

IN THE COURT OF APPEALS OF IOWA

No. 0-310 / 89-952

FILED

SEP 26 1990

CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

435

vs.

MARSHALL WILLIAM PRUITT,

Appellant.

Appeal from the Iowa District Court for Scott County,
Margaret S. Briles, Judge.

Marshall William Pruitt appeals from his convictions,
following a bench trial, for willful injury, going armed
with intent, and carrying a dangerous weapon. **AFFIRMED.**

B. John Burns, Assistant State Appellate Defender, for
appellant.

Thomas J. Miller, Attorney General; Sarah J. Coats,
Assistant Attorney General; William E. Davis, County
Attorney; and J.E. Tobey, Assistant County Attorney; for
appellee.

Considered by Oxberger, C.J., and Donielson and
Schlegel, JJ.

SCHLEGEL, J.

Defendant Marshall Pruitt appeals his convictions on charges of willful injury, see Iowa Code § 708.4 (1989), going armed with intent, see id. § 708.8, and carrying a dangerous weapon, see id. § 724.4. His main contention is that there was insufficient evidence to support the judgments finding that he had aided and abetted or had engaged in joint criminal conduct with a fellow defendant. We find that the record does support the judgments and, therefore, affirm the decision of the trial court.

The trial court, sitting without a jury, heard this case and filed the following findings of fact, which we now adopt:

On January 7, 1989, around midnight, Jeff Tade was driving an automobile containing Thomas Davis, Russell Collins, Greg Tetrich, Don Asmussen, and Jeff Tade's three-year-old son. Mr. Tade pulled into a convenience store . . . to get some gasoline. Tom Davis, Russell Collins, Greg Tetrich, and Jeff Tade all got out of the vehicle. Don Asmussen stayed in the car, along with the three-year-old boy. Jeff Tade went around the car to pump gas into the car, and Greg Tetrich sat in the front seat with the door open and his feet hanging out.

At about the same time, a white Monte Carlo automobile arrived in an adjacent parking lot. . . . The defendant, Marshall William Pruitt, Daniel Lopez, and Jeffrey Jones got out of the vehicle The defendant apparently got the idea that the occupants of the Tade vehicle were laughing at him, as he went over and confronted Tom Davis In the course of the conversation, Tom Davis used the epithet "nigger" and evidenced a willingness to fight. Pruitt pulled a lock blade knife out of his pocket and flicked the blade open and approached Davis with it. Davis immediately backed up and protested against Pruitt's use of the knife. At the time this happened, Lopez began dancing around, shouting "stick him, stick him." Pruitt then

closed up the knife and handed it to Jeff Jones, who was standing nearby, and offered to fight Davis on a one-on-one basis. The fight then began more or less by mutual consent. After the fight started, Lopez exposed a large bladed knife and ordered Davis's friends to get back into the vehicle and remain there while the fight was going on. Jones returned to the Monte Carlo automobile. Davis shortly had Pruitt on the ground and was leaning over him, when Daniel Lopez ran across the approximately twenty feet, and with the large bladed knife stabbed Davis twice in the back. This caused Davis to fall to the ground, and Pruitt jumped up immediately. Davis began hollering "Leave me alone, leave me alone. I can't move my legs." Pruitt then kicked Davis's head at least twice, and Lopez also kicked his head and face. Lopez and Pruitt then began running for the Monte Carlo, and all of the occupants of the Tade vehicle except Tade gave chase. Jeff Jones pulled out a shot gun and pointed it at them and told them to get back in the car. At this point, they ceased the chase. Pruitt and Lopez, as well as Jones, got into the Jones vehicle and drove off.

The trial court determined that Pruitt was not guilty of an attempt to commit murder, but it did find him guilty of willful injury, going armed with intent, and carrying a dangerous weapon. The court ordered Pruitt to serve concurrent terms of ten, five, and two years, respectively.

Pruitt apparently challenges all of his convictions. He argues that the evidence is insufficient for a rational fact-finder to find beyond a reasonable doubt that he had aided or abetted or had engaged in joint criminal conduct.

Our standard of review for challenges to the sufficiency of evidence to convict is well settled. A verdict will be upheld where there is substantial evidence to support the charge. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). "Substantial evidence" means evidence that

could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. Id. We view the evidence in the light most favorable to the State, including any legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). Nevertheless, we consider all the evidence at trial, not just the evidence that supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

A person aids and abets by assenting to or lending countenance and approval to another's criminal act. State v. Lott, 255 N.W.2d 105, 107 (Iowa 1977). An aider and abetter is held liable as though that person were the principal. Iowa Code § 703.1 (1989). The aider and abetter must have the requisite intent or have knowledge that the principal has the requisite intent. Lott, 255 N.W.2d at 107. If the latter condition is relied upon, it is essential to establish that the aider and abetter had knowledge of the principal's intent before commission, State v. Vesey, 241 N.W.2d 888, 891 (Iowa 1976), but that knowledge may be inferred from circumstances surrounding the act, State v. Barnes, 204 N.W.2d 827, 828-29 (Iowa 1972). "Assenting or lending countenance or approval" to a criminal act may be either by active participation or by encouraging it prior to or at the time of the offense. State v. Galvan, 297 N.W.2d 344, 348 (Iowa 1980); Lott, 255 N.W.2d at 107. The guilt of the person charged "must be

determined upon the facts which show the part the person had in it, and does not depend upon the degree of another person's guilt." Iowa Code § 703.1 (1989). We conclude, as did the trial court, that there is substantial evidence upon which a rational jury could base a finding of guilt.

Willful injury is committed when one "does an act which is not justified and which is intended to cause and does cause serious injury to another." Iowa Code § 708.4 (1989). Citing State v. Lott, 255 N.W.2d 105, 107 (Iowa 1977), State v. Kittelson, 164 N.W.2d 157, 165 (Iowa 1969), and State v. Heidebrink, 334 N.W.2d 344, 347 (Iowa App. 1983), defendant would have us dissect the assault into two segments: the knifing and the kicking. He reasons that he had the requisite intent or knowledge and participation only in the kicking, that the kicking inflicted no serious injury required for a willful injury conviction, and that he could not be guilty of a willful injury. We find no such support in these cases for segmenting this attack.

It seems plain to us, as it did the trial court, that any kicking or beating that took place after the knifing was a mere continuation of the same assault. It is clear that Pruitt assented or lent countenance, i.e., approval, support, or sanction, to Lopez's criminal act. Lott, 255 N.W.2d at 107. The circumstances surrounding the incident show that Pruitt knew in advance of the fist fight and the stabbing that his comrades were armed, and he knew that Lopez wanted to see Davis seriously injured. See Vesey,

241 N.W.2d at 891; Barnes, 204 N.W.2d at 828-29.

Even if we do dissect these events which occurred over a period of a few seconds, we find that Pruitt should remain accountable. Assenting or lending countenance to a criminal act, as we have noted, may be through simple encouragement prior to or at the time of the offense. Galvan, 297 N.W.2d at 348; Lott, 255 N.W.2d at 107. Such encouragement, moreover, need not be active. State v. Cunha, 193 N.W.2d 106, 111 (Iowa 1971). It is clear that Pruitt and his friends sought to engage in a violent confrontation. It is also evident from their words and deeds before initiating the physical confrontation that they fully intended to cause a serious injury.

The underlying precept of aiding and abetting is a requirement that the accessory in some way "associate himself with the venture, that he participate in it as something that he wishes to bring about, that he seek by his action to make it succeed." United States v. Peoni, 100 F.2d 401, 402 (2d Cir. 1938). This precept was satisfied by the evidence in the present case.

Lott, 255 N.W.2d at 108.

The trial court found in the alternative that Pruitt was guilty of joint criminal conduct. Under Iowa law,

[w]hen two or more persons, acting in concert, knowingly participate in a public offense, each is responsible for the acts of the other done in furtherance of the commission of the offense or escape therefrom, and each person's guilt will be the same as that of the person so acting, unless the act was one which the person could not reasonably expect to be done in the furtherance of the commission of the offense.

Iowa Code § 703.2 (1989). We have already noted that we

find Pruitt participated "in furtherance of the commission of" willful assault. We also have indicated that we believe Pruitt had reason to expect the cowardly violence that occurred. Substantial evidence, therefore, supports the conviction on the joint criminal conduct theory as well.

We are unsure whether Pruitt challenges the other convictions. Citing his argument with respect to the willful injury charge, he argues that the evidence is insufficient to support a conviction of going armed with intent. We find what little argument is presented without merit because we believe there is substantial evidence to support the convictions. Everyone involved knew the shotgun was in the car. Jones's actions enabled Lopez and Pruitt to continue their assault on Davis and aided them in their escape. Pruitt therefore was responsible for the acts of Jones "done in furtherance of the commission of the offense or escape." Iowa Code § 703.2 (1989)

Having found substantial evidence to support the convictions, we affirm the judgment of the trial court.

AFFIRMED.