

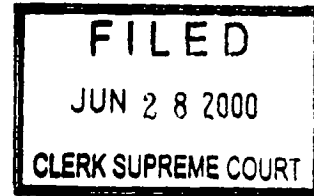
IN THE COURT OF APPEALS OF IOWA

No. 0-314 / 99-830
Filed June 28, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RAYMOND GLENN CHRISTNER,
Defendant-Appellant.



Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire
(motion for new counsel) and David E. Schoenthaler (trial), Judges.

The defendant appeals his convictions and sentences, following a jury trial, for first-degree robbery, first-degree theft, and assault on a police officer with intent to inflict serious injury. **AFFIRMED.**

Kyle D. Williamson of Engelmann, Carroll & Williamson, Davenport, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, William E. Davis, County Attorney, and Joseph A. Grubisich, Assistant County Attorney, for appellee.

Heard by Streit, P.J., and Zimmer and Hecht, JJ.

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STREIT, P.J.

The defendant, Raymond Christner, claims the length of the shirtsleeves makes the man. To the contrary, what makes the man is four positive identifications from eyewitnesses. Christner alleges his convictions for robbery, theft, and assault on a police officer were not supported by substantial evidence because differing testimony regarding the length of the perpetrator's shirtsleeves created sufficient doubt as to his identity and that the State failed to prove he purposefully intended to cause serious injury to the officer he assaulted. He also claims the trial court erred in denying him substitute counsel. Finding no merit to his assignment of error, we affirm.

1. Background Facts & Proceedings.

On an early October night in 1998, an off-duty police officer was moonlighting as a security guard at a local Davenport grocery store. Upon leaving the store, the officer observed two men pushing a Harley Davidson motorcycle through the parking lot. Suspicious, the officer approached the two men and asked for their identification and the registration to the motorcycle. The men fled and the officer gave chase.

The officer caught one of the fleeing men and attempted to subdue him. The man wrestled free from the officer's grasp and struck him in the face. The man followed that punch with a series of blows that dropped the officer to the ground. The man kicked the officer in the head and body. A passerby observed the beating and came to the officer's assistance. The assailant ran off into the

night. The officer later learned the motorcycle had been stolen from the parking lot of a nearby bar.

The officer described his assailant as wearing a white shirt, black vest, and blue jeans. He also described the man as having a mustache and a tattoo or birthmark on his neck. The patrons at the bar also described a man with a similar appearance and dress. Based on the descriptions of the man, a computer search was run of all known offenders with the same approximate age and possessing the same distinguishing characteristics. Among the names generated by the search was the name "Raymond Christner," the defendant. A photo array, including Christner's picture, was shown to the assaulted officer and the bar patrons. The officer identified Christner as his assailant, and three people present at the bar identified him as well. He was arrested six days after the incident wearing a white shirt, black vest, and blue jeans.

Christner was charged with first-degree robbery, first-degree theft, and assault with intent to inflict serious injury on a police officer. Counsel was appointed to represent him. In January of 1999 Christner requested the removal of his attorney and the appointment of an attorney who had previously represented him on other matters. The court granted Christner's motion and appointed his requested counsel. Five days before trial, Christner requested the removal of his newly appointed counsel, claiming the attorney had not personally come to see him, had not taken depositions, and had not provided him documents he had requested. A hearing was held with the attorney stating he had kept Christner informed by way of written correspondence and that he did

not feel depositions were necessary. The court denied the motion, highlighting the competency of appointed counsel and that the decision to take depositions was better left to counsel. The morning of trial Christner renewed his motion, citing the attorney's failure to promptly present him with a plea offer from the State. The court again rejected his motion, stating it would not have accepted his guilty plea even if timely entered. A jury found Christner guilty as charged, and the court sentenced him accordingly.

Christner appeals, claiming the trial court erred in refusing his motion to appoint new counsel and there was insufficient evidence he committed the crime or that he intended to seriously injure the officer.

II. Failure to Grant New Counsel.

Christner first claims the trial court abused its discretion in failing to appoint new counsel.

A. Standard of Review. We review the district court's denial of substitute counsel for an abuse of discretion. *State v. Martin*, 608 N.W.2d 445, 449 (Iowa 2000).

B. The Merits. To successfully attack a district court's denial of substitute counsel, a defendant must meet a standard two-prong test. *See id.* First, the defendant must show sufficient cause to justify the substitution of new counsel. *Id.* "Such justifiable dissatisfaction with appointed counsel includes 'a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant.'" *State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994) (quoting *Smith v. Lockhart*, 923 F.2d 1314, 1320

(8th Cir. 1991)). Next, the defendant must show prejudice as a result of the denied motion. *State v. Jefferson*, 574 N.W.2d 268, 278 (Iowa 1997). Finally, in evaluating whether the defendant has carried his burden, we are mindful of the balance between the defendant's right to counsel and the prompt and efficient administration of justice. *Martin*, 608 N.W.2d at 449.

In denying Christner's motion for substitute counsel the district court made the following findings:

I'm surprised to see an application filed. Mr. Bell [appointed counsel], I think, is probably the premier criminal defense attorney in this community, and you are going to go downhill from here if I appoint another lawyer to represent you. You are at the top of the heap with lawyers rights now. He is darn good. If he has decided there is no reason to take depositions, then that is a reasonable decision to make. He does not have to come over to the jail and hold your hand every time you want your hand held. That is not his obligation. His obligation is to represent you honestly to the best of his ability. He has got an ethical obligation to do that. I guarantee you there is not another lawyer in the community who will honor that obligation any better or with more fidelity than Mr. Bell will.

First and rather obviously the trial court held defense counsel in extremely high regard and found all trial decisions to that point reasonable, thus dispelling any notion counsel was not representing Christner zealously. See *Jefferson*, 574 N.W.2d at 278. Next the record is clear that although Christner and counsel did not see eye to eye with regard to the amount of in-person physical attention provided by counsel, Christner was informed of all progress by way of written correspondence. See *id.* at 279. We cannot conclude the trial court abused its discretion in denying Christner's motion for substitute counsel. The court

reasonably found the attorney to be extremely competent and zealous and noted no breakdown in communication between client and counsel.

III. Sufficiency of the Evidence.

Christner next claims there was insufficient evidence he committed the crime or that he intended to cause serious injury to the officer.

A. Standard of Review. We review claims of insufficient evidence for errors at law. Iowa R. App. P. 4. A jury's guilty verdict is binding upon us unless we conclude the record lacks substantial evidence to support such a finding. *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993). Substantial evidence does not, however, denote some elevated quantity of proof. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994). Rather, the relevant question in our review of the case "is whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of facts could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

B. The Identification. Christner claims the witnesses' testimony regarding the dress and build of the perpetrator were so inconsistent as to prevent a rational fact finder from identifying him as the guilty party. The discrepancies Christner speaks of concern the length of the perpetrator's shirtsleeves and his height and weight. At trial the officer and the bar patrons described the man as wearing a white shirt, black vest, and blue jeans, and

having a mustache and a tattoo or blemish on his neck. The testimony differed as to whether the shirt this man was wearing had short sleeves or long. Additionally, at the time of the assault the officer estimated his assailant's height at 5'10" and his weight at 220 pounds. Christner is actually 5'7" and weighs 190 pounds. Despite these minor discrepancies, four people positively identified Christner from a photo array as the man they had seen. The photo array was displayed in a manner where the witness could not see the necks of the featured men. Even without the aid of such a distinguishing feature as a tattoo or blemish on the neck, four people positively identified Christner. We find the discrepancies regarding the length of the shirtsleeves and the officer's inaccurate estimation of height and weight trivial in light of four positive identifications. Sufficient evidence supported Christner as the perpetrator.

C. Intent to Inflict Serious Bodily Injury. A person commits first-degree robbery when having the intent to commit a theft, the person "purposefully inflicts or intends to inflict serious injury" on another. Iowa Code §§ 711.1, .2 (1997). While the officer did not suffer serious injury, Christner's purposeful actions betrayed an intent to inflict serious injury. Christner struck the officer numerous times dropping him to the ground. At that point rather than effectuating his escape, he kicked the officer in the head and body. His kicks to the head only stopped when a passerby attempted to intervene. Based on the officer's helplessness and Christner's brutality, a rational trier of fact could find Christner purposefully intended to cause the officer serious injury. Simply because he was prevented from achieving his intended task does not prevent conviction. His

obvious intent to seriously injure the officer is sufficient. See *State v. Taylor*, 538 N.W.2d 314, 315-16 (Iowa App. 1995). His convictions are affirmed.

AFFIRMED.