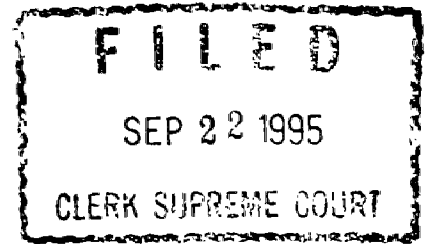


IN THE COURT OF APPEALS OF IOWA

No. 5-419 / 94-0555



STATE OF IOWA,

Appellee,

vs.

CHANDRA C. HARPER,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan,
Judge.

Harper appeals judgment and sentence, following a jury trial, entered upon her
conviction of aiding and abetting a first-degree robbery. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Anthony Janney, Assistant County
Attorney, for appellee.

Considered by Sackett, P.J., and Habhab and Huitink, JJ.

HUITINK, J.

Defendant Chandra Harper was charged with the crime of robbery in the first degree, in violation of Iowa Code sections 711.2 and 902.7 (1993). She appeals her conviction and sentence. We affirm.

In the morning of August 25, 1993, Harper's friend, Monique Rembert drove to her home and picked her up. They later picked up Harper's boyfriend, Bruce Keys. In the afternoon, Harper and Keys borrowed Rembert's car from about 1:00 to 3:30 p.m. to do some errands. They returned to Rembert's house and spent the evening there. At about 10:30 p.m., Harper asked to borrow Rembert's car again to drive Keys home. She stated she would return and Rembert could then drive her home before her curfew at midnight.

Harper drove Keys to the Dell Oil Convenience Store. She did not park in the parking lot, but parked the car in the back, where it was dark. Keys ran from the car. In the convenience store he displayed a handgun and took about fifty-five to sixty dollars in cash. As he left the store, he fired several shots at the clerk and two spectators. No one was injured. Keys then ran back to the car.

Harper drove the car away from the convenience store at a high rate of speed. She did not turn on the car's headlights until she reached the street. An unmarked police car had been observing the convenience store, and it followed Harper and Keys

away from the scene of the crime. Harper drove the car through a stop sign and a stop light. The car finally stopped when a marked police car pulled in front of it.

When Harper stopped the car, Keys ran out. Harper told police officers she did not know who he was. She voluntarily went to the police station, where she initially told officers an unknown man had jumped in her car and forced her to drive. She later stated he was a man she had been seeing for a couple of days, whose first name was K.C., and she did not know his last name. Eventually Harper admitted to police officers the man was Keys.

Harper was charged with robbery in the first degree under a theory that she had aided and abetted Keys in robbing the convenience store. A jury found her guilty of the crime charged. The jury answered the following special interrogatory in the negative:

We, the Jury, having found the defendant guilty of the crime of Robbery in the First Degree, find that at the time Bruce Keys committed this crime, he represented that he was in the immediate possession and control of a firearm, displayed a firearm in a threatening manner, or was armed with a firearm.

Defendant filed a motion for judgment of acquittal, motion for new trial, and motion in arrest of judgment. The district court denied her posttrial motions. The district court sentenced her to a term of imprisonment not to exceed twenty-five years, which is a mandatory sentence. Defendant appeals.

Defendant contends the district court erred in failing to grant her motion for a judgment of acquittal. She claims there was insufficient evidence in the record to

support her conviction because there is insufficient evidence to show she knew of Keys' robbery plans. She also states the jury's answer to the special interrogatory shows the jury found she did not know Keys had a gun. She believes the use of the firearm is essential to the first-degree robbery conviction.

When a criminal defendant challenges the sufficiency of evidence to support a conviction, we review all the evidence in the record in a light most favorable to the State. *State v. Garr*, 461 N.W.2d 171, 173 (Iowa 1990). We must uphold the conviction if there is substantial evidence in the record to support it. *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *State v. Robinson*, 288 N.W.2d 337, 339 (Iowa 1980). We view the evidence in the light most favorable to the State. *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981).

One cannot be convicted of a crime upon a theory of aiding and abetting unless there is substantial evidence to show he or she assented to or lent countenance and approval to the criminal act either by active participation in it or by some manner encouraging it prior to or at the time of its commission. *State v. Lott*, 255 N.W.2d 105, 107 (Iowa 1977). Neither knowledge nor proximity to the scene alone is enough to prove aiding and abetting. *State v. Lewis*, 514 N.W.2d 63, 66 (Iowa 1994). However, these factors in combination with circumstantial evidence, such as presence,

companionship, and conduct before and after the offense is committed, may be enough from which to infer a defendant's participation in the crime. *Id.*

We find there is substantial evidence in the record to support Harper's conviction. We first note the jury was not required to accept defendant's testimony she did not know of Keys' robbery plans prior to the robbery. *See State v. Trammell*, 458 N.W.2d 862, 863 (Iowa App. 1990).

Circumstantial evidence supports a conclusion defendant did know of the robbery plans and assented to them. Harper parked the car in back of the convenience store in an unlit area, where it was less likely to be seen. She has never claimed Keys directed her to park in the back. Additionally, immediately upon Keys' return to the car, she drove quickly away from the scene and did not turn on her lights until she reached the street, which shows an attempt to leave the scene without being seen. Her flight from the scene of the crime by driving at a high rate of speed is evidence of aiding and abetting. *See Lewis*, 514 N.W.2d at 67.

We also note that after she was stopped, defendant gave several contradictory stories to police officers. A false story told by a defendant to explain or deny a material fact against him or her is by itself an indication of guilt, and the false story is relevant to show that the defendant fabricated evidence to aid his or her defense. *State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993).

We find the jury's answer to the special interrogatory does not show it found defendant did not know Keys had a gun. The interrogatory concerns Keys' representations to the convenience store clerk. Furthermore, at trial, defendant admitted Keys had used a gun during the robbery. Because of this concession, any claim about irreconcilable findings of fact due to the special interrogatory have been waived. *See State v. Sage*, 162 N.W.2d 502, 504 (1968).

We conclude there is sufficient evidence in the record to support defendant's conviction. We affirm the decision of the district court. Costs of this appeal are assessed to defendant.

AFFIRMED.