FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellant,	)	Filed November 24, 1981
vs.	)	1-362 / 65747
MIKEL KERRY MYERS,	)	
Defendant-Appellant.	)	

Appeal from Linn District Court, Harold Swailes, Judge.

Defendant appeals his conviction for willful injury in violation of Section 708.4, The Code. AFFIRMED.

John C. Platt of Chipokas, Platt, Maher & Forte, Cedar Rapids, for defendant-appellant.

Thomas J. Miller, Attorney General, and Michael Jordan, Assistant Attorney General, for plaintiff-appellee.

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

PER CURIAM

Defendant appeals his conviction for willful injury in violation of Section 708.4, The Code. We affirm.

I. Defendant argues that the trial court erred in submitting the following instruction to the jury:

> The law provides that when two or more persons, acting in concert, knowingly participate in a public offense, each is responsible for the acts of the other done in furtherance of the commission of the offense or escape therefrom, and his guilt will be the same as that of the person so acting, unless the act was one which the person could not reasonably expect to be done in the furtherance of the commission of the offense.

When there is evidence to support a theory, the court must submit that theory to the jury and give them appropriate instructions to accompany that theory. State v. Willis, 250 N.W.2d 428, 430 (Iowa 1977). Defendant argues that the evidence did not justify submitting an instruction on acting in concert and knowing participation in a public offense to the jury.

The evidence shows that both the defendant and Albert Summers admitted to having been in the parking lot where the attack occurred around the time of the assault. The victim, Ronald Olson, testified that he warned both the defendant and Summers that he was not looking for trouble and that he did not wish to fight. Despite Olson's warning, both men continued to approach and then attack him. The victim and Roxanne Rhodes identified defendant as one of the assailants. No one saw a knife or other weapon in the hands of the defendant or Mr. Summers. Given this testimony, the evidence supports the joint action theory, and Instruction 7A was properly given to the jury by the court.

Defendant objected to Instruction 7A on an additional ground. Defendant's attorney had elicited testimony from Summers that he had pleaded guilty to a lesser charge arising out of the same incident, and defendant asserts that in light of this testimony, Instruction 7A mislead the jury to conclude that since Summers had plead guilty, defendant was also guilty. Where a defendant in examining accomplices before a jury seeks and obtains testimony which he subsequently asserts as prejudicial, he is not entitled to complain of error with respect to admission of such testimony. State v. DeWitt, 286 N.W.2d 379, 383 (Iowa 1979).

Since we have found that there was an evidentiary basis for the instruction and it was defense counsel who elicited the testimony from Summers about his guilty plea, his claim fails.

II. The trial court overruled defendant's motion for a new trial which was based on the insufficiency of the evidence. Defendant asserts the court's actions as error. The standard to be applied in reviewing the sufficiency of the evidence is whether or not, in considering all the evidence in the light most favorable to the prosecution, the record contains substantial evidence to support the verdict. State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). Substantial evidence is evidence which would convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. Id.

Defendant was identified as one of the assailants, he admitted to being in the area around the time of the assault, and he was found by others in the parking lot immediately after the assault. His companion for the evening, Summers, admitted that he had a knife in his pocket that evening, and defendant's hand was cut and required medical attention, indicating that he had just stabbed Olson. The evidence is sufficient to support the jury's verdict.

AFFIRMED.