

IN THE COURT OF APPEALS OF IOWA

SEP 29 1981

CLEAR SUPREME COURT 387

STATE OF IOWA,

Plaintiff-Appellee,

vs.

EDWIN E. WILLIAMS,

Defendant-Appellant.

Filed September 29, 1981

1-204

65532

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

Defendant appeals his conviction and sentence entered upon his plea of guilty to the crime of first degree robbery in violation of section 711.2, The Code 1979, asserting that his plea was invalid because trial court 1) failed to adequately explain and ascertain that defendant understood the nature of the charge, 2) failed to ascertain that defendant understood the nature of the plea bargain agreement, and 3) failed to ascertain a sufficient factual basis to support the plea. AFFIRMED.

James F. Hollander, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Thomas N. Martin, Assistant Attorney General, for plaintiff-appellee.

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

PER CURIAM

Defendant, Edwin E. Williams, appeals his conviction and sentence entered upon his plea of guilty to the crime of first degree robbery in violation of section 711.2, The Code 1979. He asserts that his plea was invalid because trial court 1) failed to adequately explain and ascertain that defendant understood the nature of the charge, 2) failed to ascertain that defendant understood the nature of the plea bargain agreement, and 3) failed to ascertain a sufficient factual basis to support the plea. We affirm.

Defendant was arrested on April 6, 1980, and subsequently was charged by trial information with first degree robbery in violation of section 711.2, The Code 1979. He initially pleaded not guilty. Following a hearing on May 8, 1980, to determine defendant's mental competency, trial court determined defendant was competent to stand trial. When defendant appeared in court on May 19, 1980, he indicated his desire to plead guilty. Following colloquy with defendant, trial court accepted defendant's guilty plea, ordered a presentence investigation, and set the date of sentencing. At that time, trial court stated "[i]f you desire to file a motion in arrest of judgment, please do so by [sentencing date]." On June 9th, trial court imposed sentence. No motion in arrest of judgment was filed, but defendant filed a pro se notice of appeal on July 14, 1980. Appellate counsel was appointed September 8th and thereafter filed an application for extension of time in which to file a motion in arrest of judgment. Trial court denied the motion on the grounds that defendant's filing of his notice of appeal deprived trial court of jurisdiction. Defendant's motion to reconsider this ruling also was denied. Thereafter, defendant filed an application for discretionary review which the supreme court denied by order filed January 8, 1981.

I. Scope of Review. Because a constitutional challenge is involved in this case, we must make an independent review of the factual circumstances as shown by the record as a whole. State v. Boone, 298 N.W.2d 335, 337-38 (Iowa 1980).

II. Motion in Arrest of Judgment. Pursuant to State v. Worley, 297 N.W.2d 368 (Iowa 1980), defendant can challenge his guilty plea proceedings without filing a motion in arrest of judgment because trial court failed to inform defendant of the consequences of failing to file such a motion. Id. at 370.

III. The Guilty Plea. Defendant contends that trial court did not comply with the requirements of Iowa R. Crim. P. 8(2) because it failed 1) to adequately explain and

ascertain that defendant understood the nature of the charges against him, 2) to establish defendant's understanding of the plea agreement, and 3) to ascertain a sufficient factual basis for the plea. Absolute compliance with rule 8(2) is not required; however, substantial compliance must appear on the record. Worley, 297 N.W.2d at 371; State v. Fluhr, 287 N.W.2d 857, 864 (Iowa 1980).

A. Explanation and Understanding of the Charge. Since the adequacy of trial court's explanation cannot be separated from a determination of defendant's understanding of the nature of the charge, we will address these aspects together.

Defendant alleges that first degree robbery is a complex and serious crime under Iowa law and that trial court's explanation in this case fell far short of fulfilling its duty. Section 711.2, defining robbery in the first degree, states that "[a] person commits robbery in the first degree when, while perpetrating a robbery, the person purposely inflicts or attempts to inflict serious injury, or is armed with a dangerous weapon"¹

In this case, trial court utilized the specific language from the trial information when it stated:

THE COURT: Do you understand that by your plea of guilty you are admitting that you did, on or about the 6th day of April, 1980, in Jefferson County, Iowa, commit an assault during the commission of an intended theft of Casey's General Store in Fairfield, Iowa, while being armed with a dangerous weapon?

Defendant complains that the actual language of the statute was not read to him, that he was not told there was any degree of robbery other than first degree, and that the intent requirements of the crime were not explained.

¹ Section 711.1 defines robbery as follows:

A person commits a robbery when, having the intent to commit a theft, the person does any of the following acts to assist or further the commission of the intended theft or the person's escape from the scene thereof with or without the stolen property:

1. Commits an assault upon another. . . .

Assault, as defined by section 708.1, is committed:

. . . when, without justification, the person does any of the following:

* * *

3. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.

Section 702.7, states in part that "[d]angerous weapons include, but are not limited to, any . . . knife having a blade of three inches or longer in length."

Rule 8 does not require that trial court follow any particular form when explaining the charge to defendant. Worley, 297 N.W.2d at 371. The extent of dialogue necessary depends upon the complexity of the charge and the circumstances of each case. Nonetheless, "[w]here the State must prove an element of intent, a court must be certain that the defendant, before pleading guilty, understands that element." Id. at 368; Fluhr, 287 N.W.2d at 866.

Following trial court's reading of the charge to defendant, as quoted above, defendant replied that he understood that he was admitting he committed the acts alleged in the trial information. The record reflects the following:

THE DEFENDANT: Yes, sir.

THE COURT: Did you do that, Mr. Williams?

THE DEFENDANT: Yes, sir.

THE COURT: I understand the dangerous weapon--Well, have you read the minutes of testimony attached to the county attorney's Information?

MR. BROWN: Your Honor, the minutes were read to Mr. Williams and we discussed them.

THE COURT: Are the statements contained therein true and correct to the best of your knowledge?

THE DEFENDANT: Yes, sir.

THE COURT: The dangerous weapon was a knife, I take it, from the minutes of testimony?

THE DEFENDANT: Yes, sir.

THE COURT: It was not a firearm?

THE DEFENDANT: No.

THE COURT: You had a stocking over your face?

THE DEFENDANT: Yes.

From our review of the record, we believe this colloquy is sufficient to meet the requirements of rule 8(2). The language of the Information contained every necessary element of the offense as allegedly committed in this case. When asked whether he understood the charge against him, defendant replied, "yes, sir." When asked if he committed the offense, he replied, "yes, sir." When asked if the minutes of testimony attached to the Information were correct, defendant said "yes, sir." When asked if the dangerous weapon involved was a knife, defendant again replied, "yes, sir." Defendant also stated that he was in good health, that he understood the proceedings, and that he had no questions to ask the court concerning any of the proceedings. We thus conclude

that the record supports the finding that trial court adequately explained the nature of the charge to defendant and that defendant understood the charge.

B. Understanding of the Plea Agreement. Defendant further asserts that trial court's colloquy is insufficient to show he understood whether there was a plea agreement, or, if there was an agreement, what its terms were, or that he agreed to its terms. We disagree. The record reflects the following exchange between trial court and defendant:

THE COURT: Thank you. Is this the result of any plea bargaining arrangements with the county attorney's office?

THE PROSECUTOR: It is not, Your Honor.

DEFENSE COUNSEL: Only to the extent, Your Honor, that the charges of escape would not be filed.

THE PROSECUTOR: That is true.

THE COURT: Mr. Williams, is that your understanding of any plea bargaining arrangements?

THE DEFENDANT: No.

THE COURT: What's your understanding of the arrangements?

THE DEFENDANT: Well, I mean that--yeah.

THE COURT: That they are not going to proceed with the escape charge?

THE DEFENDANT: No.

We believe this record sets forth the agreement in full as required by rules 8(2)(c) and 9(2). The plea agreement is simple -- in exchange for the plea of guilty the county attorney would not file escape charges against defendant. Although defendant argues that the colloquy shows defendant was confused, we do not agree. We believe defendant's "yeah" response indicates he understood the plea bargain and that he was agreeing with the court that the escape charge would not be filed when he said "no."

C. Factual Basis. The defendant finally alleges that trial court erred in accepting his plea because there was no factual basis for it established in the record. Again, we disagree.

Iowa law requires that trial court determine on the record that such a factual basis exists. Several sources, however, can be utilized, including inquiry of defendant and reference to the minutes of testimony attached to the trial information. Fluhr, 287 N.W.2d at 868. As indicated by the trial court's colloquy with defendant as quoted above, defendant admitted that the statements in the minutes of testimony were true

and correct. These minutes relate the defendant entered Casey's General Store with a stocking pulled over his head and carrying a knife. He pushed the clerk with one hand and "flashed" a knife with the other. He told the cashier to give him "all the money both top and under." After the clerk had opened the register and defendant had removed the money, defendant ran out of the store. Defendant was seen entering the store with the stocking over his head by a police officer and another witness. The lay witness saw defendant pull out the knife and point it at the clerk. The officer chased and caught defendant who was still wearing the stocking mask. Over \$100 in cash and \$10 in food stamps were found in defendant's pockets. The knife was recovered approximately five feet from the point where the officer caught defendant. Again, we reiterate that defendant replied "yes, sir" when asked whether he had committed the offense. He affirmed that the dangerous weapon was a knife and that he had a stocking over his face.

In summary, we conclude these minutes of testimony and defendant's responses provide a sufficient factual basis for the charge.

From our review of the record, we conclude trial court substantially complied with the requirement of rule 8(2), and therefore affirm its judgment.

AFFIRMED.