

IN THE COURT OF APPEALS OF IOWA

No. 7-592 / 96-2018

000379

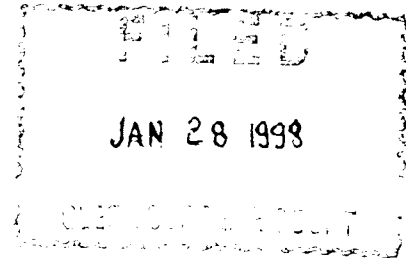
STATE OF IOWA,

Appellee,

vs.

ANTHONY T. GRANT,

Appellant.



Appeal from the Iowa District Court for Black Hawk County, George Stigler,
Judge.

Anthony Grant appeals the judgment and sentence entered upon his convictions of second-degree robbery and second-degree burglary in violation of Iowa Code sections 711.1, 711.3, 713.1, and 713.5 (1995). **AFFIRMED.**

David E. Mullin, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Jeffrey Harris, Assistant County Attorney, for appellee.

Heard by Cady, C.J., and Sackett, and Streit, JJ.

000380

CADY, C.J.

Anthony Grant appeals his convictions of second-degree robbery and second-degree burglary. He claims the district court erred in denying his motion to exclude identification testimony. He also claims he received ineffective assistance of counsel. We affirm.

The facts giving rise to this case began when Rebecca Abbott was sitting in her car in the parking lot of a community college studying for a test. As she studied, a man approached her car and asked her for a cigarette. When she told him she did not have one, he reached through the car window and took her book bag. He also grabbed the necklace from her neck. Abbott yelled for help and began chasing her assailant. Bystanders George Livezey and J.C. Kinard also joined the chase. They were, however, unable to catch him.

Shortly after the incident, police stopped Grant in a neighborhood about ten blocks from Abbott's original location. When the officers stopped Grant, he was "breathing hard" and "sweating profusely." At the scene of the stop, Kinard drove by and identified Grant as the person he had seen before. The officers next drove Grant back to the community college where Abbott and Livezey identified him as the perpetrator. During the identification procedure, the police had Grant exit their police vehicle, in handcuffs, and stand with two officers next to him. This identification took place approximately thirty minutes after the crime.

Prior to trial, Grant requested the county attorney conduct another identification procedure involving a live lineup or photographic array. After this procedure never took place, Grant requested the State be limited to an in-court identification as a sanction for their failure to conduct the additional procedure. The district court overruled Grant's motion.

On appeal Grant maintains the district court erred in denying his motion to exclude the identification testimony. He also argues he received ineffective assistance of counsel.

I. Motion to Exclude Identification Testimony

We review Grant's challenge to the identification process *de novo* in light of the totality of the circumstances. *See State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993). On appeal a claimant cannot embellish grounds for general objections given at trial or assert specific objections for the first time. *State v. Hepperle*, 530 N.W.2d 735, 739 (Iowa 1995). Without a sufficient objection, error is not preserved for our review. *See id.* at 738.

Grant maintains the trial court erred by denying his motion to exclude the identification testimony. Specifically, he now claims the procedure was impermissibly suggestive and gave rise to a substantial likelihood of irreparable misidentification. At trial, however, Grant merely raised objections to the identification evidence as a discovery sanction pursuant to Iowa Rule of Criminal Procedure 13(6)(c) for the State's failure to conduct additional identification

procedures. He did not object to the identification process as being impermissibly suggestive. Consequently, he failed to preserve error and we need not address the issue. Even if Grant had adequately preserved error, the identification procedure was not impermissibly suggestive. *See State v. Jackson*, 387 N.W.2d 623, 631-32 (Iowa App. 1986) (presence of police officers and handcuffs not enough to support a claim of suggestiveness).

II. Ineffective Assistance of Counsel

Grant's ineffective assistance of counsel claim involves a constitutional challenge. Therefore, our scope of review is de novo. *State v. Ray*, 516 N.W.2d 863, 865 (Iowa 1994). Ordinarily, ineffective assistance of counsel proceedings are preserved for postconviction proceedings. *Id.*; *see also State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994).

Grant claims he was denied effective legal assistance by his counsel's failure to obtain 911 transcripts, obtain Grant's booking photograph, and present impeachment evidence of Kinard's testimony. He suggests we should remand this case to the district court to establish a record of supplemental findings of fact.

The record is insufficient for us to address this issue on appeal. The transcripts, the booking photograph, and the impeachment evidence are not currently in evidence. Rather than remand his claim for supplemental fact findings, we believe Grant has an adequate remedy in postconviction relief. He must present this claim in an application for postconviction relief to permit a full development of the record

and give Grant's counsel an opportunity to explain her decisions. We preserve the claim for postconviction proceedings.

AFFIRMED.