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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Appellee,

v.

EDDIE J. COLLINS,

Appellant.

Filed September 21, 1978

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Appeal from Johnson District Court - Robert F. Ford, Judge.

Defendant appeals his conviction of breaking jail. Affirmed.

Emmit George, of Cahill, Johnston, Poula & Goetz, Iowa City, for appellant.

Richard C. Turner, Attorney General, J. Susan Carney, Assistant Attorney General, and Jack W. Dooley, Johnson County Attorney, for appellee.

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

PER CURIAM

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Defendant, Eddie J. Collins, appeals his conviction of breaking jail, in violation of § 745.8, The Code. On appeal defendant argues three assignments of error: (1) failure of the trial court to grant his motion for mistrial based on alleged prosecutorial misconduct in closing argument; (2) the claimed insufficiency of Instruction No. 7 in defining the word "jail"; and (3) failure of the trial court to sustain defendant's motion for directed verdict which challenged the sufficiency of the State's evidence to support the charge. We affirm the trial court.

The transcript of testimony shows that on May 26, 1977, the defendant was an inmate in the Johnson County jail, under a sentence imposed for larceny. At about 11:15 a.m. another inmate of the jail requested the jailor, officer Andrews, to remove a garbage pail from the cell block because of its stench. Complying with the request, officer Andrews unlocked the two doors separating her from the garbage and the defendant. The defendant offered to aid the officer by emptying the garbage pail into a sack brought into the cell by the officer. After beginning the transfer, the defendant bolted around the officer toward the open doors. As the defendant passed her, officer Andrews grabbed his shirt and was pulled, screaming, down a flight of stairs to the secretarial area on the floor below. Other officers heard Andrews' plea for help and together they subdued the defendant. The defendant had no permission to leave his cell.

I. Prosecutorial Misconduct. The alleged misconduct consists of the following statement made by the assistant county attorney in closing argument:

> This is an important matter not only for the defendant but for the community as well, citizens of the community, I'm sure it would come as quite a surprise, they are over at the juvenile probation office and lo and behold they are in a jail, people who want to get some civil services filed because they want to serve somebody in small claims, they are in jail.

The defendant contends that the above statement was intended to incite the passion of the jury and prejudiced his case.

Ultimately it is the duty of this court to determine whether the alleged improper argument was prejudicial to the extent that defendant was denied a fair trial. However, considerable discretion is vested in the trial court to determine whether prejudice resulted from the alleged misconduct. State v. Monroe, 236 N.W.2d 24, 29 (Iowa 1975). The trial court found no prejudice. We agree. To remind the jury of the importance of

the issues to both the parties and the public is not per se an improper argument. It only serves to emphasize the heavy responsibility which jury service entails -- a circumstance not tending to favor either side to the controversy. The rest of the prosecutor's comment was made in response to and was provoked by defense counsel's closing argument. Defense counsel had argued that for purposes of this case the entire building which stands behind the Johnson County courthouse must be considered the "jail." The prosecutor's statement countered defense counsel's argument by indicating that the building in question contained the offices of several county agencies and that the jail occupies only one part of the building. We find no prejudice to defendant in the prosecutor's response. The motion for mistrial was properly overruled. See State v. Brewer, 247 N.W.2d 205, 215 (Iowa 1976).

II. Instruction No. 7. The challenged instruction stated:

> A jail is any place, a building or a part thereof, used for the confinement of persons accused or convicted of a criminal offense.

Defendant contends that this instruction misstates the law and its submission denied him a fair trial. It is defendant's position that a jail must be a building, that it cannot be a part of a building. We find no merit in defendant's argument. As the evidence presented clearly indicates, the building in question contains county offices other than the jail. We conclude that the instruction as submitted adequately apprised the jury of the legal issues in the particular case. "A trial court may fit a definition to the facts of the case as the evidence tends to show such facts to be." State v. Blyth, 226 N.W.2d 250, 274 (Iowa 1975); 23A C.J.S. Criminal Law § 1194, p. 495.

III. Sufficiency of the Evidence. Defendant claims the evidence presented was insufficient to support the charge that he unlawfully broke jail and escaped therefrom. Section 745.8, The Code. Defendant argues that he never left the building in question and that officer Andrews had him in her grasp at all times.

When reviewing the trial court's denial of defendant's motion for a directed verdict the evidence must be viewed in the light most favorable to the State. State v. Beyer, 258 N.W.2d 353, 357 (Iowa 1977). As required by § 745.8, The Code, the State's evidence in the present case established that the defendant was confined at the time in the county jail upon a criminal charge. Furthermore, the undisputed account of

defendant's charge out of his cell and down a flight of stairs is sufficient to present to the jury the factual issue of whether said conduct constituted breaking jail or escaping from the custody of an officer charged with defendant's keeping as contemplated by § 745.8, The Code. In this regard, § 745.2, The Code, explicitly states that violation of § 745.8 does not require an actual breaking. It was not error to overrule defendant's motion for directed verdict.

AFFIRMED.