FILED
DEC 23 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Plaintiff-Appellee,

vs.

SHEALY A. WILES,

Defendant-Appellant.

Filed December 23, 1980

0-345
63896

Appeal from Floyd District Court - B. C. Sullivan, Judge.

Defendant appeals his conviction of murder in the second degree in violation of section 707.3, Supplement to the Code 1977 claiming the trial court erred in instructing the jury on the question of flight from the scene of the crime. AFFIRMED.

B. Michael Dunn of Mason City, Iowa, for defendant-appellant.

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

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

Defendant appeals his conviction of murder in the second degree in violation of section 707.3, Supplement to the Code 1977. He claims that the trial court erred in instructing the jury on the question of flight from the scene of the crime. We affirm.

On January 8, 1979, defendant was charged by information with the first degree murder of Alice Simonsmeier on December 30, 1978 under section 707.2, Supplement to the Code 1977. Trial commenced on April 25, 1979, and different versions of what happened on December 30 were testified to. Robert Hull testified that he, defendant, and the victim were driving out of Nashua when the victim grabbed the steering wheel and nearly caused an accident. According to Hull, defendant then pushed the victim violently away from the wheel, struck her, stopped the car, choked her, and then dumped her in a ditch where she later froze to death.

In defendant's testimony, he conceded that he struck the victim, but asserted that it was Hull who choked her. He admitted to helping place her body in the ditch. Both Hull and the defendant testified that they then drove back to Charles City and left the victim's luggage at the bus station to provide substantiation for their prearranged story for the authorities that the victim had taken a bus out of town.

I. At the close of trial the court instructed the jury in part as follows:

> If you find the offense charged in the Information was committed, and the Defendant thereafter fled from the scene of the crime, for the purpose of avoiding or retarding prosecution, then such flight is a circumstance you may consider in determining the guilt or innocence of the Defendant.
>
> The credit and weight, if any, to be given such circumstances is for the jury to determine from a consideration of all the evidence.

Defendant argues on appeal that this instruction should not have been given because the word "thereafter" relates to flight occuring after the offense is completed. He urges that because the victim was not yet dead at the time defendant and Hull left the scene of the crime, the instruction was not appropriate.

We believe defendant failed to preserve error on this issue. At trial he objected to the flight instruction because "if there was a crime committed by the defendant, occurred in a moving vehicle, and it would be impossible not to avoid fleeing from the scene." The rule as to preservation of error regarding jury instructions is stated in State v. Overstreet, 243 N.W.2d 880, 885 (Iowa 1976): "objections to instructions must be specific. * * * '[I]f a defendant excepts to instructions at trial he must rely on those exceptions. He may not later amplify or change them.'" (citations omitted). Since defendant's complaint on appeal was not presented to the trial court, we will not consider it here.

II. Defendant's other contention is that the record contains insufficient evidence of his flight from the scene of the crime, thereby rendering trial court's giving of the flight instruction prejudicial. We disagree. In State v. Bester, 167 N.W.2d 705, 710 (Iowa 1969), the court quoted with approval the following language from Rivers v. United States, 270 F.2d 435, 438 (9th Cir. 1959):

> It is well settled that the conduct of an accused person following the commission of an alleged crime may be circumstantially relevant to prove both the commission of the acts charged to the accused and the intent and purpose with which those acts were committed. Among such acts are flight of the accused and concealment of the results of the crime.

In State v. Galvan, 181 N.W.2d 147, 152 (Iowa 1970), no error was found in the introduction of evidence that the defendant departed from the area immediately after a knifing, but before arrival of the police and the ambulance. Those facts were held to have constituted a situation indicating defendant's flight.

The evidence in this case indicating defendant's flight is even stronger. Not only did he and Hull immediately leave the place where the victim was struck, choked and left in a snow-filled ditch, they also fabricated a story in which the victim allegedly left town on a bus. To lend further veracity to that story, they left her luggage in the bus station. We think these facts are sufficient to enable a reasonable jury to infer that defendant fled from the scene of the crime "for the purpose of avoiding or retarding prosecution." In any event, there was sufficient evidence of flight to justify the submission of the challenged instruction to the jury.

We have examined all of defendant's arguments and find no merit in any of them. We therefore affirm the conviction.

AFFIRMED.