FILED
MAR 23 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed March 23, 1982
vs.	)	
GEORGE WILLIAMSON, JR.,	)	2-51/66292
Defendant-Appellant.	)	

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Appeal from Des Moines District Court - Harlan W. Bainter, Judge.

Defendant appeals from judgment of conviction following jury trial on charge of robbery in the second degree and resulting sentence as an habitual offender. AFFIRMED.

John G. Linn of the Office of Public Defender, Burlington, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Mary Jane Blink, Assistant Attorney General; and Steven S. Hoth, Des Moines County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant appeals from judgment of conviction following jury trial on charge of robbery in the second degree and resulting sentence as an habitual offender. Defendant asserts that his motion for new trial should have been granted on one or more of the following grounds: (1) alleged interference by the State with defendant's efforts to interview a material witness in the case; (2) failure of the State to provide exculpatory evidence; and (3) newly discovered evidence. We consider these issues separately.

I. Alleged Interference With Defendant's Efforts to Interview a Material Witness. In defendant's motion for new trial, it is asserted that an investigator assisting in the defense of the case had attempted to locate a material witness without success. During the trial it was discovered by the investigator that this witness was in a room at the courthouse. When an attempt was made by the investigator to enter the room where the witness was located in order to talk to him, the investigator was refused entry by a police officer.

The defendant cites State v. Allison, 260 Iowa 176, 180, 147 N.W.2d 910, 912 (1967), as establishing a right of access to witnesses and cites several federal cases where witness interference by the prosecuting authorities has been determined to be grounds for a new trial. We have considered these cases but cannot conclude on the present record that defendant has established any right to relief.

It is defendant's obligation to provide the appellate court with a record which affirmatively discloses the error upon which reliance is placed. State v. Mark, 286 N.W.2d 396, 402 (Iowa 1979). The appellate court cannot be expected to speculate as to what exactly transpired and then pass on the propriety of the challenged action. The exact extent of the State's conduct in disallowing defendant's investigator to enter the interviewing room is not clear. It is not shown whether this was merely a case of not allowing the investigator to talk to the witness while the State was interviewing him or whether it was an attempt to prevent the investigator from communicating with the witness altogether.

Whatever the situation in this regard, it is readily apparent that defendant was fully aware of the problem while the trial was still in progress. The only record made with respect thereto is the following discussion entered into with the court:

> MR. LINN [defense attorney]: Your Honor, the defendant has consulted me about the possibility of exculpatory evidence existing that the State is aware of that we were not aware of and was not able to discern. There was a witness yesterday up here that my investigator attempted to consult with, and one of the officers refused his admittance to the witness room. I believe Mr. Hoth spoke to this gentlemen—I don't know his name. He's a young black man, I believe, who was allegedly with Mr. Knotts. If he would have any exculpatory evidence, I think we need to be made aware of that to put in the record. I think the State has an obligation to make us aware of any exculpatory evidence.
>
> MR. HOTH [prosecuting attorney]: Your Honor, I don't feel there was any exculpatory evidence on the part of this witness.
>
> THE COURT: All right. The record—Does anybody know the name of this witness?
>
> MR. HOTH: It was Alan Nolan Sawyer. [sic]
>
> MR. LINN: All right.
>
> THE COURT: All right. The record will so show.

At this point, defendant requested no relief other than to be provided with any exculpatory evidence which the State had obtained as a result of its contact with this witness. No request for a continuance in order to secure the witness's testimony or for production of the witness by the State was made by the defendant. Nor was a specific objection made by defendant to the conduct of the State. We deem the failure to request any relief in the trial court other than production of exculpatory evidence precludes defendant from seeking relief on appeal as a result of the claimed witness interference.

II. Failure to Produce Exculpatory Evidence. Next defendant contends that the witness involved in the claim of witness interference discussed in the prior division did provide the State with exculpatory evidence which it failed to

produce in the face of a specific request therefor. We reject this ground of the motion for new trial on a factual basis. Defendant, in support of his new trial motion, attaches an affidavit of the witness in question indicating that this witness had information favorable to defendant concerning at least two factual issues at the trial: (a) the amount of money which defendant had prior to the robbery, and (b) the location of the defendant at a time shortly before the robbery. Defendant's claim of failure to produce exculpatory evidence is based on the premise that this witness had given similar statements to the State prior to the conclusion of the trial. The problem with this contention is that there is no evidence to support the claim that the witness gave the police or the county attorney the same version of the facts which were recited in the affidavit executed incident to the new trial motion. The State strongly contends that he did not. We therefore decline to grant relief on this ground of the motion for the reason that it is lacking in evidentiary support.

III. Newly Discovered Evidence. Lastly, defendant contends that the information contained in the affidavit of Allen Sawyzer, which was the basis for the last issue discussed, constitutes newly discovered evidence sufficient to compel the granting of a new trial. We have tested the contents of this affidavit against the standards for reviewing the propriety of a trial court's ruling on a motion for new trial based on newly discovered evidence which are summarized in State v. Overstreet, 243 N.W.2d 880, 886 (Iowa 1979). It is there recognized that a broad discretion is vested in trial courts in passing on such motions. Such motions should be closely scrutinized and sparingly granted. The rationale for this position is a recognition that the trial court is generally in a better position to determine whether newly discovered evidence would lead to a different result on retrial. Consequently, the findings of the trial courts on such motions should not be disturbed unless an abuse of discretion is clearly shown. Overstreet, 253 N.W.2d at 886. In the present case it was encumbent upon the defendant to establish that

the claimed newly discovered evidence was of such a nature that it would probably change the result if a new trial were granted. Id. Judged by this standard, we find the denial of the motion for new trial was not an abuse of the trial court's discretion. Sawyzer's testimony concerning the amount of money which defendant had prior to the robbery was cumulative of defendant's own testimony and sharply contradicted by other credible evidence. Sawyzer's testimony concerning the time defendant left the tavern was noticeably lacking in a firm conviction as to its accuracy.

We have considered all issues presented and find no grounds for ordering a new trial.

AFFIRMED.