IN THE COURT OF APPEALS OF IOWA

No. 3-012 / 91-1999

FILED
FEB 23 1993
CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

JOSEPH L. WYRICK, JR.,

Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Anthony M. Critelli, Judge.

Defendant appeals, following a jury trial, from the judgment and sentence entered upon his convictions of robbery in the first degree, theft in the second degree, and escape from custody. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia J. Cone-Fisher, Assistant Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Robert P. Ewald, Assistant Attorney General, John P. Sarcone, County Attorney, and Scott Rosenberg, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

Defendant-appellant Joseph L. Wyrick, Jr. appeals after jury trial convictions of robbery in the first degree in violation of Iowa Code section 711, theft in the second degree in violation of Iowa Code section 714, and escape from custody in violation of Iowa Code section 719. Defendant contends there was not substantial evidence to support the conviction of robbery in the first degree and the trial court erred in admitting evidence concerning a prior burglary. We affirm.

Defendant was stopped by a Des Moines police officer who had heard a radio communication identifying the car and license plate number of a car defendant was driving as having been involved in a robbery. The officer instructed defendant to get out of his car. The officer unsnapped his service revolver. The officer told defendant to put his hands on the top of his car and the officer arrested defendant for the burglary. Defendant said he did not want to go to jail and hit the officer. The officer tried to restrain defendant but defendant freed himself and grabbed the officer's revolver, placed the gun to the officer's chest and threatened to shoot the officer. Defendant left in his car with the officer's revolver. Defendant was subsequently apprehended.

Defendant was charged with assault using a dangerous weapon, robbery in the first degree, theft in the second

degree and escape. The jury found defendant not guilty on the assault charge but convicted him on the remaining charges.

Defendant contends the charge of robbery in the first degree is not supported by substantial evidence showing beyond a reasonable doubt he committed the crime. Defendant contends the trial court erred in failing to grant his motion to dismiss the charge.

Defendant contends there is not sufficient evidence he assaulted the officer with an intent to steal the officer's gun or he assaulted the officer to perpetuate the stealing of the officer's gun.

We view the evidence in the light most favorable to the State, including legitimate inferences and presumptions fairly deduced from the evidence. See State v. Mills, 458 N.W.2d 395, 397 (Iowa App. 1990). Direct and circumstantial evidence are equally probative as long as the evidence raises a fair inference of guilt and does more than create a mere suspicion. See State v. Wheeler, 403 N.W.2d 58, 60 (Iowa App. 1987).

Iowa Code section 711.1 defines robbery:

> A person commits a robbery when, having the intent to commit a theft, the person does any of the following acts to assist or further the commission of the intended theft or the person's escape from the scene thereof with or without the stolen property:
>
> 1. Commits an assault upon another.
> 2. Threatens another with or purposely puts another in fear of immediate serious injury.
> 3. Threatens to commit immediately any forcible felony.

> It is immaterial to the question of guilt or innocence of robbery that property was or was not actually stolen.

Iowa Code § 711.1 (1989).

Iowa Code section 711.2 provides a person commits robbery in the first degree if "while perpetrating . a robbery, the person purposely inflicts or attempts to inflict serious injury, or is armed with a dangerous weapon."

Defendant relies on State v. Campbell, 214 N.W.2d 195 (Iowa 1974), to support his position. We do not find Campbell instructive. In Campbell, 214 N.W.2d at 197, defendant took a gun from a man later identified as an off-duty Nebraska policeman after the man threatened defendant with the gun. In Campbell, the court held there was no evidence to show a felonious taking of the gun. The court reasoned defendant seized the gun when it was apparently being used in an assault against defendant and the seizure was justified. We find no parallel between taking a gun from a person using it in an attempt to enforce an order he or she has no authority to give as in Campbell, 214 N.W.2d at 197, even if the person was later identified as an out-of-state law enforcement officer, and the situation here where an Iowa law enforcement officer identified by car and dress has a gun taken from him during the course of an attempt to arrest defendant on a reasonable suspicion of robbery.

The jury could have found defendant struggled with the officer in an attempt to both escape and to take the officer's revolver. The jury could have concluded defendant had a purpose in taking the gun in that it would (and did) aid defendant in his escape. Defendant took the gun, used it to facilitate his escape and carried the gun off in his car when he escaped. There clearly was sufficient evidence to support the first-degree robbery conviction.

Defendant contends the trial court abused its discretion in admitting evidence of the burglary that formed the basis for the officer's stop of defendant. The trial court admitted limited evidence of the burglary, finding it necessary to show the jury the entire transaction.

Defendant contends the evidence is both not relevant and prejudicial.

We review for an abuse of discretion. See State v. Gordon, 354 N.W.2d 783, 784 (Iowa 1984).

The prosecution has the right to show facts surrounding the commission of a crime without connecting the facts to defendant. See State v. Duncan, 312 N.W.2d 519, 522 (Iowa 1981); State v. Drake, 219 N.W.2d 492, 494 (Iowa 1974); State v. Lyons, 210 N.W.2d 543, 546 (Iowa 1973).

Evidence of crimes defendant is not charged with are admissible if it shows defendant's motive or intent. See

State v. Cott, 283 N.W.2d 324, 326 (Iowa 1979). The evidence of defendant's involvement in the burglary went to the motive of defendant. The trial court did not abuse its discretion in admitting the testimony.

AFFIRMED.