STATE OF IOWA, Plaintiff-Appellee, vs. TYREE LEE YOUNG, Defendant-Appellant.

2006 | Cited 0 times | Court of Appeals of Iowa | December 28, 2006

IN THE COURT OF APPEALS OF IOWA

No. 6-811 / 05-1345 Filed December 28, 2006

STATE OF IOWA, Plaintiff-Appellee,

vs.

TYREE LEE YOUNG, Defendant-Appellant.

_____ _____

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Tyree Young appeals hi s judgment and sentenc e for second-degree

robbery. AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds,

Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, A ssistant Attorney

General, John P. Sarcone, County Attorney, and Nan Horvat, Assistant County

Attorney, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ. VAITHESWARAN, J.

Robert Steiner hit a vehicle in whic h Tyree Lee Young was a passenger.

As Steiner attempted to retrieve his insurance card, Young picked Steiner's

pocket and made off with his wallet, whic h contained several hundred dollars in

cash.

A jury found Young guilty of second- degree robbery. Iowa Code §§ 711.1

and 711.3 (2003). On appeal, Young contends: (1) the evidence was insufficient

to support the finding of gu ilt, (2) the district cour t erred in denying Young's

request for a jury instruction on alternat e theories, and (3) trial counsel provided

ineffective assistance in several respects.

I. Sufficiency of the Evidence

The jury was instructed that the St ate would have to prove the following

elements of second-degree robbery:

1. On or about April 16, 2004 t he defendant had the specific intent to commit a theft. 2. To carry out his intentions the defendant committed an assault upon Robert Steiner.

The district court defined the term "assault" as follows:

Concerning element num ber 2 of Instruction No. 15, an Assault is committed when a person does an act which is meant to cause pain or injury, result in physical contact which will be insulting or offensive, place another person in fear of immediate physical contact which will be painful, inju rious, insulting or offensive to another person, when c oupled with the appar ent ability to do the act. The State concedes that this definiti on is inaccurate because it requires

proof of all the assault alternatives rather than any one of them. 1 Because no

objection to this instruction was lodged, it became the law of the case. See State

v. Taggart , 430 N.W.2d 423, 425 (Iowa 1988) ("Fa ilure to timely object to an

instruction not only waives the right to assert error on appea l, but also 'the

instruction, right or wrong, becomes the law of the case.'" (citations omitted)).

Therefore, the jury had to find that Y oung did an act which was meant to (1)

cause pain or injury and (2) result in physical contact which would be insulting or offensive and (3) place another person in fear of immediate physical contact which was painful, injurious, insulting or o ffensive to another person. In deciding whether there was sufficient evidence to support all these alternatives, we are obligated to view the evidence in the lig ht most favorable to the State. State v. Shanahan , 712 N.W.2d 121, 134 (Iowa 2006).

Viewed in this light, the jury could hav e found the following facts. After the accident, seventy-nine-year-old Steiner felt a hand in a pocket containing his wallet. He reached around to grab the hand. Young pulled him backwards. As a result, Steiner "fell over backwards." When asked what caused him to fall, Steiner stated "[h]im pulling me backwards trying to get my billfold out and me hanging onto his hand."

The jury could have found from this evidence that, when Young put his hand in Steiner's pocket to take his walle t, he committed an act which satisfied all three of the assault alternatives. See State v. Spears , 312 N.W.2d 79, 81 (Iowa

1 The State's brief says: "[T]he State agrees that under the instruction in this case, it was required to prove an assault was committed under all assault definitions cited in the instruction." Ct. App. 1981) (finding su fficient evidence to support assault element of second-degree robbery where defendant "reached into the pocket of the apron being worn by the bartender, grabbed money out of his pocket . . . and fled.").

We recognize the jury could have found t hat the act of remo ving the wallet from Steiner's pocket was not, in and of itself, a violent act. However, precedent

tells us that the focus is not on "the nat ure of the act itself" but on "the intended results." Spears , 312 N.W.2d at 81. Viewing al l the circumstances surrounding the removal of the wallet, the jury reasonably could have found that Young intended to cause Steiner pain when he sl ipped his hand into Steiner's pocket and pulled him backwards. The jury also reasonably could have found that the act of taking the wallet would result in c ontact with Steiner that would be insulting or offensive to Steiner and would place hi m in fear of immediate physical contact which was painful, injurious, insulting, or offensive to another person. State v. Keeton , 710 N.W.2d 531, 534 (Iowa 2006) (quoting 21 Am. Jur. 2d Criminal Law § 128, at 214-15 (1998) (sta ting the intent required by statute "may be inferred from the circumstances of the transaction and the actions of the defendant")).

We are convinced the jury's finding of guilt was supported by substantial evidence. Shanahan , 712 N.W.2d at 134.

II. Jury Instructions

At trial, defense counsel asked the dist rict court to instruct the jury that they could find Young not gu ilty of robbery even if they subscribed to different theories of innocence, with some believi ng Young was not pres ent at the scene and some believing he was present, but did not commit the assault. Defense counsel characterized such an instruction as an "alternative theory instruction." The district court disagreed with defense counsel's characterization and denied Young's request for the instruction. The court explained that the "alternate

theory" instruction focused on the State's theories of guilt rather than defense theories of innocence. Citing the uniform instruction, the court noted that the instruction does not require unanimity on alternate theories of guilt proffered by the State but only unanimity on an ultimate finding of guilt. See Iowa Criminal Jury Instruction 100.16. The court advised defense counsel:

I don't think you are talking alternat e theory. I think what you are saying is my client didn't do it. He wasn't there. If he was there, he didn't commit an assault. That is, r eally, not alternate theories, as I understand that instru ction to go to.

The court said that defense counsel was fr ee to make this argument to the jury.

The district court succinctly explai ned that Young's requested instruction was not a proper defense theory. See State v. Johnson , 534 N.W.2d 118, 124 (Iowa Ct. App. 1995). Therefore, we disce rn no prejudicial error in the court's refusal to give this instruction. State v. Kellogg , 542 N.W.2d 514, 516 (Iowa 1996) (setting forth standard of review).

III. Ineffective Assistance of Counsel

Young claims trial counsel was ineffect ive in: (1) failing to request an instruction on theft from a person, (2) purportedly telling the jury that he was guilty of theft, and (3) failing to impeach St einer's in-court identification of him with a photo array containing his picture. To prevail on a claim of ineffective assistance of counsel, a defenda nt must show that counsel failed to perform an essential duty and prejudice resulted. Strickland v. Washington , 466 U.S. 668, 690, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674, 695 (1984). Our review is de

novo. Ledezma v. State , 626 N.W.2d 134, 141 (Iowa 2001).

On the first claim regard ing counsel's failure to request a jury instruction on theft from a person, Young specifically asserts that "[h]ad the jury received such an instruction, [he] would not have been found guilt y of robbery." If Young is contending that theft is a lesser-inc luded offense of robbery and failure to instruct on this offense was reversible error, our highest court has rejected this contention. State v. Holmes , 276 N.W.2d 823, 825 (Iowa 1979). On the other hand, if Young is cont ending that the prosecutor should have charged him with theft in addition to, or in lieu of, robber y, it is established that "the decision whether to prosecute, and if so on what charges, is a matter ordinarily within the discretion of the duly el ected prosecutor." State v. Iowa Dist. Ct. , 568 N.W.2d 505, 508 (Iowa 1997). Because Young was not charged with theft, he was not entitled to a theft instructi on and trial counsel was not ineffective in failing to request it. Johnson , 534 N.W.2d at 124.

On the second claim, Young contends defense counsel "conceded that there was an intention to commit a thef t, and that a theft occurred." Young further asserts that "the jury likely heard the same concession ." This discussion took place outside the presence of the jury. In addition, there is no indication that the district court took this issue away fr om the jury, as the jury was instructed on the "intent to commit theft" element of the robbery charge. Therefore, Young was not prejudiced by trial counsel's discussion of this element.

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On the third claim, regarding def ense counsel's failure to impeach

Steiner's in-court identification of Young, Young contends "the evidence concerning the real identity of the perpetrator was mu rky at trial." On our de

novo review of the record, we disagree. Young's girlfriend at the time of the

accident unequivocally testified that he was the person who took the wallet.

Although other witness identif ications of Young revealed some inconsistencies,

the girlfriend's testimony renders it im probable that the outcome would have

changed if the photo array with Y oung's picture had been introduced.

For these reasons, we reject Young's ineffective-assistance-of-counsel

claims.

IV. Disposition

We affirm Young's judgment and s entence for second-degree robbery.

AFFIRMED.