

IN THE COURT OF APPEALS OF IOWA

No. 0-615 / 09-1361
Filed October 6, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

**EDWARD WALTER BLOOMER, KIRK
BROWN, CHESTER GUINN and
MONA SHAW,**
Defendants-Appellants.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,
Judge.

Defendants were granted discretionary review of their simple
misdemeanor convictions. **AFFIRMED.**

Sally Frank of the Drake Legal Clinic, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney
General, John P. Sarcone, County Attorney, and Anastasia Hurn, Assistant
County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.
Tabor, J., takes no part.

DANILSON, J.

Defendants Edward Bloomer, Kirk Brown, Chester Guinn, and Mona Shaw were convicted after a jury trial of simple misdemeanor trespass, in violation of Iowa Code section 716.7 (2007). The defendants alleged that they were intending to effectuate a citizen's arrest of Karl Rove (an assistant to former United States President George W. Bush) when Rove spoke at an event at the private Wakonda Club in Des Moines in July 2008. The defendants were arrested when they refused to leave the property of the club. Because there was no direct evidence of an express agreement between Wakonda Club management and the arresting officer to prevent the defendants from traversing upon or remaining on the property, the defendants urged at trial and now on discretionary review that the evidence was not sufficient to convict them of trespass. The jury rejected this claim and convicted the defendants. The district court affirmed. The defendants also argue the prosecutor's misstatements during closing argument deprived them of a fair trial. Because we find the evidence adequate to support the jury's verdict and that the alleged prosecutorial misconduct does not warrant a new trial, we affirm.

I. Sufficiency of the Evidence.

We review challenges to the sufficiency of the evidence for the correction of errors of law. Iowa R. App. P. 6.907; *State v. Keeton*, 710 N.W.2d 531, 532 (Iowa 2006). In reviewing challenges to the sufficiency of the evidence supporting a guilty verdict, we consider all of the evidence in the record in the

light most favorable to the State and make all reasonable inferences that may fairly be drawn from the evidence. *Keeton*, 710 N.W.2d at 532.

Iowa Code section 716.7(2)(b) defines trespass to include the following:

Entering or remaining upon or in property without justification after being notified or requested to abstain from entering or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or the agent or employee of the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public employee *whose duty it is to supervise the use or maintenance of the property.*

Iowa Code § 716.7(2)(b) (emphasis added). The defendants argue that the arresting officer, Des Moines Police Sergeant Mark Schleuger, did not have authority to arrest them because it was not his duty “to supervise the use or maintenance of the property.” *See id.* As Sergeant Schleuger testified:

[DEFENSE COUNSEL]: As a Des Moines police officer, you are not acting as an employee of the Wakonda Club?

[SERGEANT SCHLEUGER]: Correct.

[DEFENSE COUNSEL]: You weren’t at the club to supervise the use or maintenance of the property?

[SERGEANT SCHLEUGER]: No.

[DEFENSE COUNSEL]: You were at the club to ensure public safety?

[SERGEANT SCHLEUGER]: Correct.

.....

[STATE]: Sergeant, without getting into the specifics, did you have some conversation with [Wakonda Club General Manager] Dave Schneider before you encountered the four defendants?

[SERGEANT SCHLEUGER]: Yes.

.....

[STATE]: Were you authorized to be there by Wakonda Club?

[SERGEANT SCHLEUGER]: Yes.

[STATE]: Were you under the impression that they did not want protestors on the property?

[SERGEANT SCHLEUGER]: Yes.

In support of their argument, defendants substantially rely upon Sergeant Schleuger's statement that he was not at the club to supervise the use or maintenance of the property. However, it is clear from a complete review of Sergeant Schleuger's testimony in regard to this issue that he believed the Wakonda Club had instilled the duty upon him to ensure safety and private use of the club, as required under section 716.7(2)(b). As the district court aptly noted in its ruling:

[T]he Defendants argue that Sergeant Schleuger had no authority to order the Defendants to leave the property of the Wakonda Club. Specifically, the Defendants point out that under section 716.7(2)(b), the Code of Iowa, a police officer only has the authority to order persons to leave the property if it is his or her duty to supervise the use or maintenance of the property. The Defendants point out that the evidence at trial showed that while Sergeant Schleuger indeed had permission to be on the property of the Wakonda Club there was no evidence or testimony offered to show that at any point Mr. Schneider or anyone else from Wakonda Club asked Sergeant Schleuger to remove protestors who entered the club's property. Mr. Schneider testified that he gave Sergeant Schleuger authority to be on the club's property during the event. Sergeant Schleuger testified that he thought that was what the Wakonda Club wanted him to do.

After reviewing the entire record the Court finds that a rational trier of fact could find the Defendants guilty beyond a reasonable doubt of trespassing. The jury as the fact finder could infer from the facts and circumstances that the Wakonda Club, through its agent Mr. Schneider, did not want the Defendants on the premises on July 25, 2008 and that the presence of Sergeant Schleuger was to ensure that the Defendants did not enter the property. It is clear from the evidence that the jury could find and deduce that Sergeant Schleuger had the authority from the Wakonda Club, by Mr. Schneider, to ask the Defendants to remove themselves from the property. Therefore, the Court finds that as a matter of law, there was sufficient evidence from the record, including all legitimate inferences and presumptions which may be fairly and reasonably deduced from the record, upon which a rational trier of fact could find the Defendants guilty of trespass beyond a reasonable doubt.

Upon our review of the record, particularly the detailed video-recording of the July 25, 2008 protest and arrests, as well as the testimony of Sergeant Schleuger and General Manager Schneider, we agree with the district court's well-reasoned conclusion in this case. The phrase in section 716(2)(b) referring to a peace officer "whose duty it is to supervise the use or maintenance of the property" relates to the law enforcement officer's peacekeeping duties, and if the officer is asked to keep the peace or similar directives upon private property, the officer may be impliedly authorized to request uninvited individuals to remove themselves from the property as the jury could have concluded in these proceedings. Considering the record in the light most favorable to the State and making all reasonable inferences that may fairly be drawn, we find the evidence substantially supports the defendants' convictions for simple misdemeanor trespass. We affirm on this issue.

II. Prosecutorial Misconduct.

The defendants contend the district court abused its discretion in denying their claim of alleged prosecutorial misconduct. To prevail on a claim of prosecutorial misconduct, a defendant must establish that misconduct occurred and that he was so prejudiced by the misconduct that he was deprived of a fair trial. See *State v. Bowers*, 656 N.W.2d 349, 355 (Iowa 2002). The State argues this issue has not been preserved for our review. Even if we assume the defendants properly preserved this issue, we find that the prosecutor's comments during closing argument did not rise to the level of a due process violation.

At trial, the defendants raised as one of their defenses that they were on Wakonda Club property to execute an arrest of Karl Rove as private persons under Iowa's citizen arrest statute. See Iowa Code § 804.9(2) ("A private person may make an arrest . . . [w]hen a felony has been committed, and the person has reasonable ground for believing that the person to be arrested has committed it."). The court instructed the jury on the law of citizen's arrest in Jury Instructions Nos. 11 and 12. During closing argument, the prosecutor stated:

[T]hey entered private property to try to effectuate an arrest. This is not reasonable. The Defendants must be found guilty of trespass. Their version of the law cannot—what they're advocating for cannot be allowed to stand. It is not reasonable for a person to enter private property based upon rumor and speculation, no firsthand knowledge, and try to effectuate an arrest.

The defendants objected to this statement and requested a curative instruction to make it clear to the jury that the issue was not whether the law was reasonable but instead whether it was reasonable for defendants to believe there was probable cause to conclude Karl Rove committed a felony. The trial court gave the following curative instruction:

Instructions 11 and 12 in your instructions provide you with the law as you need to know it in the State of Iowa as it relates to citizen's arrest. It is not within your purview as members of the jury to decide what the law should be. It is within your duty to follow what the law tells you and read all of the instructions, 1 through 17, as a whole and follow that.

The district court determined the trial court's curative instruction was sufficient to overcome any harm the prosecutor's statements had caused. As the district court stated:

[T]he Court finds that the cautionary instruction by the Court when viewed together with the strength of the State's case and the

significance of the misconduct to the central issues of the case does not rise to a violation of the Defendants' due process rights. The Court instructed the jury that they must follow the law regarding the right of a citizen to make an arrest as set out in instructions number 11 and 12 of the jury instructions. Those instructions plainly set forth for the jury the law in regard to a citizen's arrest under section 804.9, the Code of Iowa. The Court finds that the curative measures taken by the Court below was more than sufficient to address the comments made by the prosecutor on rebuttal argument. Therefore, the Court finds that the conduct by the prosecutor was not such that the Defendants were denied due process of law as guaranteed to them by the 14th Amendment to the United States Constitution in Article 1 section 9 of the Iowa Constitution.

Upon our review, we agree with the district court's determination in regard to this issue. See *State v. Boggs*, 741 N.W.2d 492, 508-09 (Iowa 2007) (setting forth the factors to consider in determining whether the defendant was denied a fair trial due to alleged prosecutorial misconduct). The record discloses that the trial court instructed the jury that "[i]t is not within your purview as members of the jury to decide what the law should be," and that the jury is "to follow what the law tells you and read all of the instructions." Jurors are presumed to follow the instructions. *State v. Simpson*, 438 N.W.2d 20, 21 (Iowa Ct. App. 1989). We also note that, due to the strength of the State's case against the defendants, the prosecutor's comments did not result in prejudice to the defendants. See *State v. Carey*, 709 N.W.2d 547, 559 (Iowa 2006) (acknowledging that the most important factor to consider in a claim of prosecutorial misconduct is the strength of the State's case against the defendant).

Having considered the issues raised on this discretionary review, we affirm the defendants' convictions and sentences.

AFFIRMED.