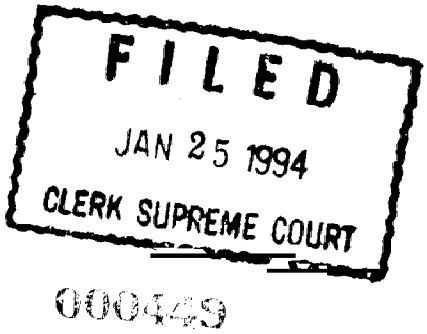
IN THE COURT OF APPEALS OF IOWA

No. 3-600 / 93-93



000449

STATE OF IOWA,

Appellee,

vs.

MATTHEW M. TENSLEY,

Appellant.

Appeal from the Iowa District Court for Scott County, C.H. Pelton, Judge.

The defendant appeals a judgment of the district court, following a jury trial, finding him guilty of four counts of second-degree burglary **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Kevin Cmelik, Assistant State Appellate Defender, for appellant.

Matthew M. Tinsley, pro se.

Bonnie J. Campbell, Attorney General, Robert P. Ewald, Assistant Attorney General, William E. Davis, County Attorney, and Michael J. Walton, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ.

000450

OXBERGER, C.J.

During July and August 1992, numerous burglaries were committed. Items taken included microwaves, jewelry, wallets, checkbooks, a toolbox, cameras, a VCR, and china. One of the victims awoke and observed a man trying to pull the ring from her finger. She later identified the burglar as Matthew Tensley. Following a brief struggle, during which the burglar attempted to put his hand in the victim's shirt, the burglar fled.

Several witnesses observed the burglaries in progress. Brad Azzaline testified he observed two men, one of whom he later identified as Tensley, walk into the back yards of houses. One man sat near the car, while Tensley left. Tensley returned a few minutes later, removing something from under his shirt. They loaded the object and left.

Darrin Wyatt testified the police raided his home and discovered a large volume of stolen goods. Wyatt stated he met Tensley through drug transactions. He testified Tensley traded gold, jewelry, electronics, and other items for drugs. Wyatt specifically identified numerous items as those he purchased from Tensley. All items were turned over to the police and later identified by the victims.

A search warrant was served on Tensley's residence. Tensley was discovered behind a locked door. The police found a large quantity of jewelry and a police nightstick.

Tensley was charged with seven counts of second-degree burglary, four counts of third-degree burglary, and one

000452

count of assault with intent to commit sexual abuse. The State later filed an amended trial information, alleging nine counts rather than twelve. Tensley filed a motion to sever the multiple counts, alleging there was no common scheme or plan and one trial on all counts would be highly prejudicial to him. The district court denied the motion.

Trial commenced on November 23, 1992. Morris Nunn, Tensley's nephew, testified he helped Tensley commit three burglaries. Tensley was found guilty as charged. The district court, noting that Tensley had prior felony convictions, determined he was a habitual offender, and sentenced him to eight consecutive terms of imprisonment not to exceed fifteen years, for a total of 120 years. Tensley has appealed.

I. Denial of Motion to Sever.

Tensley first argues the district court erred in failing to grant his motion to sever the multiple counts at trial. He argues the various burglaries share no temporal or geographic proximity. He also claims the prejudicial effect of having all offenses presented in the same trial greatly outweighed any interest in judicial economy.

Iowa Rule of Criminal Procedure 6(1), in pertinent part, provides:

> Two or more public offenses which arose from the same transaction or occurrence or from two or more transactions or occurrences constituting parts of a common scheme or plan may be alleged and prosecuted as separate counts in a single

> complaint, information or indictment, unless for good cause shown, the trial court in its discretion determines otherwise.

The rule vests the trial court with broad discretion. State v. Lam, 391 N.W.2d 245, 249 (Iowa 1986). A "common scheme or plan," by definition, presupposes involvement in a series of separate transactions or acts. Id. To determine the existence of a "common scheme or plan," the court looks to such factors as modus operandi, continuing motive, and temporal and geographic proximity. State v. Dicks, 473 N.W.2d 210, 214 (Iowa App. 1991).

In each of the eight burglaries, Tensley made a silent entry by removing a screen, cutting a screen, or entering through an unlocked door. Each of the burglaries was committed at night. Tensley operated alone and stole small, valuable objects and cash. He sold the stolen property to a drug supplier and admitted he has a cocaine problem. In addition, the burglaries all occurred within one month in a several-mile area of Davenport, Iowa. These factors support a finding of commonality in modus operandi, continuing motive, and proximity in time and place. Together, these constitute a "common scheme or plan" necessary for joint charges and joint prosecution. We affirm the district court.

II. Sentencing.

Tensley claims the trial court abused its discretion in sentencing him to eight consecutive prison terms. In

sentencing matters, we review for an abuse of discretion. Dicks, 473 N.W.2d at 215. We will not reverse the decision of the trial court unless it is on grounds or for reasons clearly untenable or to an extent clearly unreasonable. Id.

When a defendant has been convicted on multiple counts, the trial court may impose multiple sentences. State v. Criswell, 242 N.W.2d 259, 260 (Iowa 1976). It is within the trial court's discretion to order such sentences to run consecutively. State v. Jones, 299 N.W.2d 679, 682 (Iowa 1982).

We find no showing of unreasonability here. Tensley committed serious, repetitive crimes which adversely affected many citizens. He has a long history of criminal behavior and admits having a drug problem. He minimized the severity of his conduct and expressed no interest in rehabilitation. We find no abuse of discretion.

We have considered the other matters presented on appeal and find them without merit. We affirm the district court.

AFFIRMED.