

IN THE COURT OF APPEALS OF IOWA

No. 9-846 / 09-0038
Filed January 22, 2010

SUNI BLAYYA LANE,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

A postconviction relief applicant contends that his trial counsel was ineffective (1) in making admissions in his closing arguments without his consent and (2) in failing to investigate the case. **AFFIRMED.**

Catherine Levine, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and James Ward, Assistant County Attorney, for appellee State.

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

VAITHESWARAN, J.

The State charged Suni Lane with first-degree robbery in connection with an assault of a hardware store owner and the theft of money from the cash register. A jury found him guilty of the lesser-included offense of second-degree robbery.

After his appeal was dismissed, Lane filed a postconviction relief application claiming ineffective assistance of trial counsel. The district court denied the application. On appeal from this ruling, Lane contends his trial attorney was ineffective (1) in making admissions in his closing arguments without his consent and (2) in failing to investigate the case.

To prevail, Lane must show that counsel breached an essential duty and that prejudice resulted. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). Our review of these claims is de novo. *State v. Martin*, 704 N.W.2d 665, 668 (Iowa 2005).

I. Closing Argument

During closing argument, Lane's attorney made certain pejorative statements about his client without first obtaining his consent. Specifically, he admitted he "did not like Lane, that Lane committed an assault on the employee and that Lane was guilty of second-degree robbery." Lane's attorney testified that the statements were made to "ingratiate" himself with the jurors so that they would find Lane guilty of second- rather than first-degree robbery. Lane contends that his attorney's unilateral decision to make these statements "encroached on [his] right to plead not guilty."

“We need not determine whether counsel’s performance was deficient before examining the prejudice component of an ineffectiveness claim.” *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984). We elect to proceed to the prejudice component of Lane’s claim.

To establish prejudice in the ineffective-assistance-of-counsel context, an applicant must show a reasonable probability that, without counsel’s errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. Lane cannot satisfy this standard.

Rosetta Jones, a witness for the State, testified that she knew Lane before the robbery, accompanied him to the store, and canvassed it before the incident. She stated she was to the left of Lane and the store employee and saw Lane tell the employee to give him the money from the cash drawer. She spoke to police shortly after the incident and, prior to trial, identified Lane from a photo array prepared by the police department.

The store owner and employee also testified for the State and also positively identified Lane from the photo array. While defense counsel elicited testimony that the photo identification process did not comport with certain recommended procedures,¹ the appropriateness of the identification procedures is not an issue on appeal.

¹ The Iowa Supreme Court has recognized studies that have indicated that mistaken eyewitness identification is a major reason defendants are convicted of crimes that they did not commit. *State v. Folkerts*, 703 N.W.2d 761, 765 (Iowa 2005); see Gary L. Wells, *Eyewitness Identification Evidence: Science and Reform*, 29 *Champion* 12, 12 (2005) (“There is little doubt today that mistaken eyewitness identification is the primary cause of the conviction of innocent people in the United States.”).

Based on this record, we agree with the district court that Lane cannot prevail on his ineffective-assistance-of-counsel claim.

II. Claimed Failure to Investigate

Lane next contends that his attorney failed to investigate the case. He asserts counsel (A) failed to look into Rosetta Jones's background and (B) failed to investigate Lane's alibi defense.

A. As noted above, Jones accompanied Lane to the hardware store and positively identified him as the person who committed the robbery. On cross-examination, Powers asked Jones a single question concerning what Lane was wearing. Postconviction defense counsel conceded that this was an appropriate impeachment question, as Jones's testimony about Lane's clothing was inconsistent with the testimony of other witnesses. However, he urged, and Lane now maintains, that his trial attorney could have further impugned Jones's credibility had he properly investigated her background. The State counters that even if additional impeachment-worthy evidence had been gathered, that evidence would not have aided Lane, given the defense's theory of admitting his involvement.

Again, we need not weigh in on the reasonableness of trial counsel's strategy. Instead, we elect to resolve this claim on the *Strickland* prejudice prong. For the reasons stated above, we conclude there is no reasonable probability that, had counsel investigated Jones's background and further impeached her, the result of the proceeding would have been different. We affirm the district court, as Lane cannot show prejudice.

B. Lane next contends that trial counsel was ineffective in failing to investigate his alibi defense. However, this information was not given to counsel until five days before trial. Counsel immediately brought the information to the attention of the court, which ruled that the witnesses were not timely disclosed.

At the postconviction hearing, Lane's trial attorney testified that he would have raised an alibi defense if Lane had given him sufficient information to file it. The postconviction court found his testimony credible. Based on this record, we conclude counsel did not breach an essential duty in failing to raise an alibi defense.

We affirm Lane's judgment and sentence for second-degree robbery.

AFFIRMED.