

IN THE COURT OF APPEALS OF IOWA

No. 9-514 / 88-1267

FILED

DEC 21 1989

CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

WILL HENRY HOWARD III,

Defendant-Appellant.

445

Appeal from the Iowa District Court for Polk County,
Dick Strickler, Judge.

Defendant was convicted and sentenced for the crime of murder in the first degree; he was accused of participating in a robbery with two accomplices which resulted in a murder. Defendant appeals, claiming there was insufficient evidence to convict him of murder in the first degree.
AFFIRMED.

Raymond E. Rogers, State Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Julie A. Halligan, Assistant Attorney General; James Smith, County Attorney; William Thomas and Odell McGhee, Assistant County Attorneys; for plaintiff-appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden,
JJ.

SCHLEGEL, J.

Defendant was convicted and sentenced for the crime of murder in the first degree. He was accused of participating in a robbery with two accomplices which resulted in a murder. Defendant appeals. He claims there was insufficient evidence to convict him of murder in the first degree.

Defendant Will Henry Howard III was charged with murder in the first degree in violation of Iowa Code sections 707.1 and 707.2. On October 9, 1987, Howard left with Zuric Fountain and William Ridley from Mickey's Lounge. Ridley and Fountain had a plan to rob Joe Gulas. The men entered the apartment of Ted Wilt to get to Gulas' apartment. Wilt tried to detain the three men and a fight ensued. Wilt was beaten about the head with a blunt instrument. He died from his wounds. A portable television and possibly some other items were taken from Wilt's apartment. Howard admitted he was present during the fight. A jury convicted him of murder in the first degree. He was sentenced to life imprisonment.

Howard appeals his conviction. He claims there was insufficient evidence to convict him of first-degree murder. Howard states that he was unaware of the robbery plans of Ridley and Fountain. He asserts that he was an unwilling participant in their plans and that he did not become involved in the beating of Wilt.

Our standard of review is well settled. A verdict will be upheld where there is substantial evidence to support the charge. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. Id. The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

The evidence in this case turned primarily on circumstantial evidence and the testimony of witnesses. The jury and judge were present to hear the testimony of the defendant and of Mr. Ridley. The evidence is clear that the defendant was at the scene of the crime and failed to leave while the crime was being committed. There was other evidence of blood on his clothes and his shoes. The jury was certainly entitled to view defendant's testimony with suspicion given its self-serving nature. The jury apparently chose to disbelieve the defendant and to believe Mr. Ridley. There is certainly enough other evidence for the jury to draw inferences that establish the defendant's guilt beyond a reasonable doubt. In a battle of

credibility the jury must be accorded a substantial amount of weight in its determination. Upon consideration of the facts in the record, we cannot say there was not substantial evidence to convict the defendant.

AFFIRMED.