

IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT
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STATE OF IOWA,)
)
Plaintiff-Appellee,)
)
vs.)
)
JAMES BRADFORD WHITE,)
)
Defendant-Appellant.)

1-226
63633

Appeal from Dubuque District Court, Karl Kenline, Judge.

Defendant appeals from his conviction for terrorism, in violation of section 708.6(1), The Code (Supp. 1977), and going armed with intent, in violation of section 708.8, The Code (Supp. 1977). AFFIRMED.

Chris Odell, State Appellate Defender's Office, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General, and Merle Wilna Fleming, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., Donielson, Carter, Snell, and Johnson, JJ.

PER CURIAM

Defendant appeals from his conviction for terrorism, in violation of section 708.6(1), The Code (Supp. 1977), and going armed with intent, in violation of section 708.8, The Code (Supp. 1977). We affirm both convictions.

On September 5, 1978, defendant, James B. White, was charged with attempted murder, section 707.11, terrorism, section 708.6(1), and going armed with intent, section 708.8, The Code (Supp. 1977). The charges arose from an incident in which the defendant fired a shotgun once at a parked car and once into the air. The jury acquitted the defendant on the attempted murder charge and convicted him on the terrorism and going armed with intent charges.

I. Initially, the defendant claims the trial court erred in denying his motion for a directed verdict as the State failed, under Iowa R. Crim. P. 20(4), to produce sufficient corroborative evidence of the defendant's extrajudicial confession. Rule 20(4) of the Iowa Rules of Criminal Procedure requires independent corroborative proof of an extrajudicial confession to sustain a conviction based on the confession. We are of the opinion the defendant's claim is meritless. In reaching our conclusion, we view the evidence in the light most favorable to the State and accept as established all reasonable inferences tending to support the jury's action. State v. Overstreet, 243 N.W.2d 880, 884 (Iowa 1976).

The rule requiring corroboration of confessions is similar to the rule requiring corroboration of accomplice testimony. State v. Hobson, 284 N.W.2d 239, 243 (Iowa 1979); cf. Iowa R. Crim. P. 20(3), with Iowa R. Crim. P. 20(4). Therefore, the quantum and quality of corroborative evidence necessary to substantiate a confession should be comparable to that necessary to substantiate accomplice testimony. In State v. Harrington, 284 N.W.2d at 248, in connection with accomplice testimony, the court stated:

The sufficiency of corroboration evidence is a question of fact for the jury. The "corroborating evidence need not be strong. All that is [required] is that the [accomplice] be corroborated in some material fact, which tends to connect the defendant with the crime, and therefore supports the credibility of the accomplice testimony." (citations omitted)

We find substantial evidence corroborating the confession of the defendant and linking the defendant to the commission of the crime. Police Officer Fessler testified he saw a white Cadillac El Dorado speeding from the scene of the crime just seconds

after he heard two gunshots. He pursued the car and saw the defendant run from the area of the car and into a doorway. After assistance arrived, Officer Fessler searched the building and found the defendant hiding in a storage area by a balcony at the back of the building. There is other evidence tending to corroborate the defendant's confession and link him to the commission of the crime.

II. The defendant also asserts that the State failed to establish the elements of terrorism, even giving his confession and the other evidence that interpretation which is most favorable to the State. His argument raises the question of whether section 708.6(1), The Code, which requires that the occupant of a vehicle be placed "in reasonable apprehension of serious injury" sets forth an objective standard or a subjective standard for determining apprehension. In State v. Jackson, 305 N.W.2d 420, 423 (Iowa 1981), the court expressed the view that a conviction under section 708.6(1) requires that the defendant's act placed the victim in reasonable apprehension of serious injury. Defendant interprets that statement as establishing, as a necessary element of terrorism, the victim's subjective fear or apprehension. He urges that if this is the test, the evidence in the present case is insufficient to sustain the conviction. The State contends that this issue is not squarely determined in Jackson, which involved a different subparagraph of section 708.6 and that section 708.6(1) should be construed as establishing an objective test. Under the State's theory, all that need be proved is that a reasonable person would have been placed in reasonable apprehension of serious injury by defendant's acts.

On the present record, we need not determine whether an objective standard or a subjective standard is to be applied. The trial court's instruction no. 10 told the jury that in order to convict the defendant, the State must prove by evidence beyond a reasonable doubt that (1) the defendant discharged a shotgun at a vehicle occupied by the victim, (2) the shotgun was a dangerous weapon, and (3) it was the intent of the defendant to injure or provoke fear in the victim, and (4) "[the victim] was placed in reasonable apprehension of serious injury." (emphasis supplied). We believe that this instruction sufficiently conveys to the jury the subjective standard for which defendant opts.

We also conclude that based upon all of the evidence the jury could have found that the occupant of the vehicle at which defendant shot was, in fact, placed in reasonable apprehension of serious injury. Defendant's contention that the evidence is insufficient in this regard is based upon the premise that the State was required to

present direct proof of the victim's apprehension by testimony of the victim or by testimony of witnesses indicating that the victim's demeanor suggested apprehension of serious injury. We reject this contention and conclude that in the present case the requisite subjective apprehension could be inferred from the circumstances. Defendant's motion for directed verdict of acquittal was therefore properly denied by the trial court.

III. The defendant's third argument is the court erred in denying his motion, which would have required the State to elect between submitting the terrorism charge and the going armed with intent charge. We find no authority to support the defendant's contention the State must elect between two different counts before submission of the case to the jury and reject that argument made by the defendant.

IV. Lastly, we consider and reject defendant's contention that the offense of going armed with intent under section 708.8, The Code, is a lesser included offense of terrorism so as to preclude conviction of both offenses. We have considered all issues presented and find no basis for reversal of either conviction.

AFFIRMED.

All judges concur except Snell, J., who dissents.

SNELL, J., (dissenting in part.)

I dissent from the majority's affirmance of the defendant's conviction for terrorism. I believe that to convict defendant of the crime of terrorism under section 708.6(1) the state must prove that the occupant of the car was placed in reasonable apprehension of serious injury. The requirement for conviction here is different from that under subsection (2) as is pointed out in State v. Jackson, 305 N.W.2d 420 (Iowa 1981). The test to be applied is the subjective standard so that evidence must be presented proving that the victim was in reasonable apprehension of serious injury. In this case there is no testimony by any victim nor is there evidence showing a victim's "reasonable apprehension of serious injury."

The majority suggests the instruction is good enough to satisfy a subjective standard requirement (though it neither defines it nor explains it) and finds the evidence meets this test. The State, however, argues that an objective standard applies. The majority has in fact applied an objective standard in determining whether the evidence is sufficient to satisfy this statutory requirement. The motion for directed verdict of acquittal on the charge of terrorism should have been granted for insufficiency of evidence on this issue.