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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed August 29, 1985

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	5-343 84-1681
ROBERT ALLEN POWERS,	)	
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Pottawattamie County - J. C. Irvin, Judge.

Defendant appeals from his conviction for terrorism in violation of Iowa Code section 708.6. AFFIRMED.

Gary K. Anderson, of Anderson & Wheeler, Council Bluffs, for defendant-appellant.

Thomas J. Miller, Attorney General, and Lona Hansen, Assistant Attorney General, for plaintiff-appellee.

Considered by Donielson, P.J., and Schlegel, and Sackett, JJ.

SACKETT, J.

Powers was the driver of a car from which shots were fired at a barber shop one night. A rifle and both spent and live shells were found in the car. Live shells were found on Powers' person. At trial Powers testified the shooting was done by a passenger in his car who displayed a rifle and intimidated him into driving the car as directed. Powers was convicted of terrorism in violation of Iowa Code section 708.6 (1985).

He appeals contending: (1) there was insufficient evidence to support his conviction and (2) his attorney rendered ineffective assistance of counsel.

I. WAS THERE SUFFICIENT EVIDENCE TO SUPPORT POWERS' CONVICTION FOR TERRORISM

In determining sufficiency of the evidence, we view the evidence in the light most favorable to the state; all inferences that are fairly and reasonably deducted from the evidence are accepted; and all the evidence, not just that supporting the verdict, is considered. State v. Wilkens, 346 N.W.2d 16, 20 (Iowa 1984). The verdict will be upheld if supported by "substantial evidence," i.e., evidence which would convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. Id.

Powers contends the evidence showed his passenger, Rolfe, was the one who fired the shots. The state's theory was that Powers aided and abetted Rolfe, but Powers claims there was insufficient evidence to show he assented to the criminal act by active participation or encouragement.

One cannot be convicted of a crime upon a theory of aiding and abetting unless there is substantial evidence to show he 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. Phams, 342 N.W.2d 792, 796 (Iowa 1983). Guilt may be established by circumstantial evidence. Id. Knowledge is essential, but neither knowledge nor presence at

the scene of the crime is sufficient to prove aiding and abetting. Id. The underlying precept of aiding and abetting is a requirement that the accessory in some way associated himself with the venture, that he participated in it as something he wishes to bring about and that he seeks by his action to make it succeed. Id.

Under the record before us there is sufficient evidence of Powers' active participation in the terrorism incident. He was driving the car from which the shots were fired. When the car was searched, a rifle and spent casings were found. When the defendant was searched, shells for the rifle were found in his pocket. Powers claims he was not responsible because he was acting under duress. He testified Rolfe verbally threatened him and was holding a gun. He also claimed to be scared of Rolfe and testified he was glad when the police stopped the car. The jury is not, however, required to accept the defendant's version of the facts. There is sufficient evidence to support the conviction.

II. WAS POWERS DENIED EFFECTIVE ASSISTANCE OF COUNSEL

Powers filed a motion in limine[1] asking that the state not be allowed to introduce evidence relative to the fact that two bars, including one where Powers and Rolfe had been drinking, were fired at on the night in question. The state did not resist the motion. The motion was sustained, and the court enjoined the state from referring to the prior shooting at any stages of the proceeding.

Powers indicated on direct examination he had not seen the rifle in the car before Rolfe started firing at the barber shop. The state then sought to ask him questions about prior shots, shots being fired somewhere else, and if casings recovered at Jacobs matched the weapon introduced at trial. Defendant's attorney made no objection to the questions and inferences. Powers claims

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[1] The motion was made in two parts. The first part claimed the evidence was irrelevant and immaterial and the second part claimed the only evidence of the shooting was statements made to a police officer by unnamed witnesses.

trial counsel was ineffective. A defendant claiming ineffective assistance of counsel must show:

> (1) that counsel's performance was so deficient that counsel was not functioning as the "counsel" guaranteed by the sixth amendment, and
> (2) that the deficient performance so prejudiced the defense as to deprive the defendant of a fair trial.

State v. Losee, 354 N.W.2d 239, 243 (Iowa 1984) (citing Strickland v. Washington, ___ U.S. ___, ___, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984)).

The state contends the record fails to show that defendant met his burden of proof that trial counsel was ineffective and asks that the issue of ineffective assistance be reserved for postconviction proceedings. We agree.

Defendant's conviction is affirmed. The issue of ineffective assistance is reserved for postconviction proceedings.

AFFIRMED.