FILED
AUG 31 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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| STATE OF IOWA, | ) | |
| Appellee, | ) | Filed August 31, 1978 |
| vs. | ) | |
| JOHN DWIGHT LETZE, | ) | 594/61082 |
| Appellant. | ) | |

Appeal from Warren District Court - Van Wifvat, Judge.

Defendant appeals his conviction and sentence for assault with intent to murder in violation of § 690.6, The Code 1977. Affirmed.

P. F. Elgin, of Indianola, counsel for appellant.

Richard C. Turner, Attorney General of Iowa, Raymond W. Sullins, Assistant Attorney General, and John W. Criswell, Warren County Attorney, counsel for appellee.

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

DONIELSON, Acting C. J.

Defendant-John Dwight Letze appeals his conviction for assault with intent to murder in violation of § 690.6, The Code 1977. He asserts that the trial court erred in allowing evidence of armed robbery by defendant to be introduced at his assault trial, erred in overruling his motion for a directed verdict on grounds that there was insufficient evidence of a specific intent to murder, and erred in overruling his motion for new trial because of these alleged errors at trial.

The record reflects that on the morning of June 21, 1977 a "very nervous and uptight" Letze entered the home of John Chiovaro in Des Moines, pointed a gun at Chiovaro and demanded weapons, money and a car. Letze told Chiovaro that he did not want to kill him, but that he had escaped from prison, the police were going to kill him, and he had "nothing to lose" because of these circumstances. Letze ultimately took a loaded handgun, money and a 1976 white Ford automobile from Chiovaro, which Chiovaro reported to the police as soon as Letze departed around 10:20 a.m. Sergeant Richard Brown, Iowa Highway Patrol, responded to a police dispatch concerning the stolen vehicle, and noticing a similar car in the Town of Carlisle at 10:36 a.m., followed it. Sergeant Brown caught up with the car when it stopped in front of a farmhouse at 10:45 a.m. Letze, who appeared to be responding to the trooper's instructions to put his hands over his head and approach the patrol car, pulled out a gun and started shooting at Sergeant Brown. Brown had not yet taken his gun from his holster. Letze hid in some bushes and fired again, and then drove away in the stolen car. He was pursued by Sergeant Brown and apprehended when he wrecked the stolen car further down the road.

On July 11, 1977 Letze was charged by county attorney's information with the crime of assault with intent to murder Sergeant Brown in violation of § 690.6, The Code 1977. Following the entry of his plea of not guilty, he was tried to a jury, convicted and sentenced to a term not to exceed 30 years, running consecutively with any other pending sentences.

Defendant's first contention is that the testimony of the witness Chiovaro regarding property stolen from Chiovaro constituted evidence of prior crimes not related to the charge presently against the defendant, and that the trial court should have excluded this evidence by sustaining defendant's objections. The State contends

that defendant has waived his right to raise this issue on appeal by untimely objecting to the evidence at trial, and, even if error has been preserved, the evidence is admissable as an inseparable part of defendant's plan to escape from prison.

At trial, defense counsel's repeated objections to witness Chiovaro's testimony concerning details of the robbery were sustained. Only the following evidence was admitted:

> Q: And thus when he left, what did he take off with that was your property?
> MR. ELGIN: This is objected to as being incompetent, irrelevant, and immaterial to any issue before the Court and Jury.
> THE COURT: Overruled.
> W: My car, a '76 Ford Elite.
> * * *
> Q: Did you give these items, meaning the gun and the car and the money, to the Defendant voluntarily?
> MR. ELGIN: This is objected to as being incompetent, irrelevant, and immaterial to any issue before the Court and Jury.
> THE COURT: Overruled.
> A: Yes, I did.
> Q. Voluntarily you gave them to him?
> MR. ELGIN: We move to strike this, Your Honor for the reason that it is incompetent, irrelevant, and immaterial. Further, that it tends to, apparently is intended to prove a separate offense than the one of which the Defendant is charged, has no probative value.
> MR. CRISWELL: The State would withdraw the question, Your Honor.
> THE COURT: All right.
> * * *

Defendant has adequately preserved error for review, State v. Reese, 259 N.W.2d 771, 775 (Iowa 1977) and we must consider the merits of defendant's argument.

Ordinarily relevant evidence showing the commission of crimes other than the one with which a defendant is charged is inadmissable, State v. Johnson, 222 N.W.2d 483, 485 (Iowa 1974), except to prove (1) motive, (2) intent, (3) absence of mistake or accident, (4) common scheme or system of criminal activity embracing the commission of two or more crimes so related that proof of one tends to prove the other, or (5) identity of the person charged with the commission of the crime. State v. Wright, 191 N.W.2d 638, 640 (Iowa 1971). But where the acts of defendant are all closely related in time and place, and intimately associated with each other, so that they form a continuous transaction, the whole transaction may be shown. State v. Lyons, 210 N.W.2d 543, 547 (Iowa 1973); State v. Dunne, 234 Iowa 1185, 15 N.W.2d 296 (1944).

In the instant case, the State urges that the robbery of Chiovaro was an integral part of Letze's escape plan. Sergeant Brown would not have pursued Letze without the dispatch concerning the vehicle stolen from Chiovaro; Letze's assault on Brown was the culmination of a criminal "spree" in an attempt to avoid being returned to prison. We agree. Approximately 16 minutes passed from the time defendant left Chiovaro until he was seen by Brown, and only 25 minutes passed until the attack on Brown. Testimony was admitted without objection that defendant had been desperate, and believed the police were going to kill him. The limited evidence admitted concerning the robbery was such an inseparable part of the entire transaction culminating in Letze's assault that there was no error.

Defendant's second contention is that there was insufficient evidence to establish the element of malice aforethought and the trial court erred in overruling his motion for directed verdict.

In making a determination as to the propriety of the trial court's ruling on a motion for a directed verdict in a criminal case, this court views the evidence in the light most favorable to the State regardless of whether it is contradicted and every legitimate inference that may be fairly and reasonably deducted therefrom must be carried to the aid of the evidence. State v. Overstreet, 243 N.W.2d 880, 883-884 (Iowa 1976); State v. Beyer, 258 N.W.2d 353, 356 (Iowa 1977). In light of this principle, the cause in a criminal action should be submitted to the jury and the court should not direct a verdict of acquittal if there is any substantial evidence reasonably tending to support the charge. State v. Overstreet, supra.

It is equally well settled that on defendant's appeal from a criminal conviction based upon a jury verdict challenging the sufficiency of evidence to sustain the verdict, we need only consider supportive evidence, whether contradicted or not. It is for the fact finder, not us, to resolve questions of fact and determine the credibility of witnesses. Thus, a finding of guilty by the trier of fact is binding on this court unless we find that it is without substantial evidence in the record or is clearly against the weight thereof. Id. at 884; see State v. Rosewall, 239 N.W.2d 171, 173 (Iowa 1976); State v. Hall, 235 N.W.2d 702, 715-716 (Iowa 1975); State v. Dahlstrom, 224 N.W.2d 443, 447-448 (Iowa 1974).

The trial court properly instructed the jury that they were entitled to consider all of the circumstances, the use of a deadly weapon, and Letze's conduct to infer both specific intent and malice aforethought. On the record before us, there was more than sufficient evidence from which the jury could have found the existence of all the elements of assault with intent to murder. We find no error.

Since we find no error in the trial court's refusal to sustain objections to evidence of other criminal activity and the motion for directed verdict, it follows that there was no error in overruling defendant's motion for new trial grounded on these issues.

Affirmed.