

IN THE COURT OF APPEALS OF IOWA

No. 1-012 / 08-0047
Filed February 9, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TYLER JEFFREY WEBBER,
Defendant-Appellant.

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

Defendant appeals his convictions for second-degree robbery and assault causing serious injury. **AFFIRMED.**

Mark R. Hinshaw of the Law Offices of Mark R. Hinshaw, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel A. Dalrymple, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., Potterfield, J., and Mahan, S.J.* Tabor, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, S.J.**I. Background Facts & Proceedings**

Rondell Cropp agreed to purchase marijuana from Brandt Clark on January 26, 2006, at Clark's house on Kingsley Street in Waterloo, where Clark's supplier, Phillip Hansen, was to meet them with the marijuana.

Cropp later decided to steal the marijuana instead, and recruited several friends to help him. Cropp arranged for Tyler Webber to drive him in Webber's vehicle on January 26. Cropp sat in the front seat. Webber also picked up Rayshawn McClarity, Antonio Hardy, and Montess Seals. At Cropp's request, Webber drove them to Tyrone Thompson's home, where Cropp kept a sawed-off shotgun. Cropp retrieved the gun, but there is differing testimony as to whether Cropp or Seals held the gun in the car.

During the drive to Clark's house on Kingsley, Cropp explained his plan to steal the marijuana. Cropp stated he would go into the house, and the others would stay outside until Hansen showed up with the marijuana, and then McClarity, Hardy, and Seals would take it from him.

Cropp went into Clark's home while McClarity, Hardy, and Seals hid in the backyard near the alley and lay in wait. Webber stayed in the vehicle.

That same evening, James Shower and his fiancé, Joanie Hightower, came to visit Clark, who was Shower's cousin. The three men mistakenly accosted Shower and Hightower and attempted to take a paper bag from Shower, assuming it contained marijuana, although it actually contained bottles of Jagermeister. Shower was shot during the encounter and suffered injuries to

his abdomen and left arm. Hightower assisted Shower to the backdoor. When she knocked, Cropp came out and ran away. Clark called 911.

In the meantime, the three men ran back to where Webber was waiting in the car. Aaron Harvey was visiting his girlfriend, Kaity Frost, who lived close by. Harvey testified they heard a loud bang and he ran out to the front porch, where he saw a man running down Fletcher Street. After that he saw a car that was parked at the corner of Home Park and Fletcher turn on its lights and drive away. Frost testified she followed Harvey outside, and he pointed out the car driving away. Both Frost and McClarity testified that the car drove away quickly.

In the car, Seals directed Webber to a location to drop him off. Cropp then called and asked Webber to pick him up at the Kwik Star on Fletcher, and Webber drove back to pick him up. Surveillance video shows Webber going into the Kwik Star to get Cropp. Webber then dropped Cropp off at Thompson's home.

Webber was charged with robbery in the first degree and willful injury. Evidence as outlined above was presented to the jury. The jury found Webber guilty of the lesser charges of robbery in the second degree and assault causing serious injury. Webber was sentenced to a term of imprisonment not to exceed ten years on the charge of second-degree robbery, and five years on the charge of assault causing serious injury, to be served consecutively. Webber appeals his convictions.

II. Ineffective Assistance

Webber contends he received ineffective assistance because his defense counsel did not notify him when depositions were taken of Harvey and Frost, or

secure his attendance at those depositions. Webber asserts that if he had known of Harvey's and Frost's testimony, this would have affected his decision to reject the State's plea offer.

As the State points out, however, there is no indication in the trial court record whether Harvey or Frost were deposed, and if they were, whether Webber was present for the depositions. Where the trial court record is inadequate, we may preserve for possible postconviction proceedings a claim of ineffective assistance of counsel. See *Berryhill v. State*, 603 N.W.2d 243, 245 (Iowa 1999). We determine the present record is insufficient to address Webber's claims.¹

III. Sufficiency of the Evidence

Webber contends there is insufficient evidence in the record to support his convictions. He asserts the State did not present any evidence to show he had any prior knowledge of the plan to steal marijuana, or that he had any knowledge that the other men had a gun. He points out that in a deposition Cropp stated he did not tell Webber of the plan because Webber was "lame."² Cropp also stated he told McClarity and Hardy about the plan by talking over his right shoulder to them as they sat in the backseat.

We review challenges to the sufficiency of the evidence in a criminal case for the correction of errors at law. *State v. Heuser*, 661 N.W.2d 157, 165 (Iowa 2003). The fact finder's verdict will be upheld if it is supported by substantial

¹ The State asserts Webber's claim could be addressed on the prejudice component of a claim of ineffective assistance of counsel, stating the testimony of Harvey and Frost was consistent with their police statements. It is entirely unknown, however, what their testimony was during depositions, if indeed there were depositions.

² Cropp's plea agreement was rescinded because the State did not believe Cropp was truthful in his deposition.

evidence. *Id.* at 165-66. Substantial evidence means evidence that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). We consider all the evidence and view the evidence in the light most favorable to the State. *State v. Bentley*, 757 N.W.2d 257, 262 (Iowa 2000).

In order to show aiding and abetting, “the record must contain substantial evidence the accused assented to or lent countenance and approval to the criminal act either by active participation or by some manner encouraging it prior to or at the time of its commission.” *State v. Spates*, 779 N.W.2d 770, 780 (Iowa 2010) (quoting *State v. Tangie*, 616 N.W.2d 564, 574 (Iowa 2000)). Knowledge of the crime alone is not sufficient; neither is mere presence at the scene of the crime. *State v. Maxwell*, 743 N.W.2d 185, 197 (Iowa 2008). On the other hand, a person’s participation in a crime may be “inferred ‘from circumstantial evidence including presence, companionship or conduct before and after the offense is committed.’” *State v. Brown*, 466 N.W.2d 701, 703 (Iowa Ct. App. 1990) (quoting *State v. Miles*, 346 N.W.2d 517, 520 (Iowa 1984)).

We determine there is sufficient evidence in the record to show Webber aided and abetted in the commission of the crimes of second-degree robbery and assault causing serious injury. The evidence shows Webber was driving the car while Cropp, who was sitting next to him in the front seat, explained the plan to steal marijuana at Clark’s home on Kingsley Street. McClarity, who was sitting in the backseat behind Webber, testified he was able to hear Cropp’s plan. Webber drove Cropp to Thompson’s house, where Cropp retrieved his sawed-off shotgun. The gun remained in the car, whether held by Cropp or Seals, as

Webber drove to the location of the crime. In addition, the evidence showed there were numerous telephone calls between Cropp and Webber on the day of the crime. The jury could find Webber was aware of the plan made by Cropp and aware of the gun in the car.

Furthermore, Webber actively participated by driving the men near the location where they planned to steal marijuana, but parking on the other side of the block. He waited there until McClarity, Hardy, and Seals ran back to the car, and then he drove swiftly away. Webber came back to the neighborhood to pick up Cropp and took him to Thompson's house, where Cropp had obtained the gun.

We determine there is sufficient evidence in the record to support Webber's convictions for second-degree robbery and assault causing serious injury. We affirm Webber's convictions.

AFFIRMED.