FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed August 29, 1985
vs.	)	
WILLIE EDWARD TAYLOR,	)	5-327 84-1340
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Scott County - Margaret S. Briles, Judge.

Defendant appeals the trial court's refusal to grant a new trial after jurors witnessed the defendant in handcuffs and leg irons. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Valencia Voyd McCown, Assistant Attorney General, for plaintiff-appellee.

Considered by Donielson, P.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J.

Defendant Willie Edward Taylor appeals the trial court's refusal to grant a new trial after jurors witnessed the defendant in handcuffs and leg irons. We affirm.

On May 13, 1984, at approximately 12:15 a.m., the Coronet Theatre in Davenport was robbed by two men. The manager, working alone that night, testified at trial that the defendant came up to her and demanded all the money in the cash drawer. She said that the defendant pulled a gun out of his coat pocket far enough for her to see the butt of the gun. After she gave the defendant the money, he and the other man fled on foot. The manager immediately triggered the alarm and telephoned the police. Shortly thereafter, the defendant was arrested and was brought back to the theatre where the manager positively identified the defendant as the man who had taken the money. The manager later identified the defendant from a series of photographs at the police station, and also identified him at trial.

Defendant was convicted of robbery in the second degree in violation of Iowa Code sections 711.1 and 711.3 (1983). After his conviction, defendant filed a motion for a new trial and a motion in arrest of judgment. His motions were overruled and he was sentenced to a prison term not to exceed ten years with a five year minimum before eligibility of parole, pursuant to Iowa Code section 902.7 (1983).

In his motion for a new trial the defendant stated:

> On the second day of trial Defendant was brought by a Scott County deputy Sheriff through the hallway in handcuffs and chains in front of the jury and after being placed in the holding cell near the 3rd floor courtroom where the trial was being held, Willard Barger, a member of the jury who was subsequently elected foreman at the time of deliberations, came to the window of the holding cell and watched the Scott County Deputy Sheriff remove the handcuffs and leg irons from the Defendant. This matter was not brought to the attention of the under-

> signed counsel for the Defendant until a couple of days after the trial had concluded.

The defendant contended that he was in effect "paraded" in front of the jury and that he was thereby prejudiced and did not receive a fair and impartial trial. The trial court, however, overruled the motion.

It is well settled that the trial court has considerable discretion as to whether a new trial should be granted because jurors saw the defendant in chains and handcuffs. State v. Kile, 313 N.W.2d 558, 562 (Iowa 1981). In making this determination, it is relevant to consider the length of time involved in the incident, the circumstances under which the incident occurred, whether it occurred in the courtroom, and whether the jury was otherwise aware the defendant was incarcerated. Kile, at 563; State v. Ellis, 350 N.W.2d 178, 183 (Iowa 1984).

The Iowa Supreme Court succinctly stated the problems that face the trial judge in criminal cases when the defendant is restrained while outside the courtroom.

> A trial judge ... has a problem of balancing fair trial demands with security and safety. No trial is perfect. A trial judge looking back over a trial is in a better position than we are to say whether a reasonable accomodation of the two interests has been achieved; the judge is thus given considerable discretion in ruling on motions involving issues of this kind.

State v. Kile, 313 N.W.2d at 562; State v. Ellis, 350 N.W.2d at 183.

Defendant's encounter with the jury in the case at bar is not appreciably different than the facts presented in Ellis. In Ellis, after adjournment on the first day of trial, two to four of the jurors observed the defendant manacled outside the courtroom being led by a jailer down the courthouse stairs. The jurors were walking down the stairs behind the defendant. The defendant moved for a mistrial but his motion was overruled by the trial court and affirmed by the supreme court.

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We can see very little difference between the facts of the Ellis case and the facts presented before us on appeal. Based upon the affidavit signed by the defendant, we cannot say that the trial court abused its discretion. It does not appear that the encounter lasted any longer than that in Ellis. Nor do the circumstances and place of the encounter differ from the Ellis situation.

The defendant supports his motion with only his signed affidavit alleging the facts we've already discussed. It is defendant's obligation to provide this court with a record which affirmatively discloses the error upon which he relies. State v. Mark, 286 N.W.2d 396, 402 (Iowa 1980), quoting State v. Bakker, 262 N.W.2d 538, 544 (Iowa 1978).

No showing was made that the jury was prejudicially affected or that defendant's ability to present his defense was impaired. State v. Kile, 313 N.W.2d at 563; Corley v. Cardwell, 544 F.2d 349 (9th Cir. 1976), cert. denied 429 U.S. 1048, 97 S. Ct. 757, 50 L. Ed. 2d 763 (1976). Finding no abuse of discretion, we therefore affirm the trial court.

AFFIRMED.