

IN THE COURT OF APPEALS OF IOWA

No. 2-660 / 91-2003

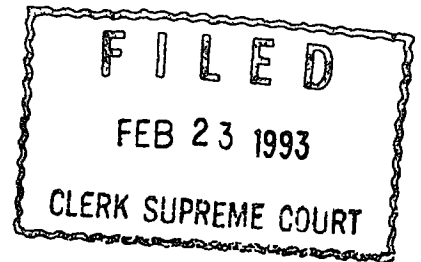
STATE OF IOWA,

Appellee,

vs.

TIMOTHY HILL,

Appellant.



Appeal from the Iowa District Court for Polk County,
A.M. Critelli, Judge.

Timothy Martin Hill appeals from his convictions and sentences for first-degree robbery and felon in possession of a firearm. **AFFIRMED.**

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

Bonnie J. Campbell, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Daniel C. Voogt, Assistant County Attorney, for appellee.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.,
but decided en banc.

OKBERGER, C.J.

On February 28, 1991, at about 4:40 a.m., Timothy Martin Hill entered a Quik Trip with a bandanna over his nose and put a gun to the head of the attendant. He then required the attendant to put the cash register money in a sack and lie face down on the floor. After Hill left, the attendant phoned the police. A short time later, the police apprehended Hill and took him to the Quik Trip. The attendant made a positive identification.

On April 1, 1991, the State charged Hill with first-degree robbery and felon in possession of a firearm. Hill filed a notice of his intent to rely upon the defense of intoxication by drugs or alcohol. The case proceeded to a bench trial.

At trial, the State presented the testimony of the Quik Trip attendant and the officers involved in Hill's arrest. The witnesses testified Hill did not appear intoxicated. Hill presented the testimony of a bartender who had served alcohol to Hill on the evening of February 27 and into the morning of February 28. Hill also presented expert testimony which indicated he had a substance abuse problem.

In addition, Hill testified on his own behalf. The direct examination focused entirely upon matters which supported his claim he was an alcoholic and he had been drinking on the evening of February 27. He also testified he did not remember anything about the alleged robbery.

During cross-examination the State asked, among others, the following two questions: "PROSECUTOR: Mr. Hill, you don't deny that you robbed this Quik Trip; do you?" Tr. 245; App. 112. "PROSECUTOR: State's exhibit number 5, this is your gun; isn't it?" Tr. 248; App. 115.

Hill objected to these two questions on the ground they constituted improper cross-examination because they were outside the scope of direct examination. However, the court permitted the questions to be asked and answered. Hill responded that he could not deny robbing the Quik Trip, and that State's exhibit 5 appeared to be his gun. The State asked Hill additional questions concerning his guilt or innocence but defense counsel did not object.

After trial, the court returned a verdict of guilty on all counts. Hill appeals.

I. Scope of Cross-Examination.

The scope of cross-examination is within the sound discretion of the trial court, and we will not reverse absent a showing of prejudice to the defendant. State v. Holmes, 325 N.W.2d 114, 117 (Iowa 1982).

Iowa Rule of Criminal Procedure 19(1) requires the State to strictly limit its cross-examination of a criminal defendant to matters testified to in the examination in chief. This does not, however, limit the prosecution to mere parroting of the questions propounded on direct examination. Holmes, 325 N.W.2d at 117. "Cross-

examination may deal with matters inquired into on direct, and questions fairly within the area of those matters constitutes proper cross-examination." Id. (quoting State v. Jensen, 189 N.W.2d 919, 923-24 (Iowa 1971)).

In the present case, Hill testified on direct examination to the matter of the events he remembered occurring the evening and morning the robbery took place. The State's questions regarding the robbery and gun were fairly within the matter of events occurring the evening and morning the robbery took place and thus, fall properly within the scope of cross examination.

In addition, Hill's argument he was prejudiced by the questioning would require us to conclude the district court would likely not have found him guilty without his answers to the challenged questions. There is no support for a finding of prejudice here. The district court was correct in overruling the defendant's objection.

II. Sufficiency of Evidence.

Hill contends the evidence supported his assertion that if he did commit the offense, he was too intoxicated to form the necessary intent to be guilty of robbery. Our standard of review is well settled. A verdict will be upheld where there is substantial evidence to support the charge. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). 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. Id. The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

Ample evidence supports the finding Hill committed the robbery. A videotape taken at the Quik Trip shows a man of Hill's approximate height and weight, dressed in clothing identified by Hill as his own, robbing the store clerk at gunpoint. The district court was correct in finding substantial evidence Hill committed the robbery.

Hill next contends he was intoxicated and unable to form the specific intent necessary to support his conviction. We do not quarrel with Hill's contention he suffers from alcoholism. The record is replete with evidence indicating his alcoholism is serious and long-standing. We sincerely encourage Mr. Hill to seek treatment and participate in Alcoholics Anonymous. However, we are unable to reverse the decision of the lower court. The store clerk testified Hill in no way appeared intoxicated. He was not glassy-eyed, his speech was not slurred, and he had no difficulty handling the gun or the money. The security camera videotape supports this

testimony. The officers who pursued Hill following the robbery testified they saw no signs of intoxication. Acquaintances who observed Hill earlier that evening testified Hill was drinking but not intoxicated. The district court correctly denied Hill's judgment of acquittal.

AFFIRMED.

All Judges concur except Schlegel, J., who specially concurs.

SCHLEGEL, J. (specially concurring)

It is nearly impossible to rely upon a defense of intoxication under the circumstances outlined in this case. Nevertheless, it is necessary to recognize that a person such as the defendant, who produced evidence of extensive drinking during the day and evening of the robbery, may well have appeared unaffected by the alcohol. We do not completely understand the phenomenon of "blackout"--a commonly experienced condition among some persons addicted to alcohol. Many studies have shown that persons experiencing so-called blackouts after periods of heavy drinking appear quite normal, sober, and in command of all their faculties when, in fact, they have no recollection of those periods of time whatsoever.

While there is much we understand about alcohol addiction, the phenomenon of "blackout" may never be understood. It is entirely possible and likely that the defendant remembered nothing of the events surrounding this robbery. However, it is unlikely, given his appearance, that any evidence by him or others to that effect would be believed.

The fact that the defendant must pay the price for not addressing his addiction to alcohol is a satisfactory

result. He is the one whose actions could have avoided such an event from ever occurring. It is unfortunate that the glamour associated with the sale and consumption of alcohol in our society does not truly demonstrate the pain and unfortunate consequences that too often result from its abusive use. It is a sad commentary that society now must pay the high cost of imprisonment of this defendant, very likely because of his abuse of and addiction to alcohol.