

FILED

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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

STATE OF IOWA,

)

Appellee,

)

Filed December 21, 1978

vs.

)

JOHN LEROY BARRETT,

)

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Appellant.

)

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Appeal from the Polk District Court - Theodore H. Miller, Judge.

Defendant appeals conviction of robbery with aggravation. Affirmed.

William A. Price, of Des Moines, for appellant.

Richard C. Turner, Attorney General, Thomas A. Evans, Assistant Attorney General and Dan Johnston, Polk County Attorney, for appellee.

Heard by Oxberger, C.J., and Snell, Carter and Johnson, JJ. Donielson, J., takes no part.

PER CURIAM

Defendant appeals conviction for robbery with aggravation, contrary to §§ 711.1, 711.2, The Code, 1977. He assigns three errors, which we consider separately.

I. Effective assistance of counsel. In defendant's first assignment, he contends that he was denied effective assistance of counsel as a result of limitations placed upon one of his two lawyers with respect to visiting defendant at the county jail. We disagree. Defendant has totally failed to show that the circumstances surrounding this briefly imposed regulation of jail house visits by counsel in any way prejudiced his rights. Prejudice must be established to entitle defendant to any relief on this claim. *State v. Rand*, 268 N.W.2d 642, 649 (Iowa 1978).

II. Was the evidence sufficient to show the victim was placed in fear? Next, defendant claims that there is no evidence to support a finding of an essential element of the charge, *i.e.*, that the victim of the robbery was placed in fear. While the victim did not expressly testify that he was placed in fear, he did testify that he turned over the money because defendant pointed a gun at him. From these circumstances, we believe the element of fear may be fairly inferred from the evidence which was presented. *See, e.g., Whitehead v. State*, 526 P.2d 959 (Okla. Crim. App. 1974); *Hazelwood v. State*, 538 P.2d 1072 (Okla. Crim. App. 1975). Defendant's contention to the contrary is without merit.

III. Admissibility of State's exhibits A, B, C, and D. In his final assignment of error defendant contends that the trial court erred when it admitted into evidence certain items, including a revolver, paper sack, and money, over his objections that there had been a break in the chain of custody with respect to said exhibits. Under the circumstances revealed by the evidence, defendant's contentions with respect to a break in the chain of custody or a failure to account for undisturbed possession of these exhibits goes to their weight, rather than their admissibility. *See State v. Lunsford*, 204 N.W.2d 613 (Iowa 1973); *State v. Limerick*, 169 N.W.2d 538 (Iowa 1969). Based upon the evidence as to what was done with these exhibits, it does not appear reasonably probable that tampering or substitution would occur. *See State v. Lunsford, supra; State v. Ubben*, 186 N.W.2d 625 (Iowa 1971). The exhibits in question were properly admitted.

We have considered all issues presented and find no basis for reversal.

AFFIRMED.