

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed February 26, 1986
vs.	)	<u>5-639</u>
	)	85-255
CARLOS A. BOLTON,	)	
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Scott County (No. 117393), James E. Kelley, Judge.

Defendant appeals from his conviction of first-degree robbery, asserting that the trial court erred by submitting a flight instruction to the jury.
AFFIRMED.

Charles L. Harrington, Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Valencia McCown, Assistant Attorney General; and James Ottesen, Assistant County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., Donielson, and Snell, JJ.

The sole issue in this appeal is whether the evidence was insufficient to warrant submission of a flight instruction during defendant's trial for robbery.

The defendant, Carlos Bolton, was found guilty by a jury of first-degree robbery. At trial, the clerk at Co-op Tapes and Records in Davenport testified that on June 14, 1984, the defendant came into the store, displayed a gun, and demanded cash. He said the defendant left with \$275. Another witness testified he was walking toward Eagle's store across the street from Co-op Tapes at the time of the robbery when he saw Bolton walk around the corner. He testified Bolton got into a car and accelerated rapidly out of the parking area, nearly striking him.

The court instructed the jury that if it found the crime was committed and the defendant left the scene of the crime for the purpose of avoiding or retarding prosecution, the flight was circumstantial evidence to be used in determining the guilt of Bolton. The defendant objected to the instruction and says it was error for the court to admit it. He claims the evidence was insufficient to allow submission of the instruction. Bolton argues that neither the store clerk or police were pursuing Bolton, and the testimony of the witness indicated only that defendant "speeded up" as he drove from the lot and nearly hit him. The defendant says this indicates imprudent driving, but cannot show flight to avoid prosecution. The defendant cites this court to a number of cases from other jurisdictions emphasizing that the distinction must be made between departure from the scene of a crime and flight, which indicates concealment or other unexplained circumstances.

It is not necessary that direct evidence be available that the defendant was fleeing to avoid arrest, and circumstantial evidence is sufficient. State

v. Brokaw, 342 N.W.2d 864, 865 (Iowa 1984). It is for the jury to determine whether the defendant merely departed from the scene or fled to prevent detection. Id.

At trial the witness said defendant got into the car and "was spinning, taking off" and that defendant "sped off in the car." This testimony, along with statements defendant nearly struck the witness is sufficient to allow the question of flight to be submitted to the jury. We find no error in the court's submission of the instruction.

AFFIRMED.