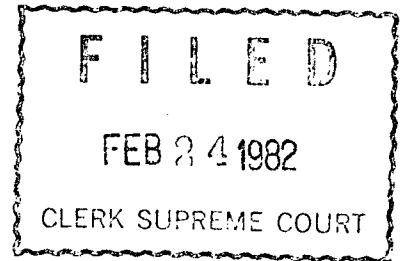


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,	)	329
Plaintiff-Appellee,	)	Filed February 24, 1982
vs.	)	
DAVID KEITH ENGEL,	)	<u>2-14</u>
Defendant-Appellant.	)	66311

Appeal from Jones District Court, Robert E. Ford, Judge.

The defendant appeals from his conviction of escape from custody in violation of Section 719.4(1), The Code. AFFIRMED.

Paul Englander, Cedar Rapids, for defendant-appellant.

Thomas J. Miller, Attorney General, and Richard L. Cleland, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

The defendant appeals from his conviction of escape from custody in violation of Section 719.4(1), The Code. We affirm.

The defendant was incarcerated in the Iowa State Men's Reformatory at Anamosa on August 18, 1979, after a felony conviction. In April 1980, the defendant requested and received protective custody because he had been threatened by a fellow inmate because of unpaid gambling debts. In June he was transferred to the Oakdale Medical Facility for three months. He returned to Anamosa on September 8 and was still in protective custody. On September 25 he was reclassified to Living Unit E so that he could receive work assignments. The defendant testified that he thought that when he was in Living Unit E he would still be separated from the rest of the inmates. He testified that when he discovered this would not be the case, he requested his counselor to return him to protective custody. Although the testimony is somewhat cloudy, the defendant asserts his counselor told him to give Living Unit E a try. On September 26, while on a work detail, the defendant left the Reformatory without authorization. He was arrested for escape approximately thirteen hours later. Prior to trial, the defendant filed a motion for a change of venue, which was denied. At the jury trial, the defendant raised the defense of compulsion based on the threat he had received. He was convicted.

The defendant appeals, asserting that (1) the trial court erred in refusing to change venue; (2) there was insufficient evidence to support the guilty verdict; and (3) he should be given an opportunity to pursue his claim of ineffective assistance of counsel.

The defendant asserts the trial court erred by denying his motion for change of venue. He based his motion on an affidavit showing stories were broadcast on

the radio about the escape, one newspaper article which reported the escape, an affidavit showing widespread distribution of the newspaper containing the article, and two affidavits of county residents stating their belief the defendant could not receive a fair trial in the county. We review the evidence de novo, to determine whether the trial court abused its discretion in ruling that the defendant "failed to demonstrate a substantial likelihood he would not receive a fair and impartial trial." State v. Cornelius, 293 N.W.2d 267, 269 (Iowa 1980). The newspaper article merely reported the facts surrounding the escape. "Mere exposure to news accounts does not prove there is a substantial likelihood of prejudice in the minds of prospective jurors in the county in which the trial is to be held." Id. The article was not inflammatory or inaccurate. There was no showing that any of the prospective jurors read the article or were prejudiced by it. There was no showing that any of the radio broadcasts were prejudicial. Furthermore, the news accounts were reported and broadcast in late September, two and one-half months before trial. There was no showing that the two persons who provided affidavits had any connection with the trial whatsoever. The defendant failed to show he could not receive a fair trial in the county. The trial court did not abuse its discretion in denying the motion for a change of venue.

The defendant next argues the verdict was contrary to the law or the evidence. He bases this argument on the defense of necessity. He testified his life was threatened in April because he was unable to pay back gambling debts he had incurred in prison. He said he escaped because he was afraid for his life.

The Iowa Supreme Court recognized the defense of necessity to an escape from custody charge in State v. Reese, 272 N.W.2d 863 (Iowa 1978). However, the defense is limited by five restrictions: (1) a specific threat of death, sexual attack or substantial bodily injury in the immediate future, (2) no time for a complaint to

authorities or a history of futile complaints, (3) no time to resort to the courts, (4) no violence toward innocent persons, and (5) the prisoner immediately reports to authorities when he has attained a position of safety. Id. at 866. The defense is unavailable to the defendant in this case because (1) the defendant received a general threat of death or injury in April which did not threaten injury in the immediate future, (2) there was opportunity to complain to authorities, and complaints had been effective in the past in gaining protective custody; and (3) the defendant made no attempt whatsoever to report to authorities after his escape. Therefore, since there was substantial evidence to prove the defendant had escaped from custody, the jury verdict of guilty is affirmed.

The defendant's final assertion is that he should be afforded an opportunity to pursue his claim of ineffective assistance of counsel. We hold that the defendant has failed to show on this record that his counsel's actions were below the normal range of competence. See State v. Williams, 285 N.W.2d 248, 271 (Iowa 1979).

AFFIRMED.