IN THE COURT OF APPEALS OF IOWA

No. 2-505 / 11-1422
Filed July 25, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BARBARA ANN PARKER,
Defendant-Appellant.

Appeal from the Iowa District Court for Clinton County, Charles H. Pelton, Judge.

Barbara Ann Parker appeals from the verdict and judgment finding her guilty of theft. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Daniel R. Burstein, Assistant Attorney General, Michael L. Wolf, County Attorney, and Elizabeth Srp, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

POTTERFIELD, J.

Barbara Parker appeals from the jury verdict and district court judgment finding her guilty of theft, contending insufficient evidence existed for her conviction or, in the alternative, that she was denied effective assistance of counsel. We affirm the district court's judgment, finding error was not preserved for the sufficiency-of-the-evidence claim, and that no prejudice resulted from her counsel's failure to preserve that claim.

I. Facts and Proceedings

Parker was shopping at Wal-Mart on January 28, 2011, with her husband and a female friend.[1] Both Parker and her husband were unemployed at this time. The group caught the eye of a Wal-Mart security worker as they were selecting more than a dozen expensive DVDs and video games—behavior the security worker was trained to note as indicative of shoplifting. Parker selected some of these and initially was in charge of pushing the shopping cart. The security worker observed the group discuss the items in the cart, and at one point, Parker selected a DVD from the cart, which she passed to her husband, who then placed it inside of his coat. Parker stood with the other two as they concealed the items from the cart in their clothing. The group then proceeded to the checkout line, where Parker's husband purchased the few remaining items in the cart.

After passing the last possible point of sale on the way out of the store, the group was called in for questioning by the security worker. Parker's husband and the third member of their group removed hundreds of dollars' worth of stolen

[1] The identity of the third member of the group was not established at trial.

goods from their persons and returned them to the security officer. As the two removed the items from their clothing, Parker did not appear surprised. The third member of the group ran off during the confrontation, and Parker and her husband were arrested for theft. At Parker's trial, the jury was instructed on a theory of accomplice liability, and aiding and abetting. The jury returned a guilty verdict of theft against Parker. She was sentenced and now appeals.

II. Analysis

A. Sufficiency of the Evidence

"To preserve error on a claim of insufficient evidence for appellate review in a criminal case, the defendant must make a motion for judgment of acquittal at trial that identifies the specific grounds raised on appeal." *State v. Truesdell*, 679 N.W.2d 611, 615 (Iowa 2004); *see also State v. Brubaker*, 805 N.W.2d 164, 170 (Iowa 2011) (finding error was not preserved where motion for directed verdict of acquittal lacked specific grounds). Here, Parker's counsel failed to state specific grounds for her motion for judgment of acquittal. Therefore, error was not preserved on this claim.

B. Ineffective Assistance of Counsel

In the alternative, Parker asserts the failure to raise specific grounds sufficient to preserve error on appeal constituted ineffective assistance of counsel. We review claims of ineffective assistance of counsel de novo. *State v. Utter*, 803 N.W.2d 647, 651 (Iowa 2011). Although we ordinarily preserve such claims for postconviction relief proceedings, we find that in the present case the record is adequate to decide the claim on direct appeal. *See State v. Stewart*, 691 N.W.2d 747, 751 (Iowa 2004).

> A claim of ineffective assistance of trial counsel based on the failure of counsel to raise a claim of insufficient evidence to support a conviction is a matter that normally can be decided on direct appeal. Clearly, if the record in this case fails to reveal substantial evidence to support the convictions, counsel was ineffective for failing to properly raise the issue and prejudice resulted. On the other hand, if the record reveals substantial evidence, counsel's failure to raise the claim of error could not be prejudicial.

Truesdell, 679 N.W.2d at 616 (citation omitted). Therefore, if sufficient evidence exists to support the conviction, the actions of Parker's counsel cannot be found to have been sufficiently prejudicial to undermine confidence in the guilty verdict.

> Sufficiency-of-the-evidence challenges are reviewed for correction of errors at law. The district court's findings of guilt are binding on appeal if supported by substantial evidence. Evidence is substantial if it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. To determine whether substantial evidence supports the trial court's verdict, we consider all the evidence and the record in the light most favorable to the trial court's decision. To support the verdict, the evidence must be such that, when considered as a whole, a reasonable person could find guilt beyond a reasonable doubt. We draw all legitimate inferences in support of the verdict. However, evidence which merely raises suspicion, speculation, or conjecture is insufficient.

State v. Hearn, 797 N.W.2d 577, 579–80 (Iowa 2011) (citations and internal quotation marks omitted). Parker contends the evidence was not sufficient to support a finding that she was an accomplice in the theft. She asserts the evidence shows she selected one DVD and handed it to her husband, who put it in his jacket. Because the husband purchased one DVD remaining in the shopping cart, she argues it cannot be shown she participated in a theft.

An aider and abettor is charged, tried, and punished as a principal. *See* Iowa Code § 703.1 (2009). "To sustain a conviction on the theory of 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). "[T]he State must prove the accused knew of the crime at or before its commission," but the proof "may be either direct or circumstantial." *State v. Lewis*, 514 N.W.2d 63, 66 (Iowa 1994). The State need not prove that Parker possessed the intent to commit the crime, but only that she had knowledge that the perpetrator possessed the intent. *See State v. Hustead*, 538 N.W.2d 867, 870 (Iowa Ct. App. 1995). "Any participation in a general felonious plan will normally support a conviction as a principal." *Id.*

"Evidence of a defendant's *presence, companionship, and conduct before and after the offense is committed* may be enough from which to infer a defendant's participation in the crime." *Hearn*, 797 N.W.2d at 581 (citations and internal quotation marks omitted). In *Hearn*, our state supreme court found sufficient circumstantial evidence existed to support a finding of accomplice liability where testimony showed the defendant was with those who committed a carjacking before it took place; was found near the scene of the carjacking; was in close proximity to the stolen vehicle; and swerved at a police officer, which the district court found was an attempt to obstruct pursuit of the stolen vehicle. *Id*. Also relied upon was circumstantial evidence of motive—that the defendant wished to visit his girlfriend but had only a borrowed car for a limited period of time. *Id*.

Similarly, in this case, the State proved more than mere knowledge of the theft; it proved actual participation or encouragement. *See Spates*, 779 N.W.2d. at 780. Substantial evidence was produced concerning presence,

companionship, and conduct before and after the offense. *Hearn*, 797 N.W.2d at 581. Parker was present before, during, and after the theft. She placed expensive items in the cart, gave one DVD directly to her husband who placed it in his coat, discussed the items in the cart before they were secreted away on the bodies of her two companions, and was unsurprised and irritable after the parties were caught. Viewed in the light most favorable to the State, we find substantial evidence exists such that a reasonable finder of fact could find guilt beyond a reasonable doubt.

AFFIRMED.