

**IN THE COURT OF APPEALS OF IOWA**

No. 9-1041 / 09-0155  
Filed February 10, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JAMES (NMN) WILLIAMS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Bradley Harris, Judge.

James Williams appeals following conviction and sentence for two counts of robbery in the first degree, assault while participating in a felony, and possession of a firearm. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and E. Frank Rivera, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

**DANILSON, J.**

James Williams appeals following conviction and sentence for two counts of robbery in the first degree in violation of Iowa Code section 711.2 (2007), assault while participating in a felony in violation of section 708.3, and possession of a firearm in violation of section 724.6. He contends: (1) there was insufficient evidence to support his convictions and (2) his trial counsel was ineffective in agreeing to joinder of all charges against him arising out of the robberies of two convenience stores. We affirm.

**I. Background Facts and Proceedings.**

On June 11, 2008, two armed robberies of convenience stores occurred in Waterloo: Around 1:00 p.m., the Clark-Prime Mart was robbed, and around 5:15 p.m., the Dollar General was robbed. On June 17, 2008, the State filed a trial information for case FECR154619, charging Williams with six counts: robbery in the first degree (Count I), assault while participating in a felony (Count II), possession of a firearm as a felon (Count III), eluding (Count IV), operating a motor vehicle while his license was barred (Count V), and operating a motor vehicle while his license was revoked (Count VI). On September 10, 2008, the State filed a second trial information for case FECR156357, charging Williams with robbery in the first degree. The State also filed a motion to join these two cases for trial, which the court granted.

During the course of a jury trial, Williams entered guilty pleas to Counts IV, V, and VI in FECR154619. At the close of trial, the jury returned guilty verdicts

on the remaining counts (including the charge for robbery in the first degree in FECR156357). Williams filed a motion for a new trial.

On January 26, 2009, Williams appeared before the court. The court denied his motion for a new trial, and proceeded to sentencing Williams as follows: indeterminate twenty-five year terms of imprisonment for the two convictions of robbery in the first degree (his sentence for assault while participating in a felony was merged into one of the robbery convictions); indeterminate five-year terms of incarceration and fines of \$750 for the possession of a firearm and eluding convictions; indeterminate two-year term of incarceration and a suspended fine of \$650 for the driving while barred conviction; and a fine of \$1000 for the driving while revoked conviction. Williams was ordered to serve the sentences for FECR154619 and FECR156357 consecutively. Williams now appeals.

## **II. Merits.**

### **A. Sufficiency of the Evidence.**

Williams argues there was insufficient evidence to support his convictions for robbery in the first degree, assault while participating in a felony, and felon in possession of a firearm. We review challenges to the sufficiency of the evidence for the correction of errors of law. Iowa R. App. P. 6.907 (2010); *State v. Keeton*, 710 N.W.2d 531, 532 (Iowa 2006). In reviewing challenges to the sufficiency of the evidence supporting a guilty verdict, we consider all of the evidence in the record in the light most favorable to the State and make all reasonable inferences that may fairly be drawn from the evidence. *Keeton*, 710 N.W.2d at 532.

Williams contends that no witnesses were able to identify him in either robbery. He notes that witnesses were only able to describe the clothing worn and that the robber was an African-American male. He also notes that no DNA evidence or fingerprints matched any suspect.

At trial, the State conceded Williams was not one of the two men who went into the stores during the robberies. Rather, the State argued Williams aided and abetted in the two robberies and in the offense of assault while participating in a felony by assisting Antonio Dantzler and Charles Ware in casing the two convenience stores and by driving the getaway car for both robberies. On appeal, the State contends there is sufficient evidence to prove the charges against Williams. For the following reasons, we agree.

As depicted by Dollar General Store surveillance videos and as testified to by several witnesses, the same three African-American men were at the Dollar General Store near Crossroads Mall at 10:00 a.m. and again at 10:57 a.m. on June 11, 2008. One man was wearing red pajama pants, one man was wearing a black t-shirt with numbers on it, and the other man was wearing a black t-shirt and a black baseball cap with a puzzle piece design. The men were seen driving a black SUV.

That same day, at about 1:00 p.m., Clark-Prime Mart surveillance videos showed an African-American man wearing a black t-shirt and a black baseball cap with a puzzle piece design enter the store briefly, go to the beer counter, then leave. Aftab Chatha, the clerk at the Clark-Prime Mart, testified that he noticed an African-American man come into the store and go to the beer counter.

The man looked around, said he did not have money, and left the store. Chatha watched the man walk toward the C&S car lot next door. According to the videos, within minutes, two different African-American men robbed the store at gunpoint. During the robbery, one man pointed his gun at Chatha from in front of the counter, and the other went behind the counter and beat Chatha repeatedly. One man was wearing an inside-out black hooded sweatshirt with a gray hood, with the words "Echo United" clearly visible on the front. He was also wearing black jeans with a distinctive silver tab on the back pocket and a white cloth over his face. The other was wearing a black sweatshirt or long-sleeved shirt, black jeans or sweatpants, a black cloth over his face, and a black stocking cap with the word "hustla" clearly visible on it. Both men appear to be wearing latex gloves. Chatha told the robbers where the money was, and the robbers took the money, left the store, and went to the C&S car lot.

Another clerk, Alisha Moffett, arrived to work just in time to see two men wearing dark clothing and with their faces covered run in the store and demand money. She went to the back room and called 911. Moffett testified (and the videos showed) that there is no easy access to Clark-Prime Mart from the C&S car lot because a fence separates the businesses so someone would have to go out to the street and around the fence to get to Clark-Prime Mart. Moffett testified that in her two years of working at Clark-Prime Mart, she had never had a customer park at C&S.<sup>1</sup>

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<sup>1</sup> Waterloo police officer Rhonda Weber later found two latex gloves lying on the ground in the C&S car lot.

A delivery man, Matthew Fowler, arrived to Clark-Prime Mart just as two African-American men wearing black, long-sleeved shirts walked briskly out of the store. Fowler noticed that one of the men was wearing a black form-fitting stocking cap. He also saw one man put something into his pocket, and suspected it was a weapon. Fowler entered the store and found Chatha was beaten and bleeding.

In the meantime, Edward Miljkovic was at the Trucker Bar near the Clark-Prime Mart when he noticed a black SUV pull into the C&S parking lot and park nose-in. He noticed the driver of the SUV re-park the vehicle nose-out while two passengers with hoods covering their heads were in the store. Miljkovic saw the two men return to the vehicle, still with their hoods up, and the vehicle left. Police arrived to the scene shortly thereafter.

Later that day, between 5:00 and 5:30 p.m., Dollar General Store surveillance videos showed an African-American man wearing an inside-out Echo United black hooded sweatshirt with a gray hood, black jeans, a white cloth over his face, and red and black shoes rob the store at gunpoint. The man pointed his gun at the clerk, Gary Larson, and ordered him to open the register. When the robber realized Larson was unable to open the register, he beat Larson on the back of his head with his gun. He ordered Larson to the back room of the store. He then grabbed some money that a customer, Shirley Clemens, had laid on the counter waiting to pay, and took a wad of money Clemens still had in her hand.<sup>2</sup> He ordered Clemens to the ground, left the store,

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<sup>2</sup> Clemens testified the wad of bills taken by the robber were damp and had been stained pink when her house in New Hartford had been flooded the previous day.

and got into a black SUV driven by another man. Clemens was later able to give a detailed description of the gun used by the robber.

As the robber exited the Dollar General Store, Reverend Raymond Pile was entering the store. Rile locked eyes with the man and noticed he had the hood of his sweatshirt pulled over his head and a scarf covering the bottom half of his face. Pile realized the man might have just robbed the store so he paid very close attention to him as he walked down the sidewalk and got into the passenger door of a black SUV, which he stated was either a Chevy Blazer or a Ford Explorer. He saw the vehicle pull out and turn north onto Ridgeway and called 911 on his cell phone. Pile was later able to give a detailed description of both the vehicle and the robber's clothing.

Waterloo police officer Brad Walter was nearby the Dollar General Store when he received a dispatch advising of the robbery. The dispatch described the suspect's black SUV and instructed that the SUV was travelling westbound on Ridgeway. Officer Walter spotted the black Ford Explorer SUV caught in traffic and pulled in behind it. He activated the top lights on his squad car. The SUV slowed down, but did not stop. Officer Walter then activated his siren. The SUV sped up until it was going faster than sixty to seventy miles per hour on residential streets, and blew through numerous stop signs. Officer Walter lost sight of the SUV just before it crashed into the porch of a house at 117 Sullivan.

When Officer Walter regained sight of the SUV, he realized both doors were open and no one was in the vehicle. Officer Walter noticed an African-American man with braids in his hair, wearing black pants and black t-shirt with a

white t-shirt underneath, running into the house at 204 Baltimore. In the meantime, several other officers had received a dispatch notifying of the robbery and pursuit in process. Officers set up a parameter around 204 Baltimore. As Officer Kemp was arriving at the scene, he noticed a man wearing black pants and no shirt walking out of a yard a couple houses down from 204 Baltimore. Officer Kemp asked the man if he had noticed anyone in the area and the man said he had not.

At that point, Officer Walter gave out a description of the suspects, and Officer Kemp realized the man he had just spoken to matched the description. Officer Kemp noticed the man sitting on the front steps of 227 Baltimore. As Officer Kemp approached, the owner of the home, Karla Russell, mouthed that she did not know the man sitting on her front steps. Officer Kemp took the man into custody, and he was identified as Antonio Dantzler. At the time of his arrest, Dantzler was wearing black jeans with a silver tab, red pajama pants underneath the jeans, and red and black shoes (as one of the robbers of the Clark-Prime Mart, the robber of the Dollar General Store, and one of the men casing the Dollar General Store were seen wearing). Officers discovered a damp wad of \$500 cash on Dantzler, with pink discoloration, in addition to approximately \$77 in dry money (both as Shirley Clemens testified were taken from her). Two receipts from the Dollar General Store were found in Dantzler's pocket, dated June 11, 2008, with times of purchases noted as 10:00 a.m. and 10:57 a.m. (the times of the two Dollar General casings).



Several neighbors, including Karla Russell, Donnalou Schwake, and Edward Stawacki, later testified that they had seen Dantzler in the yard of an abandoned house at 230 Baltimore. According to the neighbors, Dantzler had taken off his shirt, messed with a blue recycling dumpster, spoke briefly with Officer Kemp, and then went to the front steps of Russell's home. Officer Michael Albers later searched the dumpster at 230 Baltimore, which he found was empty except for a black shirt.

Meanwhile, Officer Steven Newell assisted other officers in searching 204 Baltimore. Defendant Williams was found inside the closet of a second-story bedroom. According to Officer Newell, Williams was hiding in the closet, with a hamper covering his upper body and clothes over his lower body. Williams was wearing black jeans, a black t-shirt, and black Fila tennis shoes. He had \$108 in cash in his pant pocket. The homeowner, Brittney Radford, testified that she had never seen Williams before, was not aware he had entered her home, and that he did not have permission to enter her home. Williams admitted to Officer Andrea Frana that he had been driving the Ford Explorer SUV when it left the Dollar General Store. The extreme efforts and highly unusual behaviors Williams exhibited in this case in order to avoid capture by police are a significant indicator of his (and his passengers') guilt. See, e.g., *State v. Marsh*, 392 N.W.2d 132, 134 (Iowa 1986) (noting that a defendant's flight may constitute circumstantial evidence of consciousness of guilt).

Officers later searched the Ford Explorer SUV that Williams had crashed into the house on Sullivan Street during the police chase. The SUV was

consistent with the vehicle in the videos and matched the descriptions given by several witnesses, including Reverend Raymond Pile and Edward Miljkovic. Inside the SUV, officers found the following: a black t-shirt with numbers, a hat with puzzle piece design, a black Echo United sweatshirt, a white cloth, three black t-shirts, and a black “hustla” stocking cap. Inside the center console of the SUV was a secret compartment under the cup holders. On the driver’s side of the compartment and in a location accessible to Williams, officers found a black and silver .45 millimeter Ruger handgun with a round in the chamber and six rounds in the magazine. It is clear Williams at least had joint constructive possession of the gun—by its proximity in the vehicle Williams was operating and due to his suspicious activity of hiding in a closet in a stranger’s home after the crash. See *State v. Carter*, 696 N.W.2d 31, 38-41 (Iowa 2005). Further, the gun was consistent with the gun used in the robberies as depicted by the surveillance videos, and also matched the description given by witness Shirley Clemens. Williams also stipulated at trial that he had previously been convicted of a felony.

Both robberies occurred at gunpoint and in each case, a store clerk was beaten. In each case, one individual remained in the black SUV while the robbery occurred and drove the vehicle away from the scene when the robber or robbers returned from the store. In respect to the Dollar General Store robbery, Williams admitted that he was the driver of the black SUV. An African-American man wearing the same clothes entered both stores and a black SUV was used as the getaway car in both robberies. Although three individuals were involved in the Clark-Prime Mart robbery and only two individuals were involved in the Dollar

General robbery, each robbery was close in time, proximity, and involved similar circumstances. The jury was certainly entitled to draw the inference that Williams was the driver of the black SUV for both robberies from the circumstantial evidence.

Considering the evidence in the record in the light most favorable to the State and making all reasonable inferences that may fairly be drawn, we find the evidence substantially supports the jury's findings in this case. In light of the evidence that Williams aided and abetted the robberies at the two retail stores and other supporting facts recited, we conclude there is sufficient evidence in this case to support Williams' convictions for robbery in the first degree, assault while participating in a felony, and felon in possession of a firearm.

#### **B. Ineffective Assistance of Counsel.**

Williams contends his trial counsel was ineffective in agreeing to joinder of all charges against him arising out of the robberies of two convenience stores. To establish a claim of ineffective assistance of counsel, a defendant must prove (1) counsel failed to perform an essential duty and (2) prejudice resulted to the extent it denied the defendant a fair trial. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). A defendant's failure to prove either element by a preponderance of the evidence is fatal to a claim of ineffective assistance. *State v. Polly*, 657 N.W.2d 462, 465 (Iowa 2003). We conduct a de novo review of ineffective assistance of counsel claims. *Maxwell*, 743 N.W.2d at 195.

We conclude the record is adequate to address Williams' claim. *But see State v. Bearse*, 748 N.W.2d 211, 214 (Iowa 2008) (noting that ordinarily, we

preserve ineffective assistance of counsel claims for postconviction proceedings to allow the facts to be developed and give the allegedly ineffective attorney an opportunity to explain his or her conduct, strategies, and tactical decisions). Even if Williams' counsel had objected to joinder of the charges against Williams, we find there is sufficient evidence in the record to conclude that the district court could have joined the charges despite the objection, on the ground that they arose out of a common scheme or plan and/or out of the same transaction or occurrence. See Iowa R. Crim. P. 2.6(1); *State v. Lam*, 391 N.W.2d 245, 249 (Iowa 1986).

Under the facts in this case, we cannot find that prejudice resulted from counsel's failure to object to the joinder. See *Maxwell*, 743 N.W.2d at 195. Because Williams has failed to prove that prejudice resulted from counsel's alleged failure, his claim for ineffective assistance of counsel must fail. See *Polly*, 657 N.W.2d at 465.

### **III. Conclusion.**

We affirm Williams' convictions and sentence.

**AFFIRMED.**