FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-378 / 89-1324

STATE OF IOWA,

Plaintiff-Appellee,

vs.

BLANTON EDMOND,

Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Peter A. Keller, Judge.

Defendant appeals his conviction for second-degree robbery. He challenges the sufficiency of the evidence to support the conviction. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Amy M. Anderson, Assistant Attorney General, James Smith, County Attorney, and Daniel Voogt, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

SACKETT, J.

Defendant was convicted of second-degree robbery, following a trial to the court. Defendant challenges the sufficiency of the evidence to support his conviction. We examine the record under well-established standards governing a challenge to sufficiency of the evidence. See State v. Price, 365 N.W.2d 632, 633 (Iowa 1985).

The facts which were basically undisputed were defendant, while in a Walgreens Store in Des Moines, was observed by an assistant manager putting a bottle of Beefeaters gin under the back of his coat. An employee stopped defendant and asked him if he had forgotten to pay for something. Defendant pulled the gin from under his coat and handed it to the male employee. Defendant said he had returned all property and asked to be left alone. The employee asked defendant to step back in the store. Defendant refused and began to walk past other stores in the strip mall where Walgreens was located. The Walgreens employee and assistant manager followed defendant demanding he return to the store and identify himself. At this point, both men thought defendant had returned all the merchandise.

Defendant gave the men a false name. The men continued to follow defendant and asked him to return to the store. At some point, defendant gave the men a bottle of Chevas and told them they had all their property back and they

should leave him alone. The employee went to call the police and the assistant manager followed defendant across the street to a parking lot. In the parking lot defendant stopped and hit the assistant manager in the face with the back of his hand. The defendant's blow broke the assistant manager's glasses and cut his face.

By this time the employee had returned and undaunted the two men continued to follow defendant. Defendant pulled out another bottle of Chevas. Defendant began to climb a fence and the two men tried to pull him back. Defendant took a bottle of Royal Crown and Canadian Club liquor from his coat, threw them on the ground, and fled to an open field with the two men following him yelling at him to stop. The men told people nearby to call the police. An off-duty police officer joined the chase. Defendant climbed a fence where he was confronted by a resident and two dogs. The Des Moines police arrived, and defendant was arrested and advised to drop a bottle of whiskey he was holding. Defendant does not deny either the theft or the assault. He contends, however, they were separate crimes.

Defendant contends there was not sufficient evidence to support his conviction. Defendant was charged with robbery in the second degree under Iowa Code sections 711.1 and 711.3 (1989). In defining robbery, section 711.1 provides:

> A person commits a robbery when, having the intent to commit a theft, the person does any of the following acts <u>to assist or further the commission of the intended theft or the persons escape from the scene thereof</u> with or without the stolen property:

1. Commits an assault upon another.
2. Threatens another with or purposely puts another in fear of immediate injury.
3. Threatens to commit immediately any forcible felony.

It is immaterial to the question of guilt or innocence of robbery that property was or was not actually stolen. (emphasis added).

Iowa Code § 711.1 (1989).

The State was required to prove beyond a reasonable doubt the defendant had the specific intent to commit a theft and the defendant committed an assault on the assistant manager in carrying out his intent or to assist him in escaping from the scene of the theft.

The defendant contends the alleged assault on the assistant manager occurred as a separate event from the theft and, therefore, was not committed in furtherance of the theft or to assist in his escape from the scene of the theft. In support of his argument, defendant relies on the fact he was apprehended several blocks from the Walgreens store where the theft occurred. He also points out that at the time of the alleged assault, he was no longer inside the mall area or even the curtilage of the store, and the merchandise he had taken was believed by his pursuers to have been returned prior to the time he left the store.

The issue is whether there is substantial evidence to support a finding beyond a reasonable doubt defendant's assaultive conduct assisted his escape. See State v. Jordan, 409 N.W.2d 184, 186 (Iowa 1987). Defendant had stolen bottles of liquor which were on his person when he

left the store. He left the store and was attempting to leave the presence of the men attempting to stop him when the assault occurred. One or both men had defendant in his sight prior to the assault. The assault occurred several blocks from Walgreens.

We reject defendant's argument we should find, as a matter of law, the assault was not in furtherance of the theft or to assist his escape.

AFFIRMED.