IN THE COURT OF APPEALS OF IOWA

No. 6-303 / 95-845

STATE OF IOWA,

Appellee,

vs.

ANTWAN JONES,

Appellant.

FILED
JUL 26 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, K.D. Briner, Judge.

Defendant appeals judgment and sentence, following jury trial, entered upon his conviction for first-degree robbery, in violation of Iowa Code sections 711.1 and 711.2 (1993). **AFFIRMED.**

Julie A. Miller, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Susan M. Crawford, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Raymond Walton, Assistant County Attorney, for appellee.

Heard by Cady, P.J., and Huitink and Vogel, JJ.

CADY, P. J.

Antwan Jones appeals his conviction following a jury trial for first-degree robbery. We affirm the conviction on our review.

On November 28, 1994 at approximately 9:45 a.m., John Phillips was in the basement of his home with two workmen. Phillips had just received several phone calls, a couple of which were hang ups. He heard footsteps, then a person calling for him to go upstairs. Phillips looked up to see a person, later identified as Jason Burns, at the top of the stairs pointing a handgun at him.

Phillips went upstairs. Burns placed the gun to Phillips' head and demanded his money and jewelry. Two other people later identified as Antwan Jones and Shon Graves, placed knives to Phillips' sides. A fourth intruder, later identified as Ira Crawford, was also present. Phillips was hit in the head when he told the men he had no money. Phillips then told the intruder there was money upstairs. He was ordered upstairs to locate it. More than $300 was taken from Phillips' person, and more than $800 was taken from a laundry bag. The group ordered Phillips back downstairs and onto the floor. He was then loosely tied up and kicked in the head.

When Phillips heard the back door close, he was able to observe Burns enter a car with the other robbers. A fifth person who was wearing a black hat and a gray coat with a fur lining was driving. At 10:00 a.m., with the car still in view, Phillips called 911. He described the vehicle and gave the license number. The police arrived within minutes. Phillips told officers several items besides the money had

been taken. He described Jones to police as a "black male, short hair, skinny . . . five feet six."

At 10:21 a.m., police officers pulled over a vehicle matching Phillip's description. Inside the car were four men and one woman. Each passenger was placed in a separate police car. Phillips was transported to the scene of the vehicle stop. Burns was brought before Phillips, who identified him as one of the robbers. He then identified the remaining three men as the robbers. Phillips could not identify the woman, but stated her hat and coat looked similar to those worn by the driver as the robbers' car left his residence. Inside the stopped vehicle Phillips also identified a camcorder taken from his residence. Three guns were later found in the vehicle, one of which was taken from Phillips' residence.

The suspects were transported to the police station where Phillips again individually identified the four men as the robbers. Phillips also noted Jones was wearing Phillips' coat. Jones' clothing was seized. Phillips' watch was later found inside Jones' St. Louis Cardinals jacket. One of the workmen in the basement identified Jones, Crawford and Graves. Cash was found on Jones. Police found $645 in Burns' shoe and approximately $90 on Burns' person. Police confiscated an additional $110 from Graves.

Jones, Burns, Graves, and Crawford were all charged with first-degree robbery. Their trials were consolidated over their objections. Graves' case was later

severed after he failed to appear until the second day of trial. The jury found Jones guilty of first-degree robbery.

Jones appeals. He claims the district court erred in consolidating the trials, his trial counsel was ineffective for failing to file a motion to suppress the pre-trial and in-court identifications, and insufficient evidence supports his conviction.

I. Consolidation of Trials

We review the grant of a motion to consolidate for errors at law. Iowa R. App. P. 4. We consider whether the trial court abused its discretion in determining a joint trial would not result in prejudice to a party. *State v. Olson,* 482 N.W.2d 452, 455 (Iowa App. 1992); Iowa R. Crim. P. 6 (4).

Several factors have been identified to help determine if severance of multiple defendants is warranted. These factors consider whether: (1) the admission of evidence in a joint trial would be inadmissible and prejudicial if the defendant was tried separately; (2) a joint trial would prevent one defendant from presenting exculpatory testimony of a codefendant; (3) a consolidated trial will be so complex and lengthy that the jury will be unable to effectively compartmentalize the evidence against each defendant; and (4) conflicting and irreconcilable defenses will be presented by different defendants. *State v. Williams,* 525 N.W.2d 847, 849 (Iowa 1994).

Jones claims several of these factors were present in his case. He asserts the trial was complex and lengthy, the testimony of codefendant Crawford conflicted with

his defense and would not have been admissible in separate trials, and he was prejudiced by the evidence that the fingerprints of codefendant Graves were found at the crime scene.

We are unable to find an abuse of discretion. There was no evidence admitted only against one defendant at trial and nothing to suggest the jury was unable to compartmentalize the evidence against each defendant. *See State v. Brown*, 397 N.W.2d 689, 697 (Iowa 1986). Furthermore, nothing suggested the fingerprint evidence would have been inadmissible if Jones had been tried separately. Moreover, the testimony of Crawford did not conflict with the defense of Jones to the point of being irreconcilable and mutually exclusive. *See State v. Clark*, 464 N.W.2d 861, 864 (Iowa 1991). To the contrary, Crawford's defense was similar to the defense of Jones, and Crawford only acknowledged he recognized the victim.

Finally, we observe Jones did not present the trial court with a motion to sever prior to or during the trial. We cannot conclude the district court abused its discretion in entering its pretrial order for consolidation.

II. Insufficient Evidence

A verdict of guilt will be reversed only when it is not supported by substantial evidence or is clearly against the weight of the evidence. *State v. McGrew*, 515 N.W.2d 36, 37-38 (Iowa 1994). Substantial evidence means evidence that could convince a rational trier of fact the defendant is guilty of the crime beyond a reasonable doubt. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1989). We view the

evidence in the light most favorable to the State, including legitimate references and presumptions which may fairly and reasonably be deduced from the record. *State v. Boss*, 349 N.W.2d 498, 500 (Iowa 1984).

The thrust of Jones' claim is the State provided insufficient evidence of his identity as one of the four robbers. Our review of the case confirms the existence of substantial evidence.

Two of the victims identified Jones as one of the robbers. The robbery lasted over five minutes, and victim Phillips had ample opportunity to observe Jones. Jones removed Phillip's watch and searched his pockets for cash. Jones also took Phillips around the house searching for additional cash. Furthermore, Phillips called the police as the four robbers left in their automobile, which was driven by a fifth person. He gave detailed descriptions to police, including the license plate number of the vehicle. Jones' vehicle was stopped by police 20 minutes after the call was received. Jones and four other individuals were in the car, together with numerous items of property belonging to Phillips and a large quantity of cash. A large amount of cash had been taken from the house. Moreover, Jones was wearing a jacket belonging to Phillips. Phillips' watch was also found in Jones' possession, together with a large amount of cash.

Phillips identified Jones at the scene of the stop and again at the police station. Phillips also identified three other passengers of the car as persons who entered his house. Jones argues Phillips identification of him was impermissibly suggestive

primarily because he was wearing Phillips' jacket at the time. However, even excluding the pretrial identifications by Phillips, we find substantial evidence to support the conviction.

III. Pretrial Identifications

Jones claims his counsel was ineffective for failing to move to suppress the pretrial and trial identifications by Phillips. Without addressing the merits of the suppression claim, we conclude, on our de novo review, no prejudice occurred to Jones.

Phillips identified Jones numerous times, including at trial. The jacket was only involved in the identification procedure conducted at the police station. *See State v. Canada,* 212 N.W.2d 430, 432-33 (Iowa 1973) (in court identification admissible if independent in origin from tainted pretrial identification). Furthermore, even excluding the suggestive identification at the police station there is overwhelming evidence implicating Jones. No reasonable probability exists that Jones would have been acquitted if evidence of the pretrial identification would have been suppressed.

AFFIRMED.