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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed November 19, 1979

vs.)

JAMES GEORGE DAY,) 274
62660

Defendant-Appellant.)

Appeal from Black Hawk District Court - C. W. Antes, Judge.

Defendant appeals from conviction of robbery in the first degree in violation of section 711.2, Supplement to the Code 1977, and resulting sentence. AFFIRMED.

Patrick J. Life of Life Law Office, Oskaloosa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Kathy Krewer, Assistant Attorney General, for plaintiff-appellee.

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

Defendant appeals from conviction of robbery in the first degree in violation of section 711.2, Supplement to the Code 1977, and resulting sentence. His contentions on appeal are that the trial court erred in: (1) not granting his motion for a directed verdict; (2) not giving a requested jury instruction concerning corroboration of accomplice testimony; and (3) not inserting language requested by him in the instructions relating to intent of the principle in a charge based on aiding and abetting.

I. It was the State's theory in the trial of this case that defendant aided and abetted Louis Crago and Danny Simmons in an armed robbery of the Panther Lounge in Cedar Falls, Iowa. There was evidence that Crago and Simmons entered the lounge and forced employees and patrons to give them money at gunpoint. Defendant contends that the evidence only shows his knowledge of the crime and his presence at the scene. Such evidence, he asserts, is insufficient to establish aiding and abetting as against his motion for directed verdict. Our examination of the record leads to the conclusion that the evidence shows more than knowledge of the crime and presence at the scene of the crime by defendant.

There is also evidence that defendant participated in planning the crime, helped "case" the establishment which was robbed, and shared in the proceeds of the robbery. This evidence was sufficient to permit a jury finding that defendant aided and abetted Crago and Simmons in the crime. Under standards fixed for ruling on motions for directed verdict in State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976), the trial court properly denied the motion.

II. Next, defendant contends that the trial court should have given an instruction which permitted the jury to find that the testimony of the witness, Valerie Smith, was accomplice testimony requiring corroboration under Iowa R. Crim. P. 20(3). In order to warrant the giving of such an instruction, it is nece ary that there be evidence from which it could be determined that the witness might be charged and convicted for the same crime for which the accused is on trial. State v. Jennings, 195 N.W.2d 351, 356 (Iowa 1972). At best, the evidence in the present case shows that Valerie Smith had knowledge of the crime either before or after its commission or both before and after. Such evidence is insufficient to establish that she was an accomplice on the robbery charge. The trial court properly refused the requested instruction.

III. Finally, defendant contends that the trial court erred in failing to qualify certain language used in Instructions 16-24. The instructions in question inform the jury that it was an essential element of the crime that either the defendant or "person or persons, whom the defendant aided and abetted" intended to commit a theft. Defendant requested that the trial court add the words "if the defendant did so aid and abett" to these instructions.

The issue presented is whether, absent the requested language, the jury would believe the trial court was indicating that defendant's complicity had been established as a matter of law. See State v. Juergens, 240 N.W.2d 647, 650 (Iowa 1976). Upon our reading of the instructions as a whole, we conclude that no such danger existed. The instructions clearly required the jury to make a determination of whether defendant aided and abetted Crago and Simmons. Indeed, this was the central issue in the case.

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

AFFIRMED.