

IN THE COURT OF APPEALS OF IOWA

No. 3-553 / 12-1851
Filed August 21, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NIHJL SHAQUILLE RAHMA HOOVER,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Marlita A. Greve,
Judge.

Nihjl Hoover appeals his conviction for robbery in the first degree.

AFFIRMED.

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

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney
General, Michael J. Walton, County Attorney, and Dion Trowers, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

Nihjl Hoover appeals his conviction for robbery in the first degree, in violation of Iowa Code section 711.1 and 711.2 (2011). Hoover argues there is insufficient evidence concerning the element of intent to support the conviction. Finding sufficient evidence to support the jury's verdict, we affirm.

I. Background Facts and Proceedings

Nihjl Hoover appeals his conviction for robbery in the first degree.¹ On September 9, 2011, Davenport Police Officer Jason Ellerbach (Ellerbach) was working in plain clothes as part of the department's Tactical Operations Bureau (TOB). Ellerbach was driving his unmarked car on Bridge Avenue at approximately 3:00 a.m. when he observed an individual crouched in the middle of the street.

Stopping his car to assess the situation, Ellerbach observed a male in a white tank top and khaki shorts stepping into the street from behind a parked SUV. This individual would later be identified as Hoover. Hoover proceeded to walk towards Ellerbach paying no attention to the individual still crouched in the street. Ellerbach testified Hoover was walking towards him in an aggressive manner, and Ellerbach proceeded to back his car away. After looking behind him to ensure the street was clear, Ellerbach turned back towards Hoover and saw

¹ The trial information charged Hoover with six counts, including two counts of robbery in the first degree, two counts of felon in possession of a firearm, in violation of Iowa Code section 724.26, and two counts of assault on a police officer while displaying a weapon, in violation of Iowa Code section 708.3A(2). The district court granted a motion to sever the robbery and felon in possession counts from the assault counts, and Hoover consented to a bench trial on the felon in possession counts. Only one of the robbery counts is raised in this appeal.

Hoover had a silver pistol in his hand pointed towards the unmarked police car. Ellerbach continued to back the car up until he was able to round a corner.

Ellerbach radioed the other members of the TOB unit and dispatch to inform them of the events. After losing sight of the men for a brief period of time, Ellerbach observed both men walking together down the street. Soon thereafter, TOB Officer Bryan Butt encountered Hoover who pulled the gun on Officer Butt. After a brief altercation, Hoover turned and ran with Officer Butt in pursuit. Hoover was subsequently apprehended by TOB officers. Hoover was unarmed when arrested, though a gun matching the description offered by Officers Ellerbach and Butt was located nearby. The other individual involved in the incident was later arrested. Both men were convicted of robbery in the first degree.²

II. Standard of Review

In criminal cases, we review challenges to the sufficiency of the evidence for errors at law. *State v. Stanford*, 814 N.W.2d 611, 615 (Iowa 2012). We review the entire record in the light most favorable to the jury's verdict, including all reasonable inferences. *Id.*

III. Discussion

Hoover argues there is insufficient evidence of intent to support his conviction. He contends there are a number of reasonable inferences available

² The State's theory of the case is the two men were working together to create the opportunity to engage in a robbery. The State argued one man crouched in the street so as to cause a vehicle to stop giving Hoover the opportunity to surprise the driver and take the vehicle, money, or other property.

to explain his conduct on the night in question, and no jury could have found he intended to commit a robbery beyond a reasonable doubt.

“A conviction of robbery requires proof of the intent to commit a theft and not proof of the actual theft.” *State v. Boley*, 456 N.W.2d 674, 679 (Iowa 1990). There is no requirement an actual theft be committed. *State v. Rich*, 305 N.W.2d 739, 746 (Iowa 1981). Because the element of intent requires the jury to peer into the mind of the defendant at the time of the alleged robbery, seldom is direct proof available. *State v. Schminkey*, 597 N.W.2d 785, 789 (Iowa 1999). The jury is permitted to infer intent from the surrounding circumstances. *Id.* Circumstantial evidence is of equal probative value for purposes of establishing guilt. *State v. Bentley*, 757 N.W.2d 257, 262 (Iowa 2008).

In *Boley*, a gas station clerk noticed two individuals loitering around the store and acting in a suspicious manner. 456 N.W.2d at 676. One of the individuals was later seen leaving the station and fleeing in a vehicle. *Id.* The clerk was found inside the store suffering from gunshot wounds. *Id.* Our supreme court held the evidence sufficient to support the intent element of the robbery statute. *Id.* at 679. The court specifically noted the individuals had been loitering around the station without making a purchase, appeared suspicious to station staff, and the defendant was in need of money. *Id.*

The situation in this case is similar. Ellerbach observed a suspicious situation consistent with few logical explanations. The indisputable facts are Hoover pointed a gun at Ellerbach after Ellerbach was forced to stop due to an individual crouched in the road at an extremely early hour of the morning, and

Hoover and the other individual were later seen leaving the scene together. It is reasonable to conclude the two individuals were working in concert to force vehicles to stop so Hoover could use the gun to commit a theft. Though there is no evidence, as in *Boley*, Hoover needed money or the vehicle, the suspicious behavior displayed is sufficient in this instance to support the jury's ultimate conclusion.

AFFIRMED.