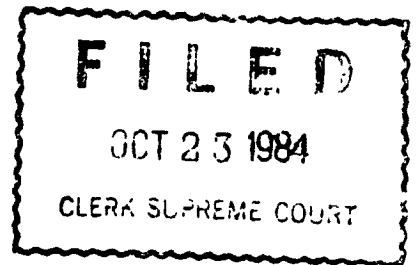


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed October 23, 1984

419

vs.

)

WILLIE DEAN SMITH,

)

4-390

84-469

Defendant-Appellant.

)

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Appeal from the Iowa District Court for Black Hawk County - Peter Van Metre, Judge.

Defendant appeals from his convictions for robbery in the second degree in violation of Iowa Code section 711.3 (1983) and from the sentence imposed upon his guilty plea for burglary in the second degree in violation of Iowa Code section 713.5 (1983). AFFIRMED.

Charles Harrington, Appellate Defender, and Patrick R. Grady, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Marcia Mason, Assistant Attorney General, for plaintiff-appellee.

Considered by Donielson, P.J., Schlegel, and Hayden, JJ.

Our review is on assigned error. Iowa R. App. P. 4; State v. Cullison, 227 N.W.2d 121, 126-27, Code of Iowa (1975).

Defendant asserts there was insufficient evidence for a jury to convict him of second degree robbery in violation of section 711.3, Code of Iowa (1983). We disagree.

The applicable principles governing appellate review of the sufficiency of the evidence have been summarized as follows:

In reviewing a motion for a directed verdict based upon insufficiency of the evidence in a criminal case, we view the evidence in a light most favorable to the State. All of the evidence must be considered, and all legitimate inferences that may be deducted therefrom will be accepted. A trial court's refusal to direct a verdict for a defendant will withstand challenge if there is any substantial evidence in the record tending to support the charge. 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. Aldape, 307 N.W.2d 32, 39 (Iowa 1982) (citations omitted). Circumstantial evidence is considered to be as probative as direct evidence. Iowa R. App. P. 14(f)(16).

A person found guilty as an aider and abettor is guilty as a principal. Iowa Code § 703.1 (1983). In order to convict defendant on an aiding and abetting theory, there had to be substantial evidence to show that defendant assented to or lent countenance and approval to the criminal act either by active participation in it or in some manner encouraging it. State v. Miles, 346 N.W.2d 517, 520 (Iowa 1984). Although mere presence at the scene of the crime is not enough to make a person an aider and abettor, the requisite participation may be inferred from circumstantial evidence including presence, companionship, and conduct before and after the offense. Id.

Defendant's claim that he had no idea a robbery was taking place was contradicted by the other sufficient evidence in the record upon which a rational

trier of the facts, the jury, could find that defendant furnished the transportation, both before and after the offense, drove to a secluded area, got out of the car and watched the robbery, was asked for advice as to what to do with the victim after the robbery, was no mere spectator, and was sufficient to show he aided and abetted the robbery. The trial court was correct in overruling defendant's motion for judgment of acquittal.

Defendant later pled guilty to an unrelated charge of second degree burglary. Judgment was entered on both convictions and defendant was sentenced to concurrent terms not to exceed ten years on each offense. Defendant's claim that the sentence imposed for burglary in the second degree, section 713.5, Code of Iowa (1983), was dependent on the mandatory term required by his conviction of robbery in the second degree, section 711.3, Code of Iowa (1983), is without merit.

When a sentence is imposed within statutory limits, it will be set aside only for an abuse of discretion. State v. Nelson, 279 N.W.2d 1, 3 (Iowa 1979). Each sentence was within its statutory ten year limit, albeit to run concurrently one with the other. The sentencing court did not abuse its discretion.

AFFIRMED.