FILED 286
FEB 24 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
ROBERT D. THOMAS,)
Defendant-Appellant.)

Filed February 24, 1981

0-382
63425

Appeal from Jefferson District Court - Ira F. Morrison, Judge

Defendant appeals from his conviction for theft in the second degree in violation of section 714.2(2), The Code, and from his sentencing as an habitual offender pursuant to sections 902.8 and 902.9(2), The Code. - AFFIRMED.

Craig R. Foss, of Foss & Kuiken, Fairfield, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and John P. Messina, Assistant Attorney General of Iowa, for plaintiff-appellee.

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

PER CURIAM

Defendant, Robert Thomas, appeals from his conviction for theft in the second degree, a class D felony and from sentencing as an habitual criminal pursuant to sections 902.8 and 902.9, Supplement to The Code 1977. We affirm.

Thomas was arrested and charged with theft after he received a used pick-up truck in exchange for a check drawn on an account in his name at the Farmers Savings Bank for the amount of $414. The check was not honored by the bank as Thomas' account had been closed.

Minutes of testimony showed the bank president would testify to Thomas' relationship with the bank at times relevant to the writing of the check.

Prior to trial, the state moved to amend the trial information seeking, in the event of a conviction, Thomas to be punished as an habitual criminal. Thomas moved for individual voir dire of the jurors and for the exclusion of evidence concerning other checks drawn on the account. These motions were heard one week before trial. The trial court allowed the State to amend in a supplemental information procedure pursuant to Iowa R. Crim. P. 6 (5), but overruled Thomas' motion.

At close of the evidence, Thomas requested an instruction to include theft in the third degree as a possible jury verdict. He argued no reasonable basis for classifying motor vehicled differently than other property in respect to value. His request was denied. (At sentencing, Thomas again raised this issue.)

The jury found him guilty of theft in the second degree and he was sentenced to a term of not more than 15 years, the sentence for an habitual criminal. Thomas appeals his conviction. Our review in on error assigned. Iowa R. App. P. 4.

Thomas alleges the following as error: 1) amendment of information to include habitual criminal; 2) denial of individual voir dire examination of jurors; and 3) evidence admitted in excess of scope of minutes of testimony. In addition, Thomas raised a constitutional challenge to the statutory classification of all motor vehicle theft being theft in the second degree regardless of value. §714.2(2), Supplement to The Code 1977.

I. Amendment of Information

Amendments to information are permissible to provide sentencing as an habitual criminal in the event of conviction of the underlying offense. State v. Robinson, 165 N.W.2d 802 (Iowa 1969). The timeliness of an amendment must be such so as not to

prejudice the defendant by denying adequate trial preparation or strategy planning. Neither may a new and different offense be charged in the amendment. Iowa R. Crim P. 4. (8)(a). This is not the situation in this case, however. The motion to amend was served on defendant twelve days before trial. If any change in strategy or preparation was needed to confront this sentencing possibility, that time period was not prohibitive. Being a habitual criminal is not a crime or offense. The provisions under sections 902.8 and 902.9 concern sentencing only. See State v. Hanna, 277 N.W.2d 605, 608 (Iowa 1979). We find no error.

II. Individual Voir Dire

Thomas requested private, individual voir dire examination of the prospective jury members "in order to insure the Defendant's right to a fair and impartial trial and because of the nature of the issues in the case, the Defendant's past, and the need to individually ascertain from each member . . . [in privacy], their opinions and knowledge of the facts and witnesses . . . ." At the hearing on this motion, Thomas offered no more particulars of his concerns, merely that the motion spoke for itself. We fail to find an adequate, prejudicial reason on the record that necessitates a finding of abuse of discretion in the denial of this request. See State v. McDaniel, 265 NW.2d 917, 920-21(Iowa 1978); State v. Elmore, 201 N.W.2d 443,445 (Iowa 1972).

III. Minutes of Testimony

The minutes of testimony for the bank president stated he would testify "that at the time relevant to writing of the check to C & O Motors, defendant did not have credit, money, funds or any understanding or agreement with the Farmers Savings Bank of Peakwood, for payment of said check".

During his actual testimony, evidence was elicited, over objection, concerning a deposit and other checks. The time span of these other transactions involved a matter of only seven days. The check in question was written on the fifth day.

The policy restricting trial testimony to the scope of the filed minutes is the prevention of undue surprise. State v. Walker, 281 N.W.2d 612 (Iowa 1979). Thomas in his overruled motion in limine prior to trial sought to exclude evidence of any checks allegedly written by him on the Farmers Saving Bank. We find Thomas was well aware of the existence and expected use of this disputed evidence. We find the trial testimony to be within the scope of the bank official's expected statement concerning the status

of Thomas' relationship with the bank.

IV. Constitutionality of Classification

Thomas argues section 714.2(2) impermissibly classifies theft of a motor vehicle irrespective of value as second degree theft. He asserts denial of equal protection of the law in that a person convicted of theft of any other property valued at $414 would only be guilty of a aggravated misdemeanor instead of a felony.

A classification does not violate equal protection of the laws unless it bears no rational relationship to a legitimate government purpose. Lunday v. Vogelmann, 213 N.W.2d 904 (Iowa 1973). Furthermore, the classification will be upheld if any state of facts can be conceived to justify it. Id.

A review of our larceny and theft laws reveals a history of special concern toward the motor vehicle. See e.g., I.C.A. §§321.72-96 (1966 and 1979 P.P.). Other property and situations have also been singled out for special treatment. See e.g. Ch. 709, The Code 1977 (where nighttime and daytime larcenies were distinquished and domestic fowls and animals, logs and lumber were specifically indentified.)

Since 1977, the criminal code theft provisions encompass several elements, including larceny, criminal fraud, embezzlement and bad check offenses. §714.1. The degrees of theft incorporate special circumstances, such as theft from a person, looting, and theft of a motor vehicle. §714.2, The Code.

The purpose of the inclusion of motor vehicle theft as second degree theft regardless of value arises from the long and continuous legislative recognition of the importance of the automobile to Iowa's economic and social environment. J. Yeager & R. Carlson, 4 Iowa Prac., Criminal Law and Procedure §322 (1979). In addition, the peculiar ease of stealing and spiriting away this mobile necessity justifies special classifications and regulations as a deterrent to that offense. We find no denial of equal protection guarantees afforded to Thomas.

Finding no error in the proceedings below, we affirm the conviction.

AFFIRMED.