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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed November 22, 1978
vs.	)	
ALEXANDER STEVEN DAVIS, JR.	)	679 / 60983
Appellant.	)	

Appeal from Scott District Court - L. D. Carstensen, Judge.

Defendant appeals his conviction for robbery with aggravation as an aider and abetter in violation of § 711.2, The Code 1977. Affirmed.

Patrick J. Kelly, of Ruth & Kelly, of Davenport, counsel for appellant.

Richard C. Turner, Attorney General of Iowa, Raymond W. Sullins, Assistant Attorney General, and Elizabeth Shaw, Scott County Attorney, counsel for appellee.

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

PER CURIAM

Defendant Alexander Steven Davis, Jr. appeals from his conviction for robbery with aggravation as an aider and abetter in violation of § 711.2, The Code 1977. He challenges the sufficiency of the State's evidence connecting him to the crime and also contends the trial court prejudiced him when it referred in jury instructions to the proper name of the alleged principal in the robbery.

On appeal the evidence presented is viewed in the light most favorable to the jury's verdict; it is necessary to consider only the evidence supporting the verdict, whether contradicted or not. The jury's finding is binding on this court if supported by substantial evidence. State v. Overstreet, 243 N.W.2d 880, 884 (Iowa 1976). The jury could find that defendant entered a Randall's supermarket in Davenport, Iowa at approximately 8:50 p.m. on April 2, 1977 with one Kenneth Gray. While Gray, armed with a sawed-off shotgun, forced the manager to open the store safes, defendant stood at the front of the store watching the employees and customers. At one point he ordered the stockboy to open cash registers, which were found to be empty. Defendant and Gray then fled from the store with the money taken from the safes. The defendant was identified by Michael Jones, the stockboy and Connie Johnson, a customer, at least once leading to his apprehension, and was identified at trial. Both Jones and Johnson failed to identify defendant in a police lineup but later informed police that they had deliberately done so because of fear and a reluctance to get involved.

We conclude there was no error in submitting the case to the jury, and find there is substantial evidence in the record to support a verdict of guilty. The circumstances surrounding each successful and unsuccessful identification of defendant by the eyewitnesses were discussed thoroughly in the presence of the jury. The credibility of the eyewitnesses to the armed robbery and the weight to be given their testimony is a matter for the jury and its judgment will not be disturbed on appeal. State v. Ayles, 205 Iowa 1024, 219 N.W. 41 (1928); People v. Attaway, 41 Ill.App. 3d 837, 354 N.E.2d 448 (Ill. 1976).

Defendant also contends that the instructions listing the elements of robbery with aggravation and the lesser included offense of robbery which referred to Kenneth Gray by name as the alleged principal were improper and so prejudicial as to violate

defendant's right to separate trial by calling attention to the guilt or innocence of Gray rather than himself. We find the contention without merit. A court must instruct the jury on the law applicable to the facts as supported by the evidence. State v. Watts, 244 N.W.2d 586, 590 (Iowa 1976). The reference by proper name to the alleged principal did not abrogate defendant's right to a separate trial nor did it prevent conviction as an aider and abetter on the basis of evidence relating to defendant's own acts. State v. Myers, 158 N.W.2d 717, 720-721 (Iowa 1968). There was no prejudice to defendant. See State v. Fuhrmann, 261 N.W.2d 475, 479 (Iowa 1978).

AFFIRMED.