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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-328 / 89-1426

STATE OF IOWA,

Appellee,

vs.

ERIC EUGENE CLARK,

Appellant.

Appeal from the Iowa District Court for Monroe County, Robert Bates, Judge.

Defendant appeals from his conviction, following a bench trial, for criminal mischief in the third degree. **AFFIRMED.**

John A. Pabst, of Clements, Blomgren, Pothoven, Pabst & Stravers, Albia, for the appellant.

Thomas J. Miller, Attorney General; Sarah J. Coats, Assistant Attorney General; Annette Scieszinski, Monroe County Attorney; and Martha L. Mertz, Marion County Attorney, for the appellee.

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

HABHAB, J.

Defendant appeals from his conviction, following a bench trial, for criminal mischief in the third degree. From the evidence, the trial court found the following facts.

On Sunday, May 22, 1988, at approximately 10:00 p.m., Todd Ratliff and Scott Smith, both of Albia, were at the local Kum 'N Go store. Ratliff was driving his 1973 Monte Carlo. As the two drove to Smith's home, a small black car pulled out behind Ratliff's and followed. The black car soon passed Ratliff and stopped suddenly in the middle of the road, blocking their way.

Ratliff backed up, turned around, and drove away. The black car, however, continued to follow, resulting in a high-speed chase on Highway 34. Ratliff's car engine "blew," and Ratliff coasted to a stop. The black car pulled up in front of the Ratliff car, and three men emerged. The men walked over to Ratliff's car and yelled at him to roll down his window. Ratliff refused, and a man they heard called "Harold" and another tall, skinny man retrieved a tire iron and broke out the driver's side window. At that time, Ratliff tried to signal for help with his headlights, but Harold smashed them. Another man whom Ratliff and Smith recognized from school, the defendant, Eric Clark, stood about three feet away from the car.

Clark and the tall, skinny man proceeded around to the back of the car. Though neither Ratliff nor Smith could see, they heard the taillights being smashed. Clark and the thin man reappeared, the thin man holding a tire iron. Smith rolled down his window to talk to Harold, who told him that he should kill him, but wouldn't because Smith had not "flipped him off." Harold accused Ratliff of making an obscene gesture at him earlier that evening and told Ratliff he resembled a man who had encouraged his wife to leave him.

Smith heard Clark say, "Let's drag them out of the car, let's get it over with, let's do it." Clark was laughing throughout this period of time. At that point, another car came by and turned around, coming back to the scene. Clark ran up a hill on the side of the highway and returned to the black car after Harold and the thin man urged him to come back. They then drove away.

At a bench trial, Clark argued that he was at home at the time of the incident. Clark's parents also testified that Clark had been home. The trial court, however, found him guilty of aiding and abetting criminal mischief in the third degree. On appeal, Clark contends the evidence was insufficient to identify him as the third man at the scene or to prove that he was present at all. Clark alternatively argues that even if he was there, there was not enough evidence to prove that he aided and abetted in criminal mischief. We disagree and affirm Clark's conviction.

Our scope of review is for the correction of errors at law only. Iowa R. App. P. 4. In reviewing the finding of guilt, this court views the evidence in a light most favorable to the State. State v. LaPointe, 418 N.W.2d 49, 51 (Iowa 1988). The court's finding of guilt is binding upon this court unless there is not substantial evidence in the record to support it or such finding is clearly against the weight of the evidence. Id. Substantial evidence means such evidence as could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981). It is sufficient to raise a fair inference of guilt as to each essential element of the crime although the evidence must do more than raise suspicion, speculation, or conjecture. LaPointe, 418 N.W.2d at 51; State v. Williams, 179 N.W.2d 756, 758 (Iowa 1970).

The State may produce sufficient evidence to prove each element of the crime charged by either direct or circumstantial evidence. State v. Blair, 347 N.W.2d 416, 420-21 (Iowa 1984). Direct and circumstantial evidence are equally probative, and either is sufficient to support a conviction. Iowa R. App. P. 14(f)(16).

Clark contends that the only evidence linking him to the crime was the identification by Ratliff and Smith. We disagree. Both Smith and Ratliff had known Clark since elementary and middle school. Both testified they

recognized Clark immediately. Although Clark's parents both testified that Clark was home at the time in question, neither could positively state on cross-examination that Clark had not left the house. Because the trial court has the duty to determine the credibility of the witnesses, it was not required to accept Clark's version of the facts. State v. Wilkens, 346 N.W.2d 16, 20 (Iowa 1984). We believe the trial court was correct in determining Clark had been at the scene of the crime.

Clark, however, maintains that even if he was at the site, there was insufficient evidence to show that he aided and abetted in criminal mischief. Iowa Code section 703.1 (1987) provides:

> All persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense or aid or abet its commission, shall be charged, tried and punished as principals. The guilt of a person who aids and abets the commission of a crime must be determined upon the facts which show the part the person had in it, and does not depend upon the degree of another person's guilt.

Pursuant to this section, a defendant may not be convicted of aiding and abetting unless there is sufficient evidence to show he or she assented to or approved of the criminal act either by actively participating in it or by encouraging it prior to or at the time of its commission. Doss, 355 N.W.2d 874, 877-78 (Iowa 1984). Evidence is sufficient if the court could conclude that the "defendant was shown to 'associate himself with the venture,' that he participated in it as something he wished to bring about,

that he sought by his action to make it succeed." State v. Lott, 255 N.W.2d 105, 108 (Iowa 1977).

The evidence viewed in the light most favorable to the State reveals that Clark associated himself with the venture. He did not remain in the black car on Highway 34, but proceeded to within several feet of Ratliff's car. Clark at no time discouraged the attack and appeared to have followed the tall, skinny man to the rear of Ratliff's car as the taillights were smashed and side window broken. Clark was seen to be laughing and smiling the whole time. Clark urged his other companions to drag the young men out of the car and "do it."

From the foregoing, we conclude there was sufficient evidence to place Clark at the scene of the crime and that he aided and abetted in criminal mischief.

AFFIRMED.