

IN THE COURT OF APPEALS OF IOWA

No. 5-157 / 94-0812

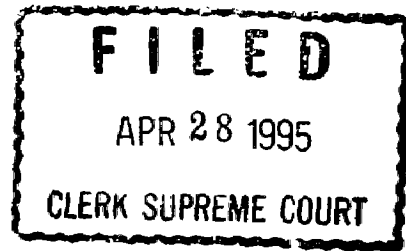
STATE OF IOWA,

Plaintiff-Appellee,

vs.

WILLIE LEE PICKETT,

Defendant-Appellant.



Appeal from the Iowa District Court for Cerro Gordo County, Bryan H. McKinley, Judge.

Willie Pickett appeals the judgment and sentence entered upon his conviction, following a jury trial, of aiding and abetting forgery as an habitual offender in violation of Iowa Code section 715A.2 (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defendant, and John F. Fatino, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, and Paul L. Martin, County Attorney, for appellee.

Heard by Donielson, C.J., and Hayden and Sackett, JJ.

SACKETT, J.

Defendant-appellant Willie Lee Pickett appeals his conviction of aiding and abetting a forgery. He contends the trial court erred in admitting certain evidence; he should have been awarded a new trial; and certain claims of ineffective assistance of trial counsel should be preserved for postconviction relief. We affirm.

Defendant, thirty-three years of age, had a relationship with Nicole Bachman, an eighteen-year-old high school dropout. There was evidence in August of 1993, defendant drove Nicole to her mother's house in Clear Lake. Nicole took check blanks of her mother's. Nicole then wrote out about fifteen of the checks in amounts from twenty to one hundred and twenty-six dollars, signed her mother's name, and cashed the checks at various businesses. Nicole pled guilty to forgery, received a deferred judgment and testified at the defendant's trial that he participated with her in her scheme.

Defendant first contends the trial court erred in allowing Nicole to testify she was afraid of him and he had made threats to her and physically abused her. The State contends the issue was not preserved for review.

Defendant contends the trial court, in allowing the evidence admitted, erred. He contends this was evidence of other crimes or bad acts, was not relevant, and was highly prejudicial to him.

Iowa Rule of Evidence 404(b) provides:

evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

We review for an abuse of discretion. *State v. Casady*, 491 N.W.2d 782, 785 (Iowa 1992). The court must initially determine if the evidence is relevant. *Id.* To convict defendant of aiding and abetting forgery, the State needed to prove he knowingly participated in some way in the crime. The State alleges the question evidence was relevant to prove defendant participated in the forgery by threatening Nicole with physical harm if she did not commit the forgery. To convict defendant of aiding and abetting forgery, the State had to show defendant either actively participated in it or knowingly advised or encouraged the act in some way before or when it was committed. *See* Iowa Code § 715A.2(1)(a) (1993). We agree with the State and find the evidence clearly relevant to defendant's control or influence over Nicole's committing the forgery.

The next question is whether the evidence is more prejudicial than probative. *See State v. Plaster*, 424 N.W.2d 226, 231 (Iowa 1988); *State v. Coen*, 382 N.W.2d 703, 707 (Iowa App. 1985). This issue must be considered even if the evidence is relevant. *See Plaster*, 424 N.W.2d at 231.

Defendant advances the evidence attempted to paint him, an African-American, as an unsavory character to an all-white jury panel. He contends this was

evidence he was responsible for Nicole's decline in life. He said there was substantial evidence that, before knowing him, Nicole was using drugs, had been a stripper and a prostitute. Defendant further points out Nicole's testimony was impeached on several occasions. He advances the lack of clear proof of the events was further reason why the trial court should not have admitted the evidence. Defendant attempted to show he did not participate in the crimes but merely accompanied Nicole when she picked up some of the checks and cashed them. We affirm on this issue.

Defendant's next claim is the trial court abused its discretion in denying his motion for a new trial. At trial, Nicole testified she thought she was pregnant with defendant's child. A motion for new trial was filed claiming newly discovered evidence showed Nicole was not pregnant. The motion was overruled. Defendant contends the nature of the relationship between he and Nicole was a pivotal issue at trial and Nicole's claim of pregnancy prejudiced the jury against him. Defendant contends the trial court abused its discretion in ruling on the motion because the reason given for denying it was his court reporter could not find testimony that Nicole had testified she was pregnant with defendant's child.

The record was Nicole testified when in jail, six months before trial, she thought she was pregnant with defendant's child. The record does not support defendant's argument. There was no abuse of discretion.

Finally, the defendant asks we reserve for postconviction relief his claim his trial counsel was ineffective in failing to object to the composition of the jury panel

and in failing to procure exculpatory witnesses. He asks this issue be preserved for postconviction relief. Trial counsel moved for a new trial on the basis there were no African-Americans in the jury pool. No further record on the issue was made. The trial court rejected the claim.

The jury pool was all white. Defendant is African-American. Nicole and her mother are white. The 1990 census showed there were 303 blacks in Cerro Gordo County out of a population of 46,733. To succeed, defendant must first establish a prima facie violation of the Sixth Amendment's fair cross section requirement. *State v. Watkins*, 463 N.W.2d 411, 414 (Iowa 1990). Defendant would have failed on this issue even if further evidence had been supplied. *See State v. Huffaker*, 493 N.W.2d 832, 834 (Iowa 1992) (where census figures showed blacks represent 4.52% of the total population of Polk County). In Cerro Gordo County, blacks represent only 0.648% of the population, thus making it unlikely a randomly selected jury panel would include any blacks. We decline to reserve this issue for postconviction relief.

Defendant's last claim is his attorney failed to investigate for exculpatory witnesses. He asks this issue be preserved for postconviction relief. Defendant claims he gave his attorney a list of potential witnesses. Defendant does not specify who the witnesses were or what they would say. The record is not sufficient to preserve the claim.

AFFIRMED.