



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed February 24, 1982
vs.	)	
RANCE DOUGLAS BACHMAN,	)	<u>2-12 & 2-13</u>
Defendant-Appellant.	)	<u>66227 & 66228</u>

Appeal from Polk District Court - Joel D. Novak and Ray A. Fenton, Judges.

Defendant appeals from judgments and sentences upon conviction for two separate robberies in the first degree in violation of sections 711.1 and 711.2, The Code. **AFFIRMED.**

Gerald W. Crawford, Des Moines, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Lona Hansen, Assistant Attorney General; and Richard Cleland, Assistant Attorney General; for plaintiff-appellee.

Heard by Oxberger, C.J., and Snell, Carter and Johnson, JJ. Donielson, J., takes no part.

Defendant appeals from judgments and sentences upon convictions for two separate robberies in the first degree in violation of sections 711.1 and 711.2, The Code. He argues on both that there was insufficient evidence to allow either the judge or jury to find beyond a reasonable doubt that he was capable of forming the specific intent to commit a theft, an essential element of robbery. On the second conviction, he also argues that the court erred in not granting his motion for a mistrial because of prosecutorial and co-defense counsel misconduct and because some of the jurors saw him when court was in recess with shackles, chains, and a belly chain. We affirm both convictions.

These two cases were separately tried, but their appeals were argued together. Case number 66228 was tried to the court and will be referred to by us as the Medicine Chest robbery. Case number 66227 was tried with a co-defendant to a jury and will be referred to as the Sembower robbery. Our decision is written for both.

On February 4, 1980, defendant Rance Bachman entered and robbed the Medicine Chest Pharmacy of drugs and money. On February 11, 1980, the Sembower Pharmacy was robbed of drugs and money by Tandra Ragan. The defendant and another man, John Loghry, waited in the car. A gun was used in both robberies. Ragan, Loghry, and defendant were sighted at a trailer park soon after the Sembower robbery and shortly thereafter were arrested at a motel.

At the Medicine Chest trial to the court, two pharmacy employees, police officers, and Ragan testified. Ragan and defendant were tried together before a jury for the Sembower robbery. Pharmacy employees, the defendants, police, and Loghry testified at this trial.

At both trials defendant filed notice of a diminished responsibility defense due to inability to form the specific intent to commit a theft necessary to support a robbery conviction. Dr. Garfield, a private clinical psychologist, and Shahe

Zenian, a clinical psychologist employed by the county, testified that defendant had organic brain syndrome. They also testified as to how this condition could be affected by a history of drug abuse as both related to the ability of defendant to form specific intent. The court in the Medicine Chest trial and the jury in the Sembower trial both returned verdicts of guilty of robbery in the first degree.

I. Sufficiency of the Evidence on Specific Intent. Section 711.1, The Code 1979, defines robbery as follows:

Robbery defined. A person commits a robbery when, having the intent to commit a theft, the person does any of the following acts to assist or further the commission of the intended theft or the person's escape from the scene thereof with or without stolen property:

1. Commits an assault upon another.
2. Threatens another with or purposely puts another in fear of immediate serious injury.
3. Threatens to commit immediately any forcible felony.

It is immaterial to the question of guilt or innocence of robbery that property was or was not actually stolen.
(emphasis added)

Defendant's position is that the State must prove each element of the robbery beyond a reasonable doubt; in both these cases defendant argues that, at best, the evidence produced raised only suspicion, speculation, or conjecture that the defendant could have formed the necessary specific intent.

When a claim of insufficient evidence is made, we must review all of the evidence in the light most favorable to the State, including all inferences which flow from the evidence and which support the verdict. State v. Robinson, 288 N.W.2d 337, 338-40 (Iowa 1980). Evidence is sufficient to support a guilty verdict if a rational factfinder could conclude from it that a defendant is guilty beyond a reasonable doubt. Id. The weight of the evidence and the credibility of the witnesses are questions for the factfinder. State v. Robinson, 288 N.W.2d at 341. In a nonjury criminal trial the same general rules apply as in civil trials to the

court. State v. York, 293 N.W.2d 13, 14 (Iowa 1980). The findings of the court have the effect of a special jury verdict and, if supported by substantial evidence, are binding on review. State v. Hall, 287 N.W.2d 564, 565 (Iowa 1980).

The Medicine Chest robbery on February 4 was committed by defendant alone. The employees testified that he appeared calm and did not seem intoxicated. He asked for specific drugs by name and held a gun on them while getting the drugs and money. When arrested on February 11, he told police that he had thrown this gun away into a schoolyard after the robbery was completed.

Ragan was the person who robbed the Sembower Pharmacy while defendant and Loghry waited in the car on February 11. The pharmacy employees did not see defendant and so could not testify as to his condition. However, Loghry testified that defendant planned the robbery and wrote out the list of desired drugs that Ragan took into the pharmacy with her. After the robbery, defendant unsuccessfully attempted to buy syringes, and then went with the others to a trailer which he and Ragan entered for a short time before driving on to a motel parking lot where they were all arrested.

Balanced against this evidence of planning and purposeful behavior was testimony from Ragan concerning the great number of drug injections by defendant over a long period of time. The police also testified as to defendant's sluggish, strung-out, and intoxicated state after he was arrested on February 11. Psychological evidence indicated defendant suffered from organic brain syndrome, a term meaning defendant was likely to have some organic brain damage but without a psychotic condition. This evidence also indicated that, with substantial drug abuse and depending on the strength of the dosages, defendant could suffer an impairment in his ability to form specific intent.

The expert testimony offered in support of defendant's claim of diminished responsibility suffers in terms of its effectiveness from the fact that it relates generally to defendant's ability to form "a specific intent" rather than being keyed

to the particular intent required to commit robbery. Robbery requires an intent to commit theft. In the present case, an intent to commit theft may be inferred as a natural consequence of the acts which defendant committed. Given this fact and the failure of the expert testimony to identify the particular element in issue, we cannot say that, as a matter of law, the State failed to prove the requisite intent. The issue was for the trier of fact in each case. The factfinder, whether judge or jury, is, of course, free to believe or disbelieve the testimony of the various witnesses, including expert witnesses. State v. Wedelstedt, 265 N.W.2d 626, 627 (Iowa 1978).

II. Motions for Mistrial. In case number 66227, the Sembower robbery, defendant argues also that the trial court erred in not granting his motion for mistrial on two separate occasions. In one instance, during a court recess, a few of the jurors observed defendant in shackles, leg irons, and a belly chain. In the other situation, defendant argued that he was being denied a fair trial and impartial jury because of the continuing and obvious hostilities between the prosecutor and co-defense counsel. Trial court denied both motions.

There is no question that ordinarily a necessary component of a fair and impartial trial is freedom of the defendant during trial from chains, leg irons, and handcuffs. See State v. Evans, 169 N.W.2d 200, 210-11 (Iowa 1969). In the present situation, defendant was seen in the hallway, not the courtroom, some fifteen or twenty minutes after the recess had been called, and then only because a few jurors had lingered in the hall. A trial judge must balance the problems of fair trial demands with those of security, and generally the trial court is in a better position than we are to say whether a reasonable accommodation of the two interests has been achieved; the judge is thus given considerable discretion in ruling on motions involving issues of this kind. State v. Kile, 313 N.W.2d 558, 562-63 (Iowa 1981) (cites omitted). There is nothing in the record to indicate that the jurors who observed defendant were adversely influenced towards him by what

they had seen. In fact, the one affidavit submitted from a juror who had seen defendant seemed to indicate that she felt sympathy for his condition. Finding no prejudice to defendant, we find no error in the trial court's denial of defendant's motion for a mistrial in this instance.

The defendant also moved for a mistrial because of prosecutorial misconduct and the continuing conflict between the prosecutor and co-defense counsel. He argued that their inflammatory remarks to each other were overheard by the jury and that their attitudes would "rub off" on defendant and prejudice his opportunity for an impartial jury. The trial court denied the motion because it believed the remarks were not heard by the jury and defendant was not prejudiced by the conduct of the other two attorneys.

In resolving claims of prosecutorial misconduct, the trial court is vested with a broad discretion, and its determination will not be disturbed except upon a showing that this discretion has been abused. State v. Love, 302 N.W.2d 115, 119 (Iowa 1981); State v. Mayes, 286 N.W.2d 387, 392 (Iowa 1979). While the record is clear that there was evidence of high emotion between the prosecutor and co-defense counsel, and the trial court did caution and admonish both as to controlling their behavior, there is nothing in the record to indicate that the jurors were adversely influenced toward the defendant as a result of the comments between counsel. See State v. Cuevas, 288 N.W.2d 525, 535-36 (Iowa 1980). We therefore do not find the trial court abused its discretion in denying defendant's motion for a mistrial because of alleged misconduct on the part of the prosecutor and co-defense counsel.

We have considered all of defendant's arguments and affirm his convictions in case number 66228, the Medicine Chest robbery, and number 66227, the Sembower robbery.

AFFIRMED.