IN THE COURT OF APPEALS OF IOWA

No. 1-342 / 00-0906
Filed July 31, 2001

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHARLES LONELL CRAWLEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, K.D. Briner, Judge.

Charles Lonell Crawley appeals his conviction and sentence, following a jury trial, for first-degree robbery, first-degree theft, and felon in possession of a firearm. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen C. Odell, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

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STREIT, J.

Charles Crawley was convicted of first-degree robbery, first-degree theft, and possession of a firearm as a felon. He appeals, claiming his trial attorney should have sought severance of the later count from the former two, objected to certain identification testimony, and challenged the sufficiency of the evidence. We affirm.

I. Background Facts & Proceedings.

On September 29, 1999, a man robbed a Kwik Star store in Waterloo at gunpoint. Later that day, the Waterloo police received an anonymous tip suggesting Charles Crawley was the robber. A photographic lineup that included a nine-month-old photo of Crawley was then shown to Julie Broten and Rhonda Myers, the two Kwik Star clerks who were at the store during the robbery. Neither of the clerks identified any of the six men in the lineup as the Kwik Star robber.

The police later learned Crawley had been an inmate at the Black Hawk County jail from December 1998 until thirteen days before the Kwik Star robbery. The store's surveillance videotape was shown to three deputies who had worked at the jail during that nine-month period. Each deputy, after separately viewing the videotape, identified Crawley as the robber in the videotape—only one of the deputies knew he was looking for Crawley. Their identifications led to Crawley's arrest on October 11, 1999.

Broten and Myers were then shown another photographic lineup that included a new photo of Crawley. Broten identified Crawley from the lineup as

the Kwik Star robber and identified him again at trial. Myers was unable to identify Crawley from the lineup, but identified him at a February 2000 suppression hearing and at the April 2000 jury trial.

Crawley was convicted of first-degree robbery, first-degree theft, and possession of a firearm as a felon. He appeals, claiming he received ineffective assistance of counsel.

II. The Merits.

We review Crawley's claims of ineffective assistance of counsel de novo. *See State v. Allison,* 576 N.W.2d 371, 373 (Iowa 1998). To prevail, Crawley must show his attorney's performance fell outside a normal range of competency and the deficient performance so prejudiced him as to give rise to the reasonable probability that, but for his attorney's errors, the result of the proceeding would have been different. *See Strickland v. Washington,* 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). We can decide his claims on direct appeal if he fails to prove either of these two prongs. *State v. Pierson,* 554 N.W.2d 555, 562 (Iowa Ct. App. 1996).

A. Severance.

Crawley claims his trial attorney should have filed a motion to sever the possession of firearm as a felon count from the first-degree robbery and theft counts. *See* Iowa R. Crim. P. 6(1). Crawley cannot prove the requisite prejudice. The State's evidence against Crawley included the Kwik Star clerks' eyewitness testimony and identifications, the deputies' identifications, and the incriminating Kwik Star surveillance videotape. There is no reasonable

probability the jury would not have convicted Crawley of first-degree robbery and theft if they had not known Crawley was a convicted felon. Crawley's first ineffective-assistance-of-counsel claim fails.

B. In-Court Identification.

Crawley also claims his trial attorney should have sought exclusion of Myers's in-court identification of him. He argues this identification was "the fruit of a prior unreliable and suggestive identification"—namely Meyers's pretrial identification of him when he was in shackles at another court proceeding—and thus violated his due process rights. *See State v. Mark*, 286 N.W.2d 396, 403-07 (Iowa 1979). Once again, Crawley cannot prove the requisite prejudice. The jury was thoroughly instructed about how to evaluate identification testimony. There was also overwhelming evidence of Crawley's guilt regardless of Meyers's identifications. Accordingly, even if both of these identifications should have been excluded, Crawley would not have been entitled to a new trial. *See State v. Boley,* 456 N.W.2d 674, 678 (Iowa 1990) ("An error of constitutional magnitude does not mandate a new trial if the error was harmless beyond a reasonable doubt."). Crawley's second ineffective-assistance-of-counsel claim also fails.

C. Sufficient Evidence.

Finally, Crawley claims his trial attorney should have challenged the sufficiency of the evidence via a suitably specific motion for judgment of acquittal. *See* Iowa R. Crim. P. 18(8). As we have already briefly discussed, the State presented overwhelming evidence of Crawley's guilt on all three counts—first-degree robbery, first-degree theft, and possession of a firearm as a felon.

Crawley's trial attorney had no duty to pursue a meritless issue. *See State v. McPhillips*, 580 N.W.2d 748, 754 (Iowa 1998). Crawley's final ineffective-assistance-of-counsel also fails.

We affirm the district court.

AFFIRMED.

Huitink, J., concurs; Sackett, C.J., concurs specially without opinion.