

FILED

JUN 29 1982

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**STATE OF IOWA,**

Plaintiff-Appellee,

vs.

DANIEL C. MARR,

Defendant-Appellant.

Filed June 29, 1982

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Appeal from Lee District Court, John Miller, Judge.

Defendant appeals his conviction for escape in violation of section 719.4(1), The Code 1981. Defendant claims (a) there was insufficient evidence to support the conviction in light of the evidence proffered to establish necessity as a defense and (b) the trial court erroneously admitted testimony of the prison's recordkeeper. **AFFIRMED.**

C. J. Krogmeier of Deitchler, Thomas, Saunders, Krogmeier, Humphrey & Johnson, Fort Madison, for defendant-appellant.

Thomas J. Miller, Attorney General, and John P. Messina, Assistant Attorney General, for plaintiff-appellee.

Heard en banc.

Defendant appeals his conviction for escape in violation of section 719.4(1), The Code 1981. Defendant claims (a) there was insufficient evidence to support the conviction in light of the evidence proffered to establish necessity as a defense and (b) the trial court erroneously admitted testimony of the prison's recordkeeper. We find substantial evidence to support defendant's conviction and conclude any error committed by the trial court's admission of testimony of the prison recordkeeper was rendered harmless by defendant's admission during trial. We affirm defendant's conviction.

On January 22, 1981, defendant, Daniel C. Marr, and another inmate of the Iowa State Penitentiary at Fort Madison secreted themselves in a garbage container within the confines of the prison. When the container was emptied at the city landfill, both inmates fell out of the container and were immediately apprehended by prison guards. Defendant was convicted after a jury trial for escape under section 719.4(1), The Code 1981.

Defendant initially argues the trial court erred by overruling his motion for a directed verdict. Defendant claims there was substantial evidence establishing all of the elements of necessity as a defense to an escape charge, see State v. Reese, 272 N.W.2d 863, 866 (Iowa 1978), and, therefore, the court should have directed a verdict in his favor.

In reviewing a ruling on a motion for a directed verdict, we must consider all the evidence, not merely the State's, see State v. Galvan, 297 N.W.2d 344, 348 (Iowa 1980), and apply the following test: "[W]e view the evidence in the light most favorable to the State, without regard to contradiction or inconsistencies and assisted by all reasonable inferences. If there is substantial support for the verdict in the record, the jury verdict is conclusive." State v. Robinson, 288 N.W.2d 337, 338 (Iowa 1980). Indulging in all reasonable inferences from the evidence, we find substantial support for the jury's verdict.

Under State v. Reese, 272 N.W.2d 863, 867 (Iowa 1978), three of the five elements of the necessity defense to escape are: (1) the prisoner must be faced with a specific threat of death in the immediate future; (2) there must be no time for complaint to authorities or there is a history of futile complaints which make any result from such complaints illusory; and (3) there must be no time or opportunity for resort to the courts. The evidence establishes the threat against defendant was not specific nor was it likely to be carried out in the immediate future. The threat was made on December 25, 1980. Defendant did not feel the situation necessitated immediate action as it was not reported to any official until December 29, 1980, even though he had the opportunity to do so. We do not find evidence of history complaining such that continued complaints would be futile. Defendant testified only that the person making the threat was a member of a violent prison gang called the Bikers. Further, the situation was not urgent as shown by the fact that defendant could afford to delay his escape until January 22, 1981, and enlist another inmate to participate in the escape. We do not believe defendant was stripped of reasonable alternatives to escape. See State v. Walton, 311 N.W.2d 113, 115 (Iowa 1981). We find ample evidence in the record to establish there was no necessity for defendant's escape as the necessity defense is defined in State v. Reese, 272 N.W.2d 863, 867 (Iowa 1978). Cf. State v. Walton, 311 N.W.2d at 115.

Defendant also contends the trial court committed reversible error by admitting testimony of the prison's recordkeeper. The prison's recordkeeper, Debbie Crambit, testified defendant was committed to the state penitentiary for commission of a felony. Proof that defendant was convicted of a felony is an essential element of escape under section 719.4(1), The Code 1981. Defendant argues the State was required by the best evidence rule to produce document's indicating the reason for which defendant was in prison and that the recordkeeper's testimony was incompetent to establish defendant was in prison for

commission of a felony. Defendant claims without the testimony of Crambit the State failed to introduce evidence sufficient to prove an essential element of the offense. Without addressing the merits of defendant's argument, we conclude any prejudice to defendant was cured by his admission he was convicted of a felony.

Finding no reversible error on the record presented, we affirm defendant's conviction.

AFFIRMED.