IN THE COURT OF APPEALS OF IOWA

No. 8-720 / 98-0287

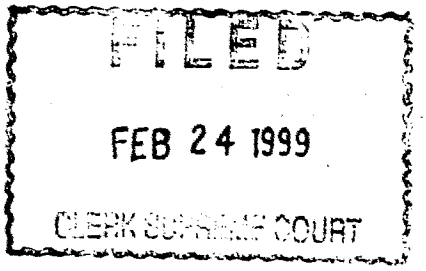
STATE OF IOWA,

Plaintiff-Appellee,

vs.

ROBERT CLAIR LINDEN, JR.,

Defendant-Appellant.



Appeal from the Iowa District Court for Cerro Gordo County, Stephen P. Carroll, Judge.

Defendant appeals from judgment and sentence entered for escape as an habitual offender. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Paul L. Martin, County Attorney, and Gregg R. Rosenbladt and Douglas D. Hammerand, Assistant County Attorneys, for appellee.

Heard by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Robert Linden, Jr., appeals from judgment and sentence entered for escape as an habitual offender. He argues there was insufficient evidence to support the conviction. He also contends the district court erred in admitting certain evidence. We affirm.

The Schoolhouse Apartments Building in Mason City was destroyed by fire on May 18, 1997. Arson was suspected. On May 20, 1997, police officers requested Linden and his girlfriend come to the police station for questioning about the fire. Linden asked if he was under arrest and was told he was not. The two were driven to the police station for an interview. At the police station, Linden again asked if he was under arrest and was told he was not. He was given his *Miranda* rights and interviewed.

During the interview, Linden became upset when informed his girlfriend had given police a statement. He stated he may have dropped a cigarette onto a pile of clothes. Linden became agitated and asked if he was under arrest. The officer responded he was not. Linden then got up and stated he was going to leave. He was informed he could not leave and was now under arrest.

Linden was then taken to another room for booking. He was told to sit down and was read the appropriate code section for arson in the first degree. As the paperwork on Linden was being completed, the officer in charge received a call from the dispatcher indicating someone was at the window to see him. He informed Linden, "Wait a minute. Sit tight. I'll be right back." When the officer returned,

Linden was gone. A search of the police station was unsuccessful. Linden was then found approximately eight blocks from the station. A foot chase ensued and Linden was ordered to stop several times. Linden stated he was not going to stop and informed the officers, "You'll have to kill me because I'm not going back to prison."

Linden was eventually apprehended and charged with first-degree arson[1] and escape as an habitual offender.[2] Two separate juries returned guilty verdicts and Linden was sentenced to consecutive twenty-five-year and fifteen-year terms of imprisonment.

I. SUFFICIENCY OF THE EVIDENCE ON THE OFFENSE OF ESCAPE. Linden argues there was insufficient evidence to support his conviction for the offense of escape. Specifically, he contends he was not under arrest when he fled the police station and the charge must, therefore, fail.

Our review is to determine whether substantial evidence supports the jury verdict. *State v. Conyers*, 506 N.W.2d 442, 444 (Iowa 1993); *State v. Barrett*, 445 N.W.2d 749, 753 (Iowa 1989). Evidence is "substantial" if it would convince a rational trier of fact that a defendant is guilty beyond a reasonable doubt. *State v. Constable*, 505 N.W.2d 473, 475 (Iowa 1993). We examine the evidence in a light most favorable to the State. *Conyers*, 506 N.W.2d at 444. All legitimate inferences

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[1] The arson charge is not a subject of this appeal.

[2] Linden stipulated to the habitual offender allegations and does not raise this issue on appeal.

and presumptions that can be fairly and reasonably deduced from the evidence are resolved in favor of the State. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984).

An arrest is defined as "the taking of a person into custody when and in the manner authorized by law, including restraint of the person or the person's submission to custody." Iowa Code § 804.5. The question of whether a defendant was arrested is determined under the circumstances of each case. *State v. Dennison*, 571 N.W.2d 492, 495 (Iowa 1997). "There is no bright-line rule or test." *Id.* Iowa Code section 804.14 recites the proper manner for making an arrest:

> The person making the arrest must inform the person to be arrested of the intention to arrest the person, the reason for arrest, and that the person making the arrest is a peace officer, if such be the case, and require the person being arrested to submit to the person's custody.

Iowa Code § 804.14.

Linden challenges only the requirement that he submit to custody. He points out he was not searched, handcuffed, or placed in jail. Linden contends he was not arrested because he was not subjected to actual physical contact or restraint. Clearly, that is not a legal requirement in Iowa. *State v. Breitbach*, 488 N.W.2d 444, 449 (Iowa 1992). Physical restraint is "necessarily involved whenever an individual either is or *would be* subjected to restraint if an attempt to flee from authorities was made." *Id.*

We have reviewed the facts of this case and conclude Linden was required to submit to custody and did so submit. Linden's claim that he was not arrested is without merit. We affirm the district court on this issue.

II. ADMISSION OF STATEMENT. While fleeing from authorities, Linden made the statement, "You'll have to kill me because I'm not going back to prison." At trial, the district court allowed the State to introduce evidence Linden made the statement, "You'll have to kill me." Linden contends the district court abused its discretion in allowing this sanitized version of his statement into evidence.

Our review is for abuse of discretion. *State v. Sallis*, 574 N.W.2d 15, 17 (Iowa 1998). We find an abuse of discretion only when the district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Knox*, 536 N.W.2d 735, 738 (Iowa 1995).

The district court admitted the statement on the theory it was probative on the issue of Linden's intent and this probative value outweighed the danger of unfair prejudice. Escape is a general intent crime. *State v. Francois*, 577 N.W.2d 417, 421 (Iowa 1998). Therefore, the statement did not have to be admitted to prove specific intent on the part of Linden. However, such evidence could still be admitted if it was relevant. Iowa R. Evid. 401. We conclude the statement was relevant to show Linden's actions did not occur from accident or mistake and the officers had not consented to his departure. Even assuming arguendo the statement should not have been admitted, we find Linden has failed to show prejudice. *State v. Traywick*, 468 N.W.2d 452, 454 (Iowa 1991). We, therefore, affirm the district court on this issue.

AFFIRMED.