



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed February 26, 1986

254

vs.

)

RANDY JOE ALLEN,

)

5-627
84-1902

Defendant-Appellant.

)

Appeal from the Iowa District Court for Lee County (No. R917(S)0684)

- Harlan W. Bainter, Judge.

Defendant appeals his conviction of second-degree robbery in violation of Iowa Code section 711.3, asserting that the trial court erred in refusing to submit defendant's proposed instruction regarding aiding and abetting.

AFFIRMED.

Charles L. Harrington, Appellate Defender, and Deborah A. Goins, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Roxann M. Ryan and Bruce McDonald, Assistant Attorneys General, for plaintiff-appellee.

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

Defendant Randy Joe Allen was charged with robbery in the second degree in violation of Iowa Code section 711.3 (1983). The victim in this case was Charles "Buzz" Allen, defendant's uncle. Buzz testified at trial that soon after midnight on May 24, 1984, Marcia Henkle and her son, Robbie, knocked on Buzz's kitchen door and entered his kitchen claiming to have car trouble. Buzz knew that Marcia was the girlfriend of defendant. Buzz testified that Marcia made sexual advances to him which he rejected. When he refused, she became enraged and deliberately tore the front of her blouse. At this point, defendant arrived and Marcia told him that Buzz tried to rape her. Marcia then tried to extort money and the title to his house from Buzz in exchange for a promise not to charge him with rape. Buzz offered her three dollars which she knocked to the floor. Then Marcia began throwing food from the refrigerator on the floor, breaking dishes and vases, and yanked the telephone wires loose from the wall. She also struck Buzz on the head and arms. During this time defendant was in the house, standing by quietly.

Buzz attempted to escape by running out to the yard. Defendant grabbed Buzz's sweatshirt, but Buzz slipped out of it and started running. Defendant followed Buzz into the yard and repeatedly told Buzz to return to the house. When Buzz finally did return, he sat down at his kitchen table and noticed that his CB radio, his scanner, and his wristwatch were missing from his desk. He asked defendant, Marcia, and Robbie, who were all in the house, where his belongings were, but no one responded. Defendant stood about four feet from Buzz in the kitchen and never attempted to restrain Marcia, who was yelling, or her son, who was carrying some of Buzz's belongings outside. Buzz observed Marcia and Robbie pick up his mattress from his bed and look underneath it. He then observed Robbie carry Buzz's shotgun and television out of the house. Buzz

testified defendant stood by silently, observing the robbery and ransacking, and said nothing. Finally Marcia took Buzz's radio and she and her son left. Before defendant left, he threatened to kill Buzz if he called the police. Buzz immediately locked the house after everyone left and called the police. The police subsequently found his stolen items at an apartment rented to Marcia. Neither defendant nor Marcia testified at defendant's trial.

Defense counsel requested that the trial court submit this additional instruction on aiding and abetting: "A person seeing a crime committed has no duty to intervene or prevent the commission of the crime." The trial court refused because it found that the uniform aiding and abetting instruction, which it did submit to the jury, incorporated the proposed instruction. The instruction given reads as follows:

The term aiding and abetting refers to the conduct of persons in the commission of a public offense and means to knowingly assist to an act or lend countenance or approval either by active participation in it or by some manner knowingly advising or encouraging the act prior to or at the time of its commission. Subsequent conduct may be considered only as it may tend to prove the defendant's prior encouragement or participation. The defendant's mere proximity to or presence at the scene or knowledge of the crime, without more, is not sufficient to constitute aiding and abetting. The guilt of a person who knowingly aids and abets the commission of an offense must be determined solely upon the facts which show the part he had it at, and does not depend upon the degree of another person's guilt.

Defendant was convicted as charged and sentenced to a term not to exceed ten years.

On appeal, defendant contends that because there was sufficient evidence in the record to support his additional instruction on aiding and abetting, the trial court erred in failing to submit the proposed instruction to the jury.

"The obligation of the court to instruct is well settled. Even without a request, the court must instruct on all material issues so that the jury under-

stands the matters which they are to decide." State v. Van Rees, 246 N.W.2d 339, 343 (Iowa 1976). "The court has the duty to instruct the jury on the law applicable to the facts disclosed by the evidence, and must so instruct if there is evidence admitted which supports some involved issue." State v. McConnell, 178 N.W.2d 386, 389 (Iowa 1970). However, if the instructions given by the trial court adequately and accurately cover the substance of the defendant's requested instruction, the defendant is not entitled to a particularly-worded instruction. State v. Doss, 355 N.W.2d 874, 881 (Iowa 1984); State v. Robinette, 216 N.W.2d 317, 318 (Iowa 1974) (trial court can choose its own language in framing instructions and defendant cannot complain if instructions fail to emphasize circumstances favorable to him); State v. Seiler, 342 N.W.2d 264, 268 (Iowa 1968). Our duty, then, is to determine whether the court's instruction adequately incorporates the applicable principle of law contained in defendant's requested instruction. State v. Lott, 255 N.W.2d 105, 108 (Iowa 1977). Instructions are considered as a whole and not in a piecemeal fashion. State v. Johnson, 243 N.W.2d 598, 604 (Iowa 1976), citing Dickman v. Truck Transport, Inc., 224 N.W.2d 459, 464 (Iowa 1974).

The trial court instructed the jury that "defendant's mere proximity to or presence at the scene or knowledge of the crime, without more, is not sufficient to constitute aiding and abetting." Additionally, the instruction given required the jury to find active participation, advice, or encouragement by defendant. Defendant's requested instruction merely emphasizes the fact that inaction at the scene of a crime is not sufficient to constitute aiding and abetting.

We conclude that the trial court's instruction adequately covered the legal principle contained in defendant's proposed instruction. Therefore, the court properly denied the requested instruction.

AFFIRMED.