IN THE COURT OF APPEALS OF IOWA

000349

No. 6-225 / 95-99

FILED
APR 23 1996
CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

WILLIE JOHN HILSON,

Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Kristin L. Hibbs, Judge.

Willie John Hilson appeals from his conviction, following a jury trial, for second-degree robbery. **AFFIRMED.**

Patrick E. Ingram of Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, Denver D. Dillard, County Attorney, and Todd Tripp, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Cady and Streit, JJ.

PER CURIAM

This is an appeal by a defendant from his conviction for second degree robbery, in violation of Iowa Code sections 711.1 and 711.3 (1993). We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On May 16, 1994, a man unsuccessfully demanded money from a clerk at a Kentucky Fried Chicken in Cedar Rapids. The man then ran from the store, leaving two shoes in the parking lot. Police officers received a report that the man was a bald black man with a goatee, who was wearing shorts and a gray T-shirt with a design of the Tazmanian Devil.

Within minutes, police officers picked up defendant, Willie Hilson, a few blocks from the store. Hilson matched the description of the robber, except he was wearing a white T-shirt with a design of Wiley E. Coyote. Hilson was not wearing any shoes. Hilson was brought back to the store, where he was identified by the store clerk and two customers.

I. Hilson contends his conviction should be reversed because the identification procedures used by the police were overly suggestive. In order to establish this claim, the defendant must show: (1) the procedure was in fact impermissibly suggestive and (2) the irregularities gave rise to a very substantial likelihood of irreparable misidentification. *State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993).

On the question of reliability, the court gives weight to these factors: (1) the opportunity of the witness to view the perpetrator at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the perpetrator; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. *Id.* at 763.

We find there was no substantial likelihood of irreparable misidentification under the facts of this case. The witnesses had ample opportunity to view Hilson, and they gave him their full attention. The prior descriptions of the witnesses matched Hilson's actual appearance. Each of the three witnesses positively identified Hilson. Additionally, the lapse of time between the crime and the identification was only a matter of minutes. Under the totality of the circumstances, we find the identifications were reliable.

II. Hilson also claims he received ineffective assistance of counsel. The present record is not sufficient to allow us to address this claim. Therefore, we preserve this issue for postconviction proceedings.

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

AFFIRMED.