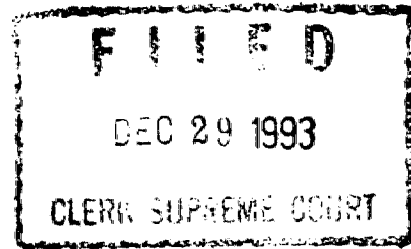


IN THE COURT OF APPEALS OF IOWA

No. 3-462 / 92-1204



000479

SPENCER PIERCE,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Polk County,
Rodney J. Ryan and Arthur E. Gamble, Judges.

Spencer Pierce appeals the district court's denial of
his application for postconviction relief. **AFFIRMED.**

Francis C. Hoyt, Jr., West Des Moines, for appellant.

Bonnie J. Campbell, Attorney General; Bridget A.
Chambers, Assistant Attorney General; John A. Sarcone,
County Attorney; and Nan Horvat, Assistant County Attorney,
for appellee.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J. 000460

In December 1989, a restaurant was robbed by two males armed with handguns and wearing ski masks. One of them fired his gun. The bullet lodged itself in a wall. One of the robbers was described as wearing red sweat pants with writing on the left leg, a red shirt, high-top tennis shoes, gloves and a black leather jacket.

The two men fled and a high-speed chase ensued. The car was forced to stop and Spencer Pierce surrendered to police. He was wearing a red T-shirt, red sweat pants with "Adidas" written on the left leg and high-top tennis shoes. A black leather jacket was found in Pierce's car. Nine .357 bullets were found in the jacket pockets.

At trial, Pierce's defense was two other individuals borrowed his car and committed the robbery. Pierce testified when he was giving these two people a ride home the police tried to pull them over. The two men then ducked down in the car and told him, "we just hit a store." Consequently, Pierce sped away from the police.

Pierce was convicted of robbery in the first degree and sentenced to a term not to exceed twenty-five years. The Iowa Supreme Court affirmed his conviction.

Pierce filed a postconviction relief application claiming his trial counsel was ineffective. The district court denied his application. Pierce appeals.

Established principles govern our review of Pierce's Sixth Amendment claim his counsel was ineffective. When considering this claim, our ultimate concern is with "the fundamental fairness of the proceeding whose result is being challenged." Strickland v. Washington, 466 U.S. 668, 696, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674, 699 (1984). In deciding this we must consider whether "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686, 104 S. Ct. at 2064, 80 L. Ed. 2d at 692-93. We review de novo the totality of relevant circumstances. State v. Risdal, 404 N.W.2d 130, 131 (Iowa 1987) (citations omitted). "Defendant bears the burden of proving by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted." Id. at 131-32.

In proving the first prong of this test, appellant must overcome the strong presumption counsel's actions were reasonable under the circumstances and fell within the normal range of professional competency. State v. Hildebrant, 405 N.W.2d 839, 841 (Iowa 1987). To prove the second prong of this test appellant must show a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698 (1984). We

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may begin our analysis with either prong of the test. If either prong fails, the claim is defeated. Risdal, 404 N.W.2d at 132-33. With these principles in mind we now turn to Pierce's specific claims.

Pierce claims his trial counsel was ineffective for three reasons: (1) he failed to call witnesses who would have supported Pierce's defense; (2) he failed to object to testimony about the effect of hollow point bullets when no one was shot or fired upon, and (3) he failed to object to misstatements of fact in the prosecutor's closing arguments

The evidence indicated a man matching the description of Pierce, including identical clothing, robbed a restaurant. Pierce's vehicle was used as the getaway vehicle. The vehicle was spotted by police shortly after leaving the crime scene. A high-speed chase ensued. The car eluded police and made a stop. A passenger exited the vehicle. The stolen money, a gun, ski masks and bullets were found at the spot the passenger exited the vehicle. Pierce was picked up a short time later, driving the getaway vehicle and wearing clothing exactly matching the description of those worn by one of the robbers. Bullets matching the one shot at the crime scene were found in a pocket of a black leather jacket found in Pierce's car.

Based on the overwhelming evidence of Pierce's guilt, we conclude no prejudice occurred from any of trial counsel's alleged errors.

AFFIRMED.