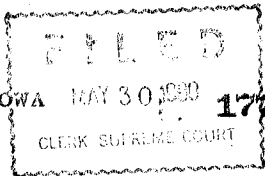


IN THE COURT OF APPEALS OF IOWA MAY 30 1980 177



STATE OF IOWA,)

Plaintiff-Appellee,)

Filed May 30, 1980

vs.)

LUTHER RONALD MOORE,)

Defendant-Appellant.)

0-108
63320

Appeal from Scott District Court - C. H. Pelton, Judge.

Defendant appeals conviction for robbery in the first degree in violation of section 711.2, The Code. AFFIRMED.

Patrick J. Kelly of Davenport, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; John P. Messina, Assistant Attorney General; Realff H. Ottesen, Assistant Scott County Attorney; for plaintiff-appellee.

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

Defendant appeals from his conviction for the offense of robbery in the first degree in violation of section 711.2, The Code. The only issue presented for review is whether the evidence was sufficient to sustain the denial of defendant's motion for directed verdict. We conclude that it was and affirm the trial court.

The victim of the robbery testified at defendant's trial that she was working alone as a motel desk clerk when defendant and one Larry Hoskins exited from an elevator on the floor where the motel registration desk was located. Defendant, walking strangely, entered the men's room on that floor.¹ Hoskins asked directions of the witness and then joined defendant in the men's room. Moments later Hoskins emerged, armed with a shotgun, and forced the desk clerk into the ladies' room. While in the ladies' room, the witness heard two loud bangs which she described as consistent with the front desk door (leading to the area where the cash was located) opening and closing twice. She then heard the sounding of an automatic alarm which was set to go off when cash was taken from the motel cash drawer. Police arrived moments later and encountered defendant and Hoskins in the process of leaving. When ordered to halt, the pair split up and attempted to walk away. When defendant was finally halted by police, a knife fell from his clothing and he shouted "talk to me, Larry."

We conclude that the foregoing circumstantial evidence was sufficient to support a jury finding that defendant was aiding and abetting Hoskins in the robbery. The underlying precept of aiding and abetting is that the accessory in some way associate with the criminal venture, i.e., participate in it as something desired to be brought about. State v. Lott, 255 N.W.2d 105, 108 (Iowa 1977). Prior or concurrent knowledge of the crime is required, but it may be shown by surrounding circumstances. State v. Buttolph, 204 N.W.2d 824, 825 (Iowa 1973). Criminal complicity may be inferred from presence, companionship and conduct before and after the offense is committed. State v. Brown, 172 N.W.2d 152, 155 (Iowa 1969). For purposes of determining the sufficiency of the evidence as against a motion for directed verdict, direct and circumstantial evidence are equally probative. State v. O'Connell, 275 N.W.2d 197, 205 (Iowa 1979). In applying the foregoing principles to the present factual situation, we find the following statement from People v. Koley, 29 Ill.2d 116, 119, 193 N.E.2d 753, 755 (1963), to be especially appropriate:

¹ This was described by the witness as a hunched over, tight-armed walk.

[A]n innocent spectator is not criminally responsible because he happens to see another person commit a crime, but if the proof shows that a person is present at the commission of a crime without disapproving or opposing it, it is competent for the jury to consider this conduct in connection with other circumstances and thereby reach the conclusion that he assented to the commission of the crime, lent to it his countenance and approval and was thereby aiding and abetting the same. In the absence of explanation, such conduct is not consistent with that of an innocent person similarly situated, and is sufficient to support an inference that a common understanding or design existed.

See also United States v. Thomas, 469 F.2d 145, 148 (8th Cir. 1972); People v. Fuller, 395 Mich. 451, 236 N.W.2d 58 (1975). Under the evidence, the defendant's motion for directed verdict was properly denied.

AFFIRMED.