

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 15 1989

CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

MICHAEL BYERS,)

Defendant-Appellant.)

193

9-151
88-348

Appeal from the Iowa District Court for Polk County
(No. 36625), Dick Strickler, Judge.

Defendant appeals his conviction, following a jury
trial, of first-degree robbery. **AFFIRMED.**

David D. Butler, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes,
Assistant Attorney General; and James Ramey, Assistant
County Attorney, for plaintiff-appellee.

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

HABHAB, J.**200**

Defendant Michael Byers appeals his conviction, following a jury trial, of first-degree robbery for his involvement in the holdup of a gas station. He contends the district court erred in (1) overruling his motion to suppress evidence obtained during illegal stop and search of his car soon after the robbery, and (2) denying his motion for severance of his trial from codefendant Christopher Leon Weckman, who was also convicted for the robbery having been identified as the man who entered and robbed the gas station. We affirm the district court rulings and defendant's conviction.

I. Investigatory Stop. Defendant contends the stop of his vehicle the night of the robbery was unconstitutional because the robber had left the station on foot so the police were operating entirely on suspicion rather than reasonable cause when they stopped defendant's car.

A review of the record indicates police were aware of the following facts when defendant's car was pulled over and searched: At approximately 2:45 on a weekday morning, an attendant of a gas station was robbed at gunpoint. The attendant gave the police a description of the robber and a large, older, dark-colored car with a loud muffler she had noticed slowly drive by the station shortly before the holdup. A few minutes later, an officer near the robbery

scene spotted defendant's car, which matched this description. A man matching the robber's description was a passenger in defendant's car as well. The officer lost sight of the car when turning around, but relocated it and signaled defendant to pull over, which he did.

The fourth amendment has been interpreted to require that an officer have a reasonable belief criminal activity is afoot to justify a warrantless stop of an individual for investigatory purposes. Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968). "When a stop is challenged on the basis reasonable cause did not exist, the State must show that the stopping officer had 'specific and articulable cause to support a reasonable belief that criminal activity may have occurred.'" State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982) (quoting State v. Aschenbrenner, 289 N.W.2d 618, 619 (Iowa 1980) (emphasis added in Lamp)). The record must disclose objective facts available to the officer to justify the stop under the circumstances. State v. Losee, 353 N.W.2d 876, 878 (Iowa App. 1984).

We find the officer had reasonable cause to stop and search the vehicle and the defendant based upon the descriptions of the robber and the car, the close proximity to the robbery where defendant's car was spotted, and the close proximity of time to the robbery when the stopping officer spotted the car. See State v. Scott, 405 N.W.2d

829 (Iowa 1987); State v. Hawthorne, 353 N.W.2d 889 (Iowa App. 1984); Lamp, 322 N.W.2d at 51-52. We also note the attendant was called to the scene of the stop and positively identified defendant's passenger as the robber.

II. Severance. Defendant Byers contends the district court erred by overruling his motion to sever his trial from codefendant Weckman. Defendant argues the jury could only have found him guilty by association since no one could place him at the scene of the robbery and the robber was not seen getting into a car.

The district court's refusal to grant a severance will be reversed on appeal only if the defendant demonstrates an abuse of discretion. State v. Brown, 397 N.W.2d 689, 695 (Iowa 1986) (citing State v. Belieu, 288 N.W.2d 895, 900 (Iowa 1980)). No abuse of discretion will be found unless the joint trial is shown to have prejudiced defendant's right to a fair trial. State v. Snodgrass, 346 N.W.2d 472, 475 (Iowa 1984).

Defendant's testimony at trial and an affidavit of codefendant Weckman entered into evidence contend defendant had no knowledge of the robbery and was only giving Weckman a ride the day of the robbery. The affidavit indicated the money found on defendant, which included a marked two-dollar bill from the gas station, was paid to defendant to satisfy a debt.

Defendant contends his and Weckman's defenses were mutually antagonistic, i.e., to accept one defense, the jury necessarily would have been forced to reject the other defendant's defense. Brown, 397 N.W.2d at 696. While defendant Byers testified and presented an affidavit damaging to Weckman, we find no defense was presented by Mr. Weckman. This is not a case where a prosecutor seeks to introduce evidence damaging to one defendant, i.e., a confession, which is also prejudicial to a codefendant against whom the confession would not be admissible if a separate trial were held. See Bruton v. United States, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968).

We find no abuse of discretion by the district court in denying defendant's motion to suppress or motion to sever. Defendant's conviction and sentence is affirmed.

AFFIRMED.