IN THE COURT OF APPEALS OF IOWA

No. 9-804 / 09-0195
Filed November 25, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RONALD RAY MURRAY Jr.,
Defendant-Appellant.

Appeal from the Iowa District Court for Benton County, Robert E. Sosalla, Judge.

Defendant appeals his convictions for robbery in the second degree and theft in the second degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, David C. Thompson, County Attorney, and Anthony Janney, Assistant County Attorney, for appellee.

Considered by Doyle, P.J., Mansfield, J., and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

DOYLE, P.J.

Ronald Murray Jr. appeals his convictions for robbery in the second degree and theft in the second degree. He claims the district court erred in submitting both general intent and specific intent instructions to the jury. We disagree and affirm the judgment of the district court.

I. Background Facts and Proceedings.

Murray was charged by trial information with robbery in the second degree in violation of Iowa Code section 711.3 (2007), theft in the second degree in violation of sections 714.1(1) and 714.2(2), and threats in violation of section 712.8. A jury trial was held on November 17, 2008. From the evidence presented at trial, the jury could have found the following facts:

Around noon on November 19, 2007, Murray walked into a bank with a gun. He was wearing a white hooded sweatshirt, jeans, and tennis shoes and carrying a white plastic grocery bag. Murray approached a teller at the bank and stated, "Give me all the money in your drawer. You have five seconds or a bomb will go off at the restaurant" across the street from the bank. The teller gave him the money she had in her drawer, and Murray left the bank.

An acquaintance of Murray's saw him at approximately 12:15 p.m. jogging down an alley with a white plastic grocery bag in his hand. He watched Murray get into a black Nissan Pathfinder and drive away. Murray was arrested a couple of hours later near his home. Law enforcement officials discovered a white hooded sweatshirt, tennis shoes, a gun, and money in Murray's vehicle—a black Nissan Pathfinder. Murray admitted he had been in the bank with a gun earlier that day.

At the close of evidence, the jury was instructed in relevant part as follows:

Instruction No. 16

To commit a crime a person must intend to do an act which is against the law. While it is not necessary that a person knows the act is against the law, it is necessary that the person was aware he was doing the act and he did it voluntarily, not by mistake or accident. You may, but are not required to, conclude a person intends the natural results of his acts.

Instruction No. 17

"Specific intent" means not only being aware of doing an act and doing it voluntarily, but in addition, doing it with a specific purpose in mind.

Because determining the defendant's specific intent requires you to decide what he was thinking when an act was done, it is seldom capable of direct proof. Therefore, you should consider the facts and circumstances surrounding the act to determine the defendant's specific intent. You may, but are not required to, conclude a person intends the natural results of his acts.

Instruction No. 18

The State must prove all of the following elements of Robbery In The Second Degree:

1. On or about the 19th of November 2007, the defendant *had the specific intent to* commit a theft.

2. In carrying out his intention or to assist him in escaping from the scene with or without the stolen property, the defendant:

a. Committed an assault on [bank tellers] Tammy Kruse, Krista Griswold and Ruth Albers.

b. Threatened Tammy Kruse, Krista Griswold and Ruth Albers with or purposely put Tammy Kruse, Krista Griswold and Ruth Albers in fear of immediate serious injury.

. . . .

Instruction No. 19

With regard to Instruction No. 18 an assault occurred if a person committed an act *which was intended to* cause pain or injury and/or resulted in physical contact which was insulting or offensive and/or placed another in fear of an immediate physical

> contact which would have been painful, injurious, insulting or offensive to the other.
>
> Instruction No. 20
>
> The State must prove all of the following elements of Theft:
>
> 1. On or about the 19th day of November, 2007, the defendant took possession or control of money.
> 2. The defendant did so *with the intent to* deprive the Keystone Savings Bank of the money.
> 3. The property, at the time of the taking was in the possession of the Keystone Savings Bank.

(Emphasis added.)

Murray objected to Instruction No. 16 "as [a] proposed general intent instruction. There are no general intent crimes alleged in this case nor lessers." The district court overruled Murray's objection, and the case was submitted to the jury for deliberation, following which the jury found Murray guilty of robbery in the second degree and theft in the second degree, but not guilty of threats. He was sentenced to a term of imprisonment not to exceed ten years on the robbery conviction and five years on the theft conviction, to be served consecutively.

Murray appeals his convictions, raising only one issue: whether the district court erred in submitting both general intent and specific intent instructions to the jury.

II. Scope and Standards of Review.

Alleged errors in jury instructions are reviewed for correction of errors at law. *State v. Kellogg*, 542 N.W.2d 514, 516 (Iowa 1996). Error in giving a jury instruction does not merit reversal unless it results in prejudice to the defendant. *Id*. "Prejudice results when the trial court's instruction materially misstates the law, confuses or misleads the jury, or is unduly emphasized." *Anderson v.*

Webster City Cmty. Sch. Dist., 620 N.W.2d 263, 268 (Iowa 2000); *see also Moser v. Stallings*, 387 N.W.2d 599, 605 (Iowa 1986) ("[G]iving instructions which are conflicting and confusing is reversible error."). "An instruction is not confusing if a full and fair reading of all of the instructions leads to the inevitable conclusion that the jury could not have misapprehended the issue presented by the challenged instruction." *Moser*, 387 N.W.2d at 605. We therefore consider the instructions as a whole and if the jury has not been misled there is no reversible error. *Id.*

III. Discussion.

As set forth above, the jury received two instructions on intent. Instruction No. 16 is a verbatim recitation of the uniform instruction on general criminal intent, while Instruction No. 17 is a verbatim recitation of the uniform instruction on specific criminal intent. *See* I Iowa Crim. Jury Instructions 200.1, 200.2. Murray argues the jury should not have received the general intent instruction because none of the crimes with which he was charged were general intent crimes. The State counters that although both robbery and theft are specific intent crimes, assault (which was an element of the robbery charge) is a general intent crime.

The question of what intent—specific or general—is required to commit an assault has considerable recent history and no definitive answer. *See Wyatt v. Iowa Dep't of Human Servs.*, 744 N.W.2d 89, 94 (Iowa 2008). In *State v. Keeton*, 710 N.W.2d 531, 533-34 (Iowa 2006), our supreme court noted the two labels were difficult to apply, emphasizing instead the need to focus on the elements of the crime involved. *See also Eggman v. Scurr*, 311 N.W.2d 77, 79 (Iowa 1981)

("The distinction between general intent and specific intent has not always been made with the utmost clarity. Some scholars are critical of attempts to distinguish between the two intents."). The court in *Keeton* thus determined that "[r]egardless of which label is attached to the offense, the State was still required to prove [the defendant] possessed the mens rea required by the statute." 710 N.W.2d at 534. Taking our lead from *Keeton*, we conclude the district court did not err in instructing the jury as to both general and specific intent (even though all of the crimes at issue arguably required proof of specific intent only) for the reasons that follow.

The instructions on intent are both correct statements of the law and do not contradict one another as suggested by Murray. The district court was careful to contrast the two instructions in the beginning sentence of Instruction No. 17, as follows: "'Specific intent' means not only being aware of doing an act and doing it voluntarily, but in addition, doing it with a specific purpose in mind." *See Eggman*, 311 N.W.2d at 80 (distinguishing between specific and general intent in the same manner). Confusion was thus avoided rather than fostered. *See State v. Pierce*, 287 N.W.2d 570, 575 (Iowa 1980) (finding court did not err in submitting an instruction that defined both general and specific intent in the same instruction).

In addition, in Instruction No. 18, the jury was clearly instructed the State was required to prove Murray "had the specific intent to commit a theft" in order to find him guilty of robbery in the second degree. The jury was also correctly instructed as to the intent required by statute for theft and assault. Because the jury was so instructed, we cannot accept Murray's contention that "there is no

way to know which intent instruction the jury used" in convicting him of robbery and theft. *See Keeton*, 710 N.W.2d at 533-34 (holding that attaching a label of specific intent or general intent is secondary to the State's burden to prove that the defendant possessed the mens rea required by statute); *State v. Doughty*, 359 N.W.2d 439, 441 (Iowa 1984) (rejecting argument that court erred in failing to specify that the intent required to prove kidnapping was specific rather than general because the "jury was correctly instructed that it must find an intent").

IV. Conclusion.

Upon considering the jury instructions as a whole, we conclude the district court did not err in submitting both general and specific criminal intent instructions to the jury. The jury was specifically advised as to the different intents required to convict Murray of the crimes with which he was charged. We reject Murray's claims to the contrary and affirm the judgment of the district court.

AFFIRMED.