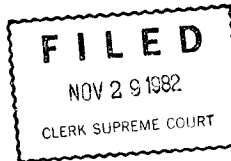


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA, )

Plaintiff-Appellee, )

vs. )

KIRBY ALLEN TAYLOR, )

Defendant-Appellant. )

November 29, 1982

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Appeal from Polk District Court, Joel D. Novak, Judge.

Defendant appeals from his conviction for robbery in the first degree, a violation of Iowa Code §§ 711.1 and 711.2, asserting that he was denied his constitutional right to effective assistance of counsel. AFFIRMED.

Charles L. Harrington, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Roxann M. Ryan, Assistant Attorney General, for plaintiff-appellee.

Considered en banc.

Defendant Kirby Allen Taylor appeals from his conviction for first-degree robbery, asserting that he was denied his constitutional right to effective assistance of counsel when trial counsel made no attempt prior to trial to subject either defendant's blood or blood stains found at the crime scene to analysis more detailed than was necessary to ascertain basic blood type. We affirm.

At trial the State attempted to establish the identity of defendant as the perpetrator of the robbery by introducing into evidence testimony of the victim that the defendant in court was the man who robbed her, evidence that the license plate number on the car driven by the robber was registered to defendant's parents, and evidence that blood stains found in the car and on the victim's clothing were from type A blood, the same type as defendant's. Defendant denied involvement in the crime. During the trial, the court granted defense counsel's motion for supplemental testing of the blood specimens and defendant's blood so that a more detailed comparison could be made. However, the state criminalist was unable to perform these additional tests.

Defendant's sole contention on appeal is that he was denied effective assistance of counsel because his attorney failed to request, prior to trial, a more extensive categorization and comparison of defendant's blood and the blood stains found at the crime scene, and because failure to timely request such tests made the testing impossible. Defendant's claims that the procurement of such evidence would have established his innocence.

The presentation of an issue involving an alleged constitutional violation requires us to review this case by making an independent evaluation of the totality of the circumstances. State v. Cullison, 227 N.W.2d 121, 126-27 (Iowa 1975).

Initially we note, however, that the record before us is inadequate to resolve the ineffective assistance of counsel issue on direct appeal. The record is void of any explanation as to why trial counsel did not request supplemental tests prior to trial, and as to whether the supplemental tests might have been successful if they had been conducted earlier.

The Iowa Supreme Court was confronted with a similar situation in State v. Steltzen, 288 N.W.2d 557 (Iowa 1980), in which the court concluded:

"This type of ineffective assistance issue ordinarily requires an evidentiary, adversary hearing." The question of defendant's previous counsel's competency is more properly presented on an application for postconviction relief. . . . Such a hearing would allow opportunity to more fully develop the record to show "all the circumstances" including any not in the present record, concerning strategy and reasons involved in counsel's performance.

Id. at 560 (citations omitted).

Due to the inadequacy of the record before us and the right of the defendant to fully litigate the ineffective assistance of counsel issue on the merits, we refuse to address the issue on this appeal. We thus affirm the judgment of the trial court and preserve the ineffective counsel issue for postconviction relief proceedings.

AFFIRMED.