FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

345

STATE OF IOWA,)

Plaintiff-Appellee,) Filed April 24, 1984

vs.)

RONALD LEROY PRICE,) 4-43
83-254

Defendant-Appellant.)

Appeal from the Iowa District Court for Linn County - August F. Honsell, Judge.

The defendant appeals his conviction of robbery in the second degree in violation of Iowa Code section 711.3 (1981). AFFIRMED.

Patrick R. Grady, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Valencia Voyd McCown, Assistant Attorney General, for plaintiff-appellee.

Considered by Donielson, P.J., and Snell and Schlegel, JJ.

PER CURIAM

The defendant appeals his conviction of robbery in the second degree in violation of Iowa Code section 711.3 (1981). Defendant claims there was insufficient evidence to find that he was guilty of robbery by committing an assault in furtherance of a theft or escape from the scene. We affirm.

This case arose out of an incident occurring at a Target store in Cedar Rapids on July 23, 1982. William Freeman, a store employee, testified that he observed defendant take two packs of cigarettes out of a carton and place them in his back pocket. Freeman followed the defendant out of the store, stopped him, and confronted defendant about the alleged theft and requested that he come back to the store to talk about it. Defendant denied taking the cigarettes and then shoved Freeman against the outside doors of the store. He later offered to pay for one package of cigarettes. After defendant was informed that it was against company policy to accept payment of merchandise after it had been removed from the store, he started yelling and screaming, indicating that he had killed someone before and would do it again if he had to. Subsequently, defendant accompanied other Target employees to the store's security office. On cross-examination, Freeman stated that defendant did not try to flee when he shoved Freeman.

Jean Karagheusian, another Target employee, testified that while defendant was standing in the security office, he tried to give her money to pay for the cigarettes. Karagheusian testified that after the money fell to the floor, defendant bent over to pick it up and shoved her. On cross-examination she also stated that defendant did not attempt to run. Yet another employee, John Stepanek, stated that while defendant was in the security office, he stated that he was going to get out of there and then stood up and attempted to push himself out, making physical contact with Stepanek and Karagheusian.

At the close of the State's case and at the close of all of the evidence, defendant moved for a directed verdict on the basis that there was insufficient

evidence to find that a robbery had occurred. The trial court denied the motions. Defendant was convicted and sentenced, and he brought this appeal.

In determining questions of evidentiary sufficiency, we consider all of the evidence in the light most favorable to the State. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). "Robbery," for the purposes of this case, is defined in Iowa Code section 711.1 in relevant part 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.
>
> * * *

Iowa Code § 711.1 (emphasis added). "Assault" is defined in part as "[a]ny act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act." Iowa Code § 708.1(1). Thus, as the trial court properly instructed the jury, defendant could be found guilty of second-degree robbery if defendant intended to commit a theft (this element is not contested in this appeal), he assaulted either Freeman or Stepanek, and he did so to assist and further either the commission of the theft or his escape from the scene.

We conclude that there is sufficient evidence that defendant assaulted Stepanek with a view to assisting his escape from the scene. The record shows that while defendant was seated in the security office of the store, Stepanek informed defendant that the police had been called. Upon being so informed, defendant stood up from his seat and began pushing his way out of the office, declaring that he was going to get out of there. In fact, the record indicates that he managed to push his way out into the corridor. Stepanek was standing in front of defendant when defendant jumped up and used his body to push Stepanek out of his way. We believe this satisfies the statutory definition of "assault" which

requires only an act by defendant with an intent to offensively touch someone. Iowa Code § 708.1(1); State v. Johnson, 291 N.W.2d 6, 9 (Iowa 1980). A rational jury could reasonably find that defendant was attempting to escape arrest by jumping up and pushing his way out the door. It is also reasonable that the jury could find that defendant, in jumping up from his seat abruptly, intentionally shoved Stepanek out of his way for the purpose of escaping from the Target Store before the police arrived.

Because there is sufficient evidence to support defendant's conviction based on the Stepanek incident, we need not decide if the incident outside the store with Freeman would sustain the jury's decision. Defendant's conviction and sentence are affirmed.

AFFIRMED.