

IN THE COURT OF APPEALS OF IOWA

No. 2-534 / 10-0993
Filed August 22, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FREDDY BULHA RENIER,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,
Judge.

Freddy Renier appeals from his convictions, sentence and judgment for robbery in the first degree and assault while participating in a felony, following jury trial. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget Chambers, Assistant Attorney General, Michael J. Walton, County Attorney, and Amy Devine and Dion Trowers, Assistant County Attorneys, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

DANILSON, J.

Freddy Renier appeals from his convictions, sentence, and judgment for robbery in the first degree and assault while participating in a felony following jury trial. On appeal, Renier asserts the district court erred in denying his motion for judgment of acquittal because the evidence was insufficient to establish that he had the specific intent to commit a theft. Because we find sufficient evidence supports the jury verdicts, we affirm.

I. Background Facts and Proceedings.

Renier stabbed Carl Cartwright in the arm and ripped a necklace off of his body during an altercation at the Washington Street Mini Mart. Renier testified that Cartwright entered the Mini Mart and accused him of theft. Cartwright testified that Renier threatened to “whoop” him, so they exited the store. Renier claims he was threatened at the time because Cartwright is a much larger man, known to carry knives and guns. Renier got out a small knife as he exited the store.

Surveillance video footage of the exterior of the store captures Renier advancing toward Cartwright in a threatening manner, brandishing his knife.¹ Cartwright backs away from Renier, and the men are outside the view of the camera for a very brief moment during which Renier forcibly removes the chain from Cartwright’s neck.² Renier testified that he swiped the knife at Cartwright

¹ Renier saw Cartwright reach into his pocket. He asserts that he believed Cartwright was reaching for a weapon, which caused him to stab Cartwright, allegedly in self-defense.

² Renier claims he tore off Cartwright’s silver chain as he tried to push Cartwright back. However, the video shows Renier advancing toward Cartwright until they are out of view for mere seconds. When the men reappear on the video, Renier has the necklace in his

three times. It is not clear whether the stab wound was inflicted on or off of the camera. Renier claims to have picked up the chain and given it back to Cartwright; however, the return of the necklace is not depicted on the video.

On January 4, 2010, the State charged Renier with robbery in the first degree in violation of Iowa Code sections 711.1 and 711.2 (2009) and assault while participating in a felony, enhanced as a habitual offender, in violation of sections 708.3 and 902.8. Renier pleaded not guilty and demanded speedy trial.

The jury found Renier guilty of the substantive offenses, and he stipulated to having two prior felonies to support a habitual offender enhancement. Renier filed a motion in arrest of judgment or for a new trial on May 27, 2010. The district court overruled the motion after a hearing, and sentenced Renier to twenty-five years in prison with a seventy-percent mandatory minimum on count one and fifteen years in prison on count two, to be served concurrently.

On appeal Renier asserts the district court erred in denying his motion for judgment of acquittal because the evidence was insufficient to prove he committed a theft or had the intent to commit a theft, an element of both convictions.

II. Standard of Review.

Our review of claims of insufficient evidence to support a conviction is for correction of errors at law. Iowa R. App. P. 6.907; *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011). A jury's findings of guilt are binding on appeal if supported by substantial evidence. *State v. Enderle*, 745 N.W.2d 438, 443 (Iowa 2007).

left hand and the knife in his right hand. He then swipes the knife at Cartwright again before walking away.

Substantial evidence exists to support a verdict when the record reveals evidence that could convince a rational trier of fact a defendant is guilty beyond a reasonable doubt. *Brubaker*, 805 N.W.2d at 171. In making this determination, we consider all of the evidence in the record in the light most favorable to the verdict and make all reasonable inferences that may fairly be drawn from the evidence. *Id.* “However, it is the State’s ‘burden to prove every fact necessary to constitute the crime with which the defendant is charged, and the evidence presented must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture.’” *Id.* (quoting *State v. Kemp*, 688 N.W.2d 785, 789 (Iowa 2004)).

III. Discussion.

A. Robbery in the first degree.

The elements the State was required to prove under this count are as follows:

1. On or about the 17th day of November 2009, the defendant had the specific intent to commit a theft.
2. To carry out his intention or to assist him in escaping from the scene, with or without the stolen property, the defendant committed an assault on Carl F. Cartwright.
3. The defendant was armed with a dangerous weapon.^[3]

Renier admitted that he brandished a knife in a threatening manner; thus, the third element is not in dispute. Renier also admits to stabbing Cartwright. However, he disputes that he had the specific intent to commit a theft or that he committed the assault to carry out that intention.

³ Iowa Code §§ 711.1-2; Jury instruction seven.

A person commits theft in violation of Iowa Code section 714.1(1) when he “[t]akes possession or control of the property of another . . . *with the intent to deprive the other thereof.*” (Emphasis added.) The intent to deprive “requires more than a temporary dispossessing of another’s property, although a deprivation is not necessarily a permanent thing.” *State v. Berger*, 438 N.W.2d 29, 31 (Iowa Ct. App. 1989). Our supreme court has noted that an essential element of theft is the intent to permanently deprive the owner of his property and:

[b]ecause proof that the defendant acted with the specific purpose of depriving the owner of his property requires a determination of what the defendant was thinking when an act was done, it is seldom capable of being established with direct evidence. Therefore, the facts and circumstances surrounding the act, as well as any reasonable inferences to be drawn from those facts and circumstances, may be relied upon to ascertain the defendant’s intent.

State v. Schminkey, 597 N.W.2d 785, 789 (Iowa 1999) (citation omitted).

The credible evidence of record establishes that Renier advanced toward Cartwright in a threatening manner while brandishing a knife, ripped a silver chain off of Cartwright’s neck, and then attempted to leave with it.⁴ However, the victim stood in front of the vehicle in which Renier planned to flee, and initiated a call to the police.

Cartwright testified that Renier threw the chain on the ground behind the car before fleeing on foot. Renier’s ultimate decision to return the necklace does not refute the jury’s determination that when he took the necklace, he intended to

⁴ While Renier’s testimony indicates that he returned the chain to Cartwright right after ripping it off of his person, the surveillance video belies this claim.

keep it. The State was required to prove that Renier intended to permanently deprive Cartwright of his necklace, not that he succeeded in doing so.

“Evidence is sufficient to withstand a motion for judgment of acquittal when, viewing the evidence in the light most favorable to the State and drawing all reasonable inferences in the State’s favor, ‘there is substantial evidence in the record to support a finding of the challenged element.’” *State v. Williams*, 695 N.W.2d 23, 28 (Iowa 2005) (quoting *State v. Reynolds*, 670 N.W.2d 405, 409 (Iowa 2003)). We find no error in the district court’s denial of Renier’s motion for acquittal; when viewed in a light most favorable to the State, the evidence of record could convince a rational jury that Renier is guilty beyond a reasonable doubt.

Moreover, the function of the court, on a motion to direct a verdict of acquittal, is limited to determining whether there is sufficient evidence from which reasonable persons could have found the defendant guilty as charged. It is not the province of the court, in determining the motion, to resolve conflicts in the evidence, to pass upon the credibility of witnesses, to determine the plausibility of explanations, or to weigh the evidence; such matters are for the jury.

Id. (quoting 75A Am. Jur. 2d *Trial* § 1026, at 573-74).

B. Assault while participating in a felony.

The State had to prove the following elements to convict Renier of assault while participating in a felony:

1. On or about the 17th day of November 2009, the defendant committed an assault on Carl F. Cartwright.
2. At the time of the assault, the defendant was participating in the crime of theft in the first degree.^[5]

⁵ The court further instructed the jury as follows: “The crime of theft in the first degree occurs when a person takes possession or control of property that is in the actual

Iowa Code section 702.13 describes the scope of participating in a public offense:

A person is “participating in a public offense,” during part or the entire period commencing with the first act done directly toward the commission of the offense and for the purpose of committing that offense, and terminating when the person has been arrested or has withdrawn from the scene of the intended crime and has eluded pursuers, if any there be. A person is “participating in a public offense” during this period whether the person is successful or unsuccessful in committing the offense.

Renier admits to brandishing a knife and stabbing Cartwright; he merely denies he was participating in the crime of theft at the time of the assault. As we conclude sufficient evidence supports the jury’s conclusion that Renier had the specific intent to commit a theft when he dispossessed Cartwright of his necklace, we also conclude sufficient evidence supports the jury determination that Renier is guilty of assault while participating in felony theft in the first degree.

IV. Conclusion.

Substantial evidence supports the jury’s determination that Renier possessed the intent to commit theft during his assault on Cartwright. The district court properly denied Renier’s motion for judgment of acquittal.

AFFIRMED.

physical possession of another person with the specific intent to permanently deprive the other person of the property.”