FILED
JUN 24 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed June 24, 1977
v.	)	
IVYLE E. KIMMEL,	)	202 / 59734
Appellant.	)	

Appeal from Dallas District Court - Van Wifvat, Judge.

Appellant appeals judgment entered on his plea of guilty to a charge of murder in the second degree. Affirmed.

David J. Welu, of Redfield, for appellant.

Richard C. Turner, Attorney General, and Peter A. Keller, Dallas County Attorney.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

ALLBEE, C.J.

Defendant, Ivyle E. Kimmel, was sentenced to a term not to exceed 50 years at the men's penitentiary after pleading guilty to a charge of murder in the second degree. He appeals, asserting a number of errors by trial court in the plea tender. We affirm.

I. Factual basis for plea.

Defendant and one Robert Lewis Smith were indicted on open charges of murder in the death of Richard Yager near Adel, Iowa, on July 30, 1974. Following plea bargain negotiations, the county attorney amended the indictment against Kimmel to charge murder in the second degree and recommended a 15 year sentence in return for Kimmel's testimony against Smith.

In his testimony to the court, Kimmel stated that Smith shot Yager and that he was unaware of Smith's plan until the shooting. Kimmel asserts his statements fail to show a factual basis upon which trial court could accept the plea. *See* Ryan v. Iowa State Penitentiary, 218 N.W.2d 616 (Iowa 1974). An examination of the plea hearing discloses that it was taken under the auspices of North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L. Ed.2d 162 (1970). *See also,* State v. Hansen, 221 N.W.2d 274 (Iowa 1974); Young v. Brewer, 190 N.W.2d 434 (Iowa 1971). Under these cases, a trial court may accept a guilty plea if the defendant voluntarily, knowingly and understandingly consents to the imposition of the sentence even if he is unwilling to admit participation in the crime. North Carolina v. Alford, supra; State v. Hansen, supra; State v. Townsend, 238 N.W.2d 351 (Iowa 1976); *see also,* State v. Heinen, 252 N.W.2d 454 (Iowa 1977); State v. Reed, 252 N.W.2d 455 (Iowa 1977). Defense counsel specifically informed the court the plea to second degree murder and the corresponding county attorney's recommendation of a 15 year sentence was to

"escape any possibility" of a first degree murder conviction and its mandatory life sentence. Defendant was specifically informed of his constitutional rights and the State's high burden of proof. Brainard v. State, 222 N.W.2d 711 (Iowa 1974). Considering the strength of the State's case, we cannot say Kimmel made a bad bargain. The record bears out that defendant knowingly, voluntarily and understandingly entered into a bargain to reduce penal consequences. *See* North Carolina v. Alford, supra. The assignment of error is without merit.

II. Explanation of the nature of the charges.

Defendant contends trial court erred in accepting the guilty plea since he did not understand the nature of the charges against him. Kimmel's complaint breaks down into two areas: (1) trial court should have informed him that an accomplice's testimony must be corroborated and (2) trial court should have explained to him the legal meaning of accomplice.

Defendant's first complaint is frivolous. When the plea was accepted there was no person listed as a witness on the grand jury indictment who even remotely resembled an accomplice. In fact, the bargain with Kimmel was made to secure his testimony against his confederate, Smith. Any problem which the State might have with Kimmel's testimony in Smith's trial is irrelevant to Kimmel's plea. Absent evidence to the contrary, trial court may assume defense counsel has sufficiently advised defendant on matters relating to admissibility of evidence and possible defenses to the charge. State v. Heinen, 252 N.W.2d 454, 455 (Iowa 1977).

Defendant's second contention also has its serious problems. Kimmel's written brief declares: "In view of the fact that it is undisputed that the defendant did not do the actual shooting, the defendant was apparently being charged for aiding and abetting."

The State's case as reflected by the minutes of the grand jury indictment was both direct and circumstantial. Kimmel's pickup truck was positively identified as being at Yager's station at the time of the killing. Kimmel himself was positively identified as being at the station at the time of the killing. Through ballistics, it was established that Kimmel's gun was used in the shooting. Finally, Kimmel directed police officers to where the gun had been thrown. Given this evidence, we can hardly say that the State was forced into an aiding and abetting theory against Kimmel.

Even assuming arguendo the State was proceeding against Kimmel under an aiding and abetting theory, we do not believe trial court was under a duty in this case to explain to Kimmel the often subtle and technical distinction between an accomplice and principal. It is true that trial court has an obligation to ensure that defendant has an understanding of the charge against him before accepting a guilty plea. Brainard v. State, 222 N.W.2d 711, 714 (Iowa 1974). Often this entails detailing the elements of the offense to the accused, which trial court did here. Brainard v. State, supra. Murder is defined as the killing of another human being with malice aforethought, either expressed or implied. State v. Nowlin, 244 N.W.2d 596, 604 (Iowa 1976). Whether a person is an aider or abettor simply is not an element of the offense, rather a theory by which the State may prosecute a participant in a crime even though not the actual perpetrator. Moreover, trial court also explained to Kimmel that even as an accomplice he was as liable for the killing as the actual perpetrator. *See* section 688.1, The Code.

We are satisfied Kimmel understood the nature of the charges against him. Kimmel has not challenged the effect of trial court's failure to follow the county attorney's sentence recommendation. *See* State v. Townsend, 238 N.W.2d 351, 356 (Iowa 1976).

Trial court's judgment and sentence hereby are affirmed.

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