IN THE COURT OF APPEALS OF IOWA

No. 1-195 / 00-1012
Filed April 27, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER LEE WEBB,
Defendant-Appellant.

FILED
APR 2 7 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge

On appeal from his conviction for second-degree robbery, defendant maintains the court abused its discretion in excluding impeaching evidence of the victim's two prior convictions for assault. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Zimmer and Hecht, JJ.

ZIMMER, J.

Christopher Lee Webb appeals from his conviction, following a jury trial, for second-degree robbery in violation of Iowa Code sections 711.1 and 711.3 (1999). Webb contends that the trial court abused its discretion in excluding evidence of the victim's two prior convictions for simple assault. He argues this evidence would have supported his defense that he assaulted the victim in the course of a fight, and not in furtherance of an intended theft as is required for conviction under section 711.1. We affirm.

I. Background Facts and Proceedings. In the early morning of February 5, 2000, Ronnie Gentry was driving a gray Honda Prelude that belonged to his friend, Jill Heim. While traveling on West 9th Street in Waterloo, Gentry noticed the car behind him was flashing its lights. Gentry turned on to Wellington in an effort to elude the other vehicle. However, the car continued to pursue him. As Gentry was making a right turn on to 7th Street, the other vehicle collided with him. Gentry then stopped his car and turned it off.

Gentry testified that Webb approached his vehicle and said, "You hit my car and I want some money." When Gentry told Webb he had no money, Webb punched him in the face. Webb then demanded the car stereo. When Gentry told Webb he could not remove the stereo, Webb punched him again. Gentry then offered Webb the faceplate to the stereo, which Webb accepted. Webb also demanded the keys to the vehicle, which Gentry produced.

When Webb left to move his car, Gentry ran to a nearby house to call the police. The occupant, Brad Woodman, testified that Gentry's eye was red and

that he appeared "shaken up" and "panicked." Woodman testified that Gentry relayed his story to him and Woodman called the police.

When Waterloo police officer David McFarland arrived at Woodman's residence, he observed that Gentry had a scratch on the left side of his nose and redness under his left eye. He also testified that Gentry's face was puffy and that Gentry appeared injured and upset. Gentry relayed his version of events to Officer McFarland and they proceeded to the scene of the collision.

Upon arriving at the intersection of Wellington and 7th Street, Gentry and Officer McFarland discovered both vehicles were missing. However, Officer McFarland noticed debris in the area that was consistent with a car accident having occurred there.

Officer McFarland and Gentry then proceeded to Jill Heim's residence. Gentry informed Heim of the events that had transpired with her vehicle. Officer McFarland testified that Gentry's story remained consistent. Gentry then accompanied Officer McFarland to the police station where he submitted a signed statement.

Meanwhile, Lyle Peekenschneider, a resident of the same neighborhood, observed Webb park a car he recognized as belonging to Jill Heim outside some nearby apartments. Thinking defendant was a friend of Ms. Heim, Peekenschneider gave Webb a ride back to his car, which was still parked near the intersection of 7th Street and Wellington.

Later that morning, Webb had a conversation with a friend, Chad Brickman. Brickman testified that Webb told him "he beat up some guy because

he had hit his car and that he had stolen the guy's car." Webb also told Brickman he had taken the faceplate to the stereo.

A few days later, Gentry identified Webb in a police photo lineup. Police interviewed Webb, who admitted to hitting Gentry several times and taking his car. However, Webb denied that he asked Gentry for money, the faceplate to the stereo or the keys to the car. Instead, Webb claimed Gentry had threatened him.

Webb eventually led officers to the location of the Honda. The car's speakers and several compact discs were missing. Expert testimony linked damage on the Honda to defendant's vehicle.

A trial information filed February 22, 2000 charged Webb with second-degree robbery. Following a jury trial, Webb was found guilty as charged and sentenced to an indeterminate term not to exceed ten years. Webb appeals. He contends the trial court abused its discretion in excluding impeaching evidence of the victim's two prior convictions for simple assault.

II. Scope of Review. This court reviews evidentiary issues for an abuse of discretion. *State v. Query,* 594 N.W.2d 438, 443 (Iowa Ct. App. 1999). Such abuse occurs only where the trial court "exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable." *State v. Greene,* 592 N.W.2d 24, 27 (Iowa 1999) (quoting *State v. Smith,* 522 N.W.2d 591, 593 (Iowa 1994)). If an abuse of discretion is found, we will only reverse if the abuse is prejudicial. *Greene,* 592 N.W.2d at 27.

III. Evidence of the Victim's Prior Convictions. Under Iowa Code section 711.1, a robbery occurs when a person does any of the following acts to assist or further the commission of an intended theft:

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.

Iowa Code § 711.1.

Defendant admits he hit Gentry and took his vehicle. However, he denies that he made a demand for Gentry's money, the stereo or the car keys. Instead, Webb contends the assault was merely a product of an argument with Gentry, and not in furtherance of an intended theft.

At trial, Gentry testified that Webb hit him after he told Webb he did not have any money and could not give him the stereo. On cross-examination, defendant's counsel questioned Gentry about Webb's allegation that Gentry threatened him with a can of mace. The following exchange then occurred:

> Q. There's – If there's testimony that you assaulted him, that wouldn't be true? A. Right.
> Q. Not your style? A. No.
> Q. You want the jury to believe these things you are saying? A. Yes.
> Q. You want the jury to believe that you're telling the truth about not trying to mace him? A. Yes.

Webb later sought to introduce evidence of Gentry's two prior convictions for simple assault in an effort to impeach Gentry. However, the trial court held the evidence was inadmissible. Webb argues the trial court abused its discretion.

Character evidence is not admissible for the purpose of proving a person acted in conformity with that trait on a particular occasion. Iowa R. Evid. 404(a). However, character evidence is admissible if it is "evidence of a pertinent trait of character of the victim of the crime offered by an accused. . . ." Iowa R. Evid. 404(a)(2)(A). Webb argues Gentry's penchant for violence is thereby admissible to show Webb assaulted Gentry in the course of a fight, and not in furtherance of

an intended theft. However, Webb attempted to impeach Gentry through evidence of his prior convictions.[1]

Iowa Rule of Evidence 609 limits the impeachment of a witness by evidence of a conviction of a crime. In order to introduce a conviction for a crime committed by a witness other than the accused, the crime must have carried a punishment of death or imprisonment in excess of one year. Iowa R. Evid. 609(a)(1). Regardless of the punishment, evidence of a conviction may be introduced against any witness if the crime involved dishonesty or false statement. Iowa R. Evid. 609(a)(2).

Webb sought to admit evidence of Gentry's two prior convictions for simple assault, which is a simple misdemeanor. Iowa Code § 708.2(5). The maximum period of incarceration for a simple misdemeanor is thirty days. Iowa Code § 903.1(1)(a). Also, simple assault is not a crime involving dishonesty or false statement. Thus, the conditions for admissibility of Gentry's convictions under rule 609 were not met. Therefore, the trial court properly excluded the evidence.

Even if the evidence of Gentry's prior convictions was erroneously excluded, reversal is not warranted unless the error was prejudicial. *State v. Boley*, 456 N.W.2d 674, 678 (Iowa 1990). Upon review of the evidence, we do not find Webb was prejudiced by the exclusion of this evidence. Gentry testified that Webb demanded money from him and punched him when Gentry did not give it to him. He further testified that Webb demanded the stereo and again punched him when he did not produce it. Gentry relayed this same story to Brad

[1] In arguing the admissibility of Gentry's prior convictions, Webb does not rely on rules 404(b) or 405(b) of the Iowa Rules of Evidence.

Woodman, Officer McFarland and Jill Heim. In addition, he provided a signed statement reciting these same facts. The great preponderance of the other evidence was consistent with Gentry's testimony. The only evidence to the contrary consisted of the defendant's self-serving statements made to the police after his arrest. Although Webb denied that he demanded money, the stereo or the car keys from Gentry, Webb ended up with the stereo faceplate, the car keys and the car in his possession. Webb cannot claim to have been prejudiced by exclusion of evidence to support his claim, when the evidence had little probative value and the claim itself was not credible.

Because the trial court did not abuse its discretion in excluding the evidence of the victim's prior convictions for simple assault, we affirm Webb's conviction of second-degree robbery.

AFFIRMED.