FILED
AUG 30 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

HOWELL HENRY DAMERON,)

Defendant-Appellant.)

Filed August 30, 1983

3-127
67498

Appeal from Boone District Court, M. D. Seiser, Judge.

Defendant appeals from his conviction of robbery in the first degree, Iowa Code § 711.1, 711.2 (1981), claiming that the court should have instructed the jury more clearly about the dangers of eyewitness identification and alleging ineffective assistance of counsel. AFFIRMED.

Francis C. Hoyt, Jr., Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and John P. Messina, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ.

PER CURIAM

Defendant, Howell Henry Dameron, was charged with first-degree robbery of a grocery store in Madrid, Iowa. The State's only evidence was the testimony of four eyewitnesses identifying defendant as the robber. The defendant is black; the four witnesses had never or rarely in their lives had any contact with any black individuals. No other evidence linked defendant to the crime.

Defendant's counsel submitted to the court a proposed jury instruction headed "Burden of Proving Identity Based Solely on Eye Witnesses." It read:

> The burden is on the State to prove beyond a reasonable doubt that the Defendant is the person who committed the offense with which he is charged. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of Defendant as the person who committed the offense before you may convict him. If, from the circumstances of the identification, you have a reasonable doubt whether Defendant was the person who committed the offense, you must give the Defendant the benefit of that doubt and find him not guilty.

The court declined to give the requested instruction on the grounds that it "is redundant and unduly stresses."

Defendant alleges that the trial court, in giving the jury instructions, should have stressed the dangers of eyewitness identification and emphasized the State's obligation to prove identity beyond a reasonable doubt because the only issue in the instant case was whether defendant was the person who committed the crime. Our review is on assigned error.

The Iowa Supreme Court dealt with the issue of when an "eyewitness identification" instruction should be given in State v. Wright, 274 N.W.2d 307 (Iowa 1979). In Wright, the trial court gave the same "credibility of witnesses" instruction as the trial court gave in the present case. Defendant in Wright requested a detailed "eyewitness identification" instruction be given, as defendant did in the present case; the trial court in Wright refused to give the additional instruction, as did the trial court in the present case. The supreme court, in

Wright, held that the "credibility of witnesses" instruction "adequately informed the jury as to those principles sought to be submitted through defendant's requested instruction, and it was therefore not error to refuse it." Id. at 314. The court said that an "eyewitness identification" instruction would place too much emphasis on that particular evidence, and would disassociate the evidence from all the other evidence they were to consider. A general instruction, applicable to all witnesses, was preferred. Id.

The case at bar differs from the Wright case in two respects. First, unlike in Wright, there was no other evidence for the jury to consider than the eyewitness testimony. Thus, there was no threat that an instruction concerning the reliability of eyewitness testimony would place too much emphasis on that evidence to the detriment of consideration of other evidence.

Second, the present case differs from Wright in the content of the "eyewitness identification" instruction requested by defendant. In Wright, the requested instruction detailed several factors to be considered by the jury in valuing a witness's identification testimony. Id. at 313. The contents of the requested instruction were deemed to be adequately included in the other general instructions given by the court. Similarly, we find that the jury instructions given by the trial court in the instant case adequately dealt with the subject matter of the requested instruction. Defendant requested an instruction which very generally dealt with burden of proof. It pointed out that defendant is entitled to benefit from a reasonable doubt a juror might have. The law point regarding reasonable doubt, however, was included in Instructions 2, 3, 6, 11, 18 and 19. Also, Instruction 9 noted that the juror should also consider a witness's strength of memory, means of knowledge of which they speak, and remoteness of events about which they testify. Exclusion of the requested instruction was not prejudicial to defendant.

Defendant claims he received ineffective assistance of counsel. Ineffective assistance of counsel would be a violation of a basic constitutional safeguard.

Consequently, we make our own evaluation of the claim under the totality of the circumstances. State v. Lemburg, 257 N.W.2d 39, 46 (Iowa 1977). The question is whether the attorney's challenged performance was within the range of normal competency. Kellogg v. State, 288 N.W.2d 561, 563 (Iowa 1980). We find that counsel was competent and effective in this case. Defendant's claim is without merit.

AFFIRMED.