IN THE COURT OF APPEALS OF IOWA

No. 5-431 / 94-1307

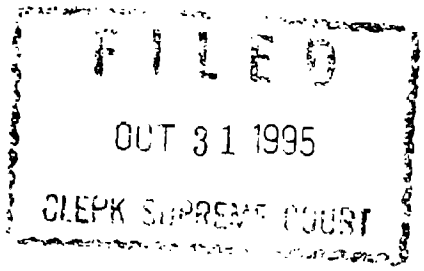
STATE OF IOWA,

Appellee,

vs.

BRANDON SCOTT COLLINS,

Appellant.



Appeal from the Iowa District Court for Pottawattamie County, J.C. Irvin, Judge.

Brandon Collins appeals from his conviction, following a jury trial, for first-degree robbery. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds Lapointe, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Richard Crowl, County Attorney, and Tim O'Grady, Assistant County Attorney for appellee.

Heard by Donielson, C.J., and Hayden and Cady, JJ.

CADY, J.

Brandon Collins appeals his conviction of first-degree robbery. He challenges the sufficiency of the evidence to support the conviction and claims the district court erred in permitting the State to impeach a rebuttal witness. We affirm.

On February 13, 1994, around 8:30 p.m., a man with a gun entered Darrah's Apco convenience store in Council Bluffs. The man wore a bandanna that covered his face from the nose down. He also wore a baseball hat and a hooded sweatshirt. The hood was over the hat. The man told a customer, Troy Nixon, to lie on the floor. Another customer, Heidi Fowler, and her small daughter, also layed on the floor. The gunman told the store clerk, Jennifer Hansen to "get the money," and later stated, "Hurry up, bitch." The gunman took about $200 from the store, along with Hansen's wallet.

A week after the robbery, Hansen identified Collins from a photographic array as the gunman, although she was not positive. Hansen later picked Collins out of a live lineup. She also identified Collins at the trial.

Fowler testified she was unable to identify the robber from the photographic array. At the lineup, however, she identified Collins by his voice. At the trial, Fowler testified Collins as the man who robbed Darrah's Apco on February 13, 1994.

Nixon testified that in viewing the photographic array, he felt Collin's eyes looked like those of the robber. Nixon also identified Collins at the live lineup, as well as the trial.

Collins presented an alibi defense. Brenda Ellis testified Collins was at her apartment from 7:30 p.m. the night of the robbery until 5:30 a.m. the next morning. She stated her daughter, Kristy Ellis, and Kristy's boyfriend, Shawn O'Neil, picked Collins up at about 7:30 p.m. and brought him to her apartment. She testified Kristy and Shawn then left and returned about 10:00 p.m. Brenda admitted she had a sexual relationship with Collins. She also admitted she had originally told police officers she did not have any relationship with Collins. She stated she was reluctant to admit to the relationship because she did not want her daughter to know she was having an affair with a younger man.

Kristy testified on rebuttal she could not remember what time she picked up Collins. She did testify Collins was at her mother's apartment when she and Shawn returned later in the evening. She recalled the late evening news was on the television. When confronted with her previous statement to police officers, Kristy testified she did not remember making the statement and did not remember what she had done on that night. Police detective Keith Mehlin was then called as a rebuttal witness. He testified Kristy previously told him she and Shawn did not pick up Collins until about 10:00 p.m. on the evening of the robbery.

The jury found Collins guilty of robbery in the first degree. The jury also answered a special interrogatory finding he was armed with a firearm or displayed a firearm in a threatening manner at the time of the offense. The district court denied

Collin's motion for new trial and motion in arrest of judgment. He was sentenced to a term of imprisonment not to exceed twenty-five years.

I. Sufficiency of Evidence

Collins first contends there was insufficient evidence in the record to support his conviction. He states the only evidence linking him to the crime was the identification testimony of the three witnesses. He believes the identification by these witnesses was unreliable. Collins points out he knew Hansen briefly in high school, and believes she recognized him because of their previous acquaintance, not from the robbery. He also points out Fowler only identified him by his voice. Additionally, he notes Nixon was not sure about the identification at the police station. Collins claims that the alibi evidence, together with the unreliable witness identification, shows there was insufficient evidence to support his conviction.

When a criminal defendant challenges the sufficiency of evidence to support a conviction, we review all the evidence in the record in a light most favorable to the State. *State v. Garr*, 461 N.W.2d 171, 173 (Iowa 1990). We must uphold the conviction if there is substantial evidence in the record to support it. *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *State v. Robinson*, 288 N.W.2d 337, 339 (Iowa 1980).

We find there is sufficient evidence in the record to support Collin's conviction. We first note the jury was free to disbelieve Ellis' alibi testimony.

Hanson and Nixon identified Collins from a photographic array. Hanson, Nixon and Fowler individually viewed the suspects in the live lineup, and each identified Collins as the gunman. Furthermore, each of the witnesses identified Collins at the trial. Although the eye witnesses indicated at various times they were unsure about the identification, we believe there was sufficient evidence in the record to support the jury's finding that Collins was the person that robbed Darrah's Apco on February 13, 1994.

II. Impeachment

Collins also claims the district court erred by allowing the State to impeach the testimony of its rebuttal witness, Kristy, by means of Mehlin's hearsay testimony. It is prejudicial error for the State to place a witness on the stand who it expects to give unfavorable testimony solely for the purpose of introducing otherwise inadmissible hearsay testimony to impeach the witness. *State v. Tracy*, 482 N.W.2d 675, 679 (Iowa 1992). Here, Collins asserts the State knew Kristy would give unfavorable testimony prior to calling her as a rebuttal witness.

We find the present situation distinguishable from that discussed in *Tracy*. Collins presented no evidence to show the State had advance knowledge Kristy would testify differently at trial than in her previous statements to police officers. Moreover the prosecutor specifically disavowed any advance knowledge that Kristy would testify to anything other than what was in her prior statement. Under these circumstances, we conclude Detective Mehlin's testimony was admissible to impeach

Kristy's testimony.

We affirm defendant's conviction for robbery in the first degree. Costs of this appeal are assessed to defendant.

AFFIRMED.