FILED
MAR 22 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,) Filed March 22, 1979
vs.)
GERRY DUANE COLLINS,) 2
Appellant.) 60815 & 60816

Appeal from Fremont District Court - Harold L. Martin, Judge.

Defendant appeals conviction of larceny alleging insufficient evidence, an erroneous jury instruction, and impermissible sentencing criteria. - AFFIRMED.

Edwin A. Getscher, of Getscher & Getscher, Hamburg, for Appellant.

Thomas J. Miller, Attorney General of Iowa, and William Armstrong, Assistant Attorney General, for Appellee.

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

PER CURIAM

Defendant Gerry Collins appeals conviction of larceny in violation of § 709.4, The Code 1977, as charged in Fremont County Attorney's Information No. 1991. We affirm.

At trial there was no claim defendant committed the act of larceny. The first question presented is whether there was substantial evidence to support a finding that defendant aided and abetted Robert Allen in the commission of the crime. On this appeal point, we view the evidence in a light most favorable to the State, accept all reasonable inferences tending to support the verdict, and consider only the supporting evidence whether contradicted or not. State v. Brown, 172 N.W.2d 152, 153 (Iowa 1969). From the evidence presented, the jury could find that on January 27, 1977, defendant and an acquaintance, Robert Allen, spent the majority of the day riding around together in defendant's car. That evening, the defendant drove with Allen to the parking lot of the Sidney Legion Hall and parked his car behind a pickup owned by Robert Leonard. Allen alighted from the car and removed a C.B. radio from the Leonard vehicle while defendant waited in his car. Defendant, admittedly aware of the theft, then drove Allen to the Mary Brownfield residence where Allen disposed of the radio. An aider and abettor's participation in an offense may be inferred by presence, companionship, and conduct before and after the crime is committed. State v. Marsan, 221 N.W.2d 278, 280 (Iowa 1974). We find substantial evidence in the record to support the verdict. See State v. Brown, 172 N.W.2d at 156.

Defendant next asserts trial court erred in overruling his motion in limine which sought to suppress any reference to criminal information No. 1992, wherein defendant was charged with larceny of another C.B. radio on the same evening that the above mentioned offense occurred. However, defendant's brief fails to state, argue or cite authority in support of this issue. Accordingly, he is deemed to have waived the same. R. App. P. 14(a)(3).

During its deliberations, the jury requested further instructions. The court subsequently prepared "Substituted Instruction #6". Defense counsel objected to this instruction, "as not being representative or covering the law involved on the subject matter of the instruction and on the ground that it places a burden on the

defendant more than he should be required to take in the matter of proof and the extent thereof." On appeal, defendant argues the substituted instruction erroneously omitted the word "knowingly". Assuming arguendo that defendant's objection sufficiently preserved the error now urged, we find no merit in his complaint. The second paragraph of the substituted instruction told the jury that the State had to prove the defendant aided and abetted his confederate with the felonious intent to convert the property to his own use or the use of the confederate. The State could not establish this element without showing that defendant acted knowingly. Thus, the instruction, as given, did not constitute prejudicial error.

Following his jury conviction under Information No. 1991, defendant pled guilty to a similar larceny charge contained in Information No. 1992. Some confusion arises from the fact that defendant was sentenced for these two offenses on the same day. On June 3, 1977, trial court conducted a sentencing hearing and imposed a prison sentence for a period not to exceed five years pursuant to the guilty verdict rendered in case No. 1991. Shortly thereafter, sentence was imposed in case No. 1992 pursuant to defendant's guilty plea. This sentence was the same as the previous one and was ordered to run concurrently therewith. In Division IV of his brief, defendant argues that trial court abused its discretion in failing to grant him a deferred sentence or probation. His argument is apparently directed at the sentence imposed in case No. 1991 since he quotes extensively from the transcript of the sentencing hearing on that case and makes no mention of the sentencing proceedings connected with case No. 1992. Defendant specifically complains of comments in which trial court expressed doubt about the credibility of defendant's testimony. The court also stated that it would be unfair to grant defendant probation while his confederate served prison time for the same offense. It is a well settled rule that sentencing procedures will not disturb a criminal conviction absent a showing of abuse of discretion, procedural conduct prejudicial to defendant, circumstances manifesting inherent injustice, or conduct which offends the public sense of fair play. State v. Delano, 161 N.W.2d 66, 74 (Iowa 1968). No such showing has been made in the instant case. We find the sentence imposed in case No. 1991 was within trial court's discretion. See State v. Peckenschneider, 236 N.W.2d 344, 348 (Iowa 1975).

AFFIRMED.