

FILED

DEC 29 1982

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

347

Plaintiff-Appellee,

)

Filed December 29, 1982

vs.

)

2-352
67910

CEDRIC H. E. GRAVES,

)

Defendant-Appellant.

)

Appeal from Black Hawk District Court, Dennis D. Damsgaard, Judge.

Defendant appeals from his conviction for robbery in the first degree, a violation of Iowa code sections 711.1 and 711.2 (1981). AFFIRMED.

James L. Beeghly of Gartelos, Wagner, Beeghly & Mattson, Waterloo, for defendant-appellant.

Thomas J. Miller, Attorney General, and Steven M. Foritano, Assistant Attorney General, for plaintiff-appellee.

Heard en banc.

Defendant appeals from his conviction for robbery in the first degree, a violation of Iowa Code Sections 711.1 and 711.2 (1981), asserting that to convict for first-degree robbery under Iowa Code section 711.1 under a theory of aiding and abetting, the State is required to prove that defendant personally committed one of the acts enumerated in the section. We affirm.

The facts of this case are not in dispute. At approximately 9:00 p.m. on the evening of June 12, 1982, a black male entered an Apco service station in Cedar Falls, Iowa, asked the attendant for cigarettes, then pulled a knife from his coat and demanded that the attendant give him the money in the cash drawer. When the attendant refused, the black male raised the knife—which had a blade several inches in length—over the counter, grabbed several dollar bills, and fled from the station. The attendant observed the man enter an auto driven by another black male.

Shortly thereafter the police stopped an automobile matching the description of the getaway vehicle given by the service station attendant. The car was occupied by two black males—defendant Cedric Graves, who was driving, and Romorrow Anderson, who matched the attendant's description of the man who robbed the Apco service station. The ensuing search revealed the knife under the seat of the car and several dollar bills in defendant's possession. The defendant and Anderson were arrested and charged with first-degree robbery.

The sole issue on appeal is one of statutory interpretation. The provision of the Iowa Code under which defendant was convicted provides:

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 the 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.

Iowa Code § 711.1 (emphasis added). Defendant focuses on the legislature's use of the words "to assist or further," contending that these words refer to aiders and abettors. Therefore, defendant reasons, the State must prove that a defendant charged with aiding or abetting committed one of the three acts proscribed by section 711.1 before it can convict him as a principal under Iowa Code § 703.1.¹ Because the State failed to produce evidence that defendant had committed any of these acts, defendant claims that his conviction was unsupported and that the case therefore should be remanded to the trial court with instructions to dismiss the action.

We believe that defendant proposes an innovative but distorted interpretation of section 711.1, an interpretation which is unsupported by the plain language of the statute and by the intent of the legislature. The Iowa courts have held that a penal statute must satisfy two requirements to survive a due process vagueness attack: "(1) it must give a person of ordinary intelligence fair notice of what is prohibited, and (2) it must provide an explicit standard for those who apply it." State v. Pierce, 287 N.W.2d 570, 573 (Iowa 1980); Williams v. Osmundson, 281 N.W.2d 622, 625 (Iowa 1979). Section 711.1 clearly does both. Had the legislature intended the prohibited acts enumerated in section 711.1 to refer to aiders and abettors as well as to principals, as defendant claims, the words "aiding and

¹Iowa Code § 703.1 (1981) provides:

Aiding and abetting. All persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense or aid and abet its commission, shall be charged, tried and punished as principals. The guilt of a person who aids and abets the commission of a crime must be determined upon the facts which show the part he or she had in it, and does not depend upon the degree of another person's guilt.

abetting" would have been used in section 711.1. Instead, the legislature separated the substantive offense of robbery from the offense of aiding and abetting, so that the conduct described in section 711.1 constitutes the substantive offense, whereas all that is necessary to invoke the treatment of 703.1 is that a defendant "aid and abet its commission." Iowa Code § 703.1. Contrary to defendant's contention, the words "to assist or further" in section 711.1 refer to the antecedent in the statute, the person who actually commits the robbery. See State v. Lohr, 266 N.W.2d 1, 3 (Iowa 1978)("referential, relative, or qualifying words and phrases refer only to the immediately preceding antecedent").

Section 711.1 has previously been upheld against vagueness challenges, e.g., State v. Pierce, 287 N.W.2d 570, 573 (Iowa 1980), and we conclude that defendant's challenge here is likewise without merit. The trial court properly found beyond a reasonable doubt that defendant aided and abetted Romorrow Anderson in the armed robbery of the Apco Service Station. Sufficient facts existed to support the court's conclusion that defendant furnished the transportation and the knife used in the robbery, that he had knowledge that Anderson would commit a robbery at the station, and that he attempted to elude the police. Under the circumstances of this case, we conclude that the trial court properly found defendant guilty of first-degree robbery under the theory of aiding and abetting. See State v. Cuevas, 281 N.W.2d 627, 631 (Iowa 1979)(evidence from which jury could conclude defendant drove getaway car with prior knowledge of burglary plans found sufficient for conviction as aider and abettor).

AFFIRMED.