

OCT 19 1978

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Appellee,

v.

GEORGE JAMES PEYOR,

Appellant.

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Filed October 19, 1978

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Appeal from Linn District Court - August F. Honsell, Jr., Judge.

Defendant appeals from judgment on conviction of assault with intent to rob.

Reversed and Remanded.

John C. Monroe, of Lynch, Dallas, Smith & Harman, of Cedar Rapids, for
appellant.

Richard C. Turner, Attorney General and Lona Hansen, Assistant Attorney General,
for appellee.

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

Defendant appeals from judgment of conviction and sentence for the offense of assault with intent to rob, § 534.7, The Code. He contends the trial court erred in admitting hearsay testimony over his objection; in failing to instruct the jury that mere presence at the scene of the crime is not enough to establish guilt; and in overruling his motion for directed verdict. We consider only the latter issue.

We consider the sufficiency of the evidence to support the conviction. When circumstantial evidence of aiding and abetting is the basis of the State's case, the following legal principles apply:

Where circumstantial evidence alone is relied on as to any one or more of the essential elements the circumstances or circumstances must be entirely consistent with defendant's guilt and wholly inconsistent with any rational hypothesis of defendant's innocence and so convincing as to exclude a reasonable doubt that defendant was guilty of the offense charged. Like direct evidence it must raise a fair inference of guilt, generating something more than suspicion, or speculation or conjecture. *State v. Jellema*, 206 N.W.2d 679, 681 (Iowa 1973).

To aid or abet means to assent to an act or to lend countenance or approval either by active participation in it or by some manner encouraging it. Knowledge is an essential element of aiding and abetting. Guilt of a person charged with aiding and abetting must be determined upon the facts which show his part in the crime and does not depend on another's degree of guilt. *State v. Daves*, 259 Iowa 584, 586, 144 N.W.2d 879, 881 (1966).

Neither knowledge nor presence at the scene of the crime is sufficient to prove aiding and abetting. *State v. Barnes*, 204 N.W.2d 827, 828 (Iowa 1972).

Reviewing the evidence presented, as we must, in the light most favorable to the State we can find no indication that the defendant had any knowledge of Madden's plan to rob Northrup at the 5th Avenue house. Northrup went with the defendant to the house voluntarily and testified that he really did not know why he was going there. The defendant was not present at the time of the assault. The only evidence connecting the defendant with Madden was that they knew each other and had been at the 420 Club at the same time as Northrup. Under the circumstances it appears the jury convicted the defendant because of his association with Madden rather than on proof of his own participation in or encouragement of the crime.

We hold that the evidence was insufficient to support the conviction and that the defendant's motion for directed verdict should have been granted. The judgment of the trial court is reversed and the cause remanded with instruction to enter a judgment of acquittal.

REVERSED AND REMANDED.