IN THE COURT OF APPEALS OF IOWA

No. 22-1489
Filed March 27, 2024

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEREMY ALLEN BARTENHAGEN,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser (AGCR064205 trial) and Henry W. Latham II (FECR066208 trial), Judges.

Jeremy Bartenhagen appeals his convictions from two separate cases, one for prohibited possession of ammunition and the other for driving while barred. **AFFIRMED.**

Elizabeth Araguas of Nidey Erdahl Meier & Araguás, PLC, Cedar Rapids, for appellant.

Brenna Bird, Attorney General, and Anagha Dixit, Assistant Attorney General, for appellee.

Considered by Greer, P.J., and Ahlers and Buller, JJ.

AHLERS, Judge.

This appeal addresses two separate criminal cases in which Jeremy Bartenhagen is the defendant.[1] The first case stems from a search of Bartenhagen as part of the booking process following his arrest on a charge unrelated to this appeal. That search uncovered a single .357 magnum ammunition cartridge in Bartenhagen's pocket. Because Bartenhagen had previously been convicted of a misdemeanor crime of domestic violence, he was prohibited from possessing ammunition, so the State charged him with prohibited possession of ammunition, in violation of Iowa Code section 724.26(2)(a) (2022).

The second case is unrelated to the first. In the second case, a law enforcement officer stopped the vehicle Bartenhagen was driving because the vehicle's taillights were nonoperational. The officer discovered that Bartenhagen was barred from driving, so the State charged Bartenhagen with driving while barred, in violation of Iowa Code sections 321.560 and 321.561 (2021).

Each charge was tried separately before different juries, different judges, and on different dates. Both juries found Bartenhagen guilty as charged. The district court sentenced Bartenhagen in a joint sentencing hearing. Bartenhagen appeals in both cases. He argues: (1) insufficient evidence supports his conviction for prohibited possession of ammunition because the State did not prove the cartridge was capable of being fired; (2) insufficient evidence supports his

[1] As there is no appellate issue linking these separate cases, Bartenhagen should have filed separate appeals under separate appellate case numbers. However, we have decided against bifurcating the appeals at this stage because doing so would create additional work for the appellate clerk's office. We urge appellants to not follow this case as an example should they have multiple, unrelated appeals.

conviction for driving while barred because the State failed to prove he had notice of his barred status; (3) the district court erred in the driving-while-barred case by admitting only part of the recording from the arresting officer's body camera to be played at trial; and (4) the district court erred by not granting a mistrial or letting him individually question the jurors in the driving-while-barred case after several jurors potentially saw him being escorted by law enforcement officers from the jail to the courthouse. We address the issues in order.

I. Sufficiency of the Evidence of Ammunition

Bartenhagen claims insufficient evidence supports his conviction for prohibited possession of ammunition. We review claims of insufficient evidence for correction of errors at law. *State v. Cook*, 996 N.W.2d 703, 708 (Iowa 2023). "We will uphold a jury's verdict if it is supported by substantial evidence." *Id.* There is substantial evidence if it could convince a rational fact finder of the defendant's guilt beyond a reasonable doubt. *Id.* We "view the 'evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record.'" *Id.* (quoting *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005)).

Bartenhagen was charged with violating section 724.26(2)(a) (2022). Along with other prohibitions, that code section prohibits a person who has been convicted of a misdemeanor crime of domestic violence from possessing ammunition. The district court gave a marshaling instruction laying out the elements of the crime that the State needed to prove. Because neither party objected to that instruction, the elements it spelled out became the law of the case for purposes of assessing Bartenhagen's sufficiency-of-the-evidence challenge.

See State v. Schiebout, 944 N.W.2d 666, 671 (Iowa 2020) ("Jury instructions, when not objected to, become the law of the case for purposes of appellate review for sufficiency-of-evidence claims."). The marshaling instruction stated:

> The State must prove the following elements of [prohibited possession of ammunition]:
>
> 1. On or about February 25, 2022, the defendant knowingly ha[d] under his dominion and control or possession ammunition.
>
> 2. The defendant knew that the item he possessed was ammunition.
>
> 3. The defendant has been previously convicted of a misdemeanor crime of domestic violence under 18 U.S.C. section 922(g)(8) [sic].[2]

Bartenhagen challenges the sufficiency of the evidence supporting the first two elements. Specifically, he contends the State failed to prove the item found in his pocket was ammunition, because the State did not prove the item was a "live" round of ammunition capable of being fired.[3]

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[2] We believe the jury instruction includes a typographical error and was meant to reference 18 U.S.C. section 922(g)(9) rather than (8). Iowa Code section 724.26(2)(a) prohibits two classes of people from possessing ammunition—those subject to a protective order under 18 U.S.C. section 922(g)(8) and those convicted of a misdemeanor crime of domestic violence under 18 U.S.C. section 922(g)(9). Bartenhagen was charged as being in the latter class, and he stipulated to the fact that he was in that class. The apparent typographical error has no bearing on the issues on appeal.

[3] Bartenhagen's brief includes an argument that the item found in his pocket did not meet the definition of ammunition under Iowa Code section 724.1(1)(f). We summarily reject this argument because section 724.1(1)(f) does not define ammunition. Rather, section 724.1(1) lists various devices it defines as "offensive weapons." The list includes such things as machine guns, cannons, bombs, and grenades. *See* Iowa Code § 724.1(a)–(c). The list also includes "[a]ny bullet or projectile containing any explosive mixture or chemical compound capable of exploding or detonating prior to or upon impact." *See id.* § 724.1(1)(f). The State has never claimed that the item found in Bartenhagen's pocket included a projectile that would explode or detonate prior to or upon impact, nor did the State charge Bartenhagen with possessing an offensive weapon. Instead, the State charged Bartenhagen with possessing a regular ammunition cartridge that would fire a projectile, not an exploding projectile. Section 724.1(1) has nothing to do with this case.

We reject Bartenhagen's challenge. Though we appear to have no cases directly addressing whether the State has the burden of proving an item claimed to be ammunition is capable of being fired, the supreme court has rejected similar arguments in the weapons arena. *See*, *e.g.*, *State v. Howse*, 875 N.W.2d 684, 693 (Iowa 2016) (finding the State was not required to prove a stun gun was operable to support a conviction for illegally carrying the weapon); *State v. Hemminger*, 308 N.W.2d 17, 20 (Iowa 1981) (affirming conviction for using a firearm in the course of a robbery without requiring proof the handgun could be fired); *State v. Nichols*, 276 N.W.2d 416, 417 (Iowa 1979) (affirming conviction for using a firearm in the course of a robbery without requiring proof the handgun was loaded); *State v. Ashland*, 145 N.W.2d 910, 911 (Iowa 1966) (same). But we need not decide that question because, even if we required proof that the item could be fired, there was sufficient evidence that it could.

The State's evidence included these photos of the item found in Bartenhagen's pocket:

The arresting officer who found the item on Bartenhagen testified to specifics of how ammunition can be identified and what characteristics indicate a live round of ammunition. He observed that, as shown in the above photos, the primer on the bullet was unstruck, and the projectile was intact. From this, the officer concluded that it was a live round that had not been fired.

The State also introduced evidence in the form of a video recording that showed Bartenhagen's reaction to the discovery of the item in his pocket. When the officer found the item, he showed it to Bartenhagen and referred to it as "live ammunition." Bartenhagen responded, "So that means I'm getting five years, right?" From this comment, a reasonable fact finder could conclude that Bartenhagen knew he had the item and that it was live ammunition.

While we understand Bartenhagen's argument that the State could have had the item tested to see if it could be fired, testing is not an element of the offense. So, while we acknowledge a reasonable juror could have considered

such lack of evidence, a reasonable juror was not required to do so. The photographs, the officer's testimony, and Bartenhagen's comment were sufficient to permit a reasonable juror to conclude that the item was ammunition, so Bartenhagen's sufficiency-of-the-evidence challenge fails.

II. Sufficiency of the Evidence of Barred Status

Bartenhagen next claims insufficient evidence supports his conviction for driving while barred because the State failed to prove he received notice of his barred status. We reject this claim because notice is not an element the State is required to prove. *State v. Williams*, 910 N.W.2d 586, 591 (Iowa 2018) ("[P]roof of mailing is not an essential element of the offense of driving while barred as a habitual offender."). The two elements of the crime of driving while barred the State must prove are (1) the defendant operated a motor vehicle on the date in question, and (2) on that date, the defendant's privilege to operate a motor vehicle was barred as a habitual offender. *See id.* Because Bartenhagen does not challenge the sufficiency of the evidence as to either element, this claim fails.

III. Admission of Only Portions of Video Recording

Bartenhagen claims the district court in his driving-while-barred case erred in admitting clips of a video recording from an officer's body camera because he did not receive enough notice of the clips to review them before trial. We review evidentiary rulings for abuse of discretion. *State v. Tucker*, 982 N.W.2d 645, 652 (Iowa 2022). We reverse only if the district court erroneously applied the law or based its decision "on grounds clearly untenable or to an extent clearly unreasonable." *State v. Walker*, 935 N.W.2d 874, 877 (Iowa 2019) (quoting *State v. Tipton*, 897 N.W.2d 653, 690 (Iowa 2017)).

We read Bartenhagen's brief as raising two arguments as to how the district court abused its discretion in admitting parts of the video recording from the body camera: (1) defense counsel did not have time to review the video the State sought to introduce into evidence; and (2) admitting only parts of the video violated the rule of completeness set forth in Iowa Rule of Evidence 5.106(a). We address the arguments in turn.

The defense blames the prosecution for not providing counsel with enough time to review the video exhibit, arguing the video had been disclosed too recently for defense counsel to review it. But counsel provided no information to the district court as to when the video was shared, while the prosecutor noted only that it had been shared "some time prior to this date." The district court overruled the objection, stating counsel had sufficient time to review the video. Because Bartenhagen did not make a record as to when defense counsel received the video, to the extent Bartenhagen challenges the admission of the evidence on grounds that he lacked notice, we have no basis to find the district court abused its discretion. *See Mumm v. Jennie Edmundson Mem'l Hosp.*, 924 N.W.2d 512, 520 (Iowa 2019) (noting that appellants bear the responsibility of providing a record and may waive error if they do not provide a record affirmatively showing the basis of the error).

It is unclear whether Bartenhagen's second argument is a complaint that the court admitted a less-than-complete video recording or that the court did not require admission of the entire recording. Either way, Bartenhagen has failed to show an abuse of discretion.

To the extent Bartenhagen claims rule 5.106(a) required the district court to deny admission of only part of the video, Bartenhagen misinterprets the rule. Rule 5.106(a) states:

> If a party introduces all or part of an act, declaration, conversation, writing, or recorded statement, an adverse party may require the introduction, at that time, of any other part or any other act, declaration, conversation, writing, or recorded statement that in fairness ought to be considered at the same time.

Rule 5.106(a) provides a remedy for out-of-context clips, but that remedy is completion, not exclusion. So Bartenhagen has shown no basis for excluding the video the State introduced.

To the extent Bartenhagen claims rule 5.106(a) was violated by admitting only part of the video rather than the whole thing, Bartenhagen again misinterprets the rule and ignores the record. The rule does not require the original proponent of the partial recording to introduce the entire recording. Rather, when the original proponent offers only part of a recording, the rule allows the adverse party (in this case, Bartenhagen) to require introduction of the rest of it. Bartenhagen never demanded, or even requested, introduction of the rest of the recording. We also note that, when Bartenhagen objected to the introduction of only parts of the recording, the prosecutor offered to admit the entire video. Bartenhagen did not accept the prosecutor's offer. Because he never took the prosecution up on its offer and did not request admission of the whole video, there is no ruling for us to review. Bartenhagen has therefore not preserved this issue for review. *See State v. Bynum*, 937 N.W.2d 319, 324 (Iowa 2020) (explaining that to preserve error parties must ensure issues are raised and decided upon).

IV. Questioning Prospective Jurors and Mistrial

Bartenhagen's final argument is that the district court abused its discretion by not granting a mistrial and for not allowing him to individually question jurors after several jurors potentially saw officers escorting him from the jail to the courthouse before his driving-while-barred trial.

The record shows that, prior to trial, two officers walked Bartenhagen from the jail to the courthouse. He was not handcuffed or shackled, and the only "jail clothing" he wore was an oversized blue jacket with no writing on it. It was suspected that six prospective jurors witnessed this and only one was identified. In response to receiving this information, Bartenhagen asked the court to either grant a mistrial or allow him to talk to jurors one-on-one to determine who had seen Bartenhagen before trial and assess the prejudice caused by that sight.

The district court denied the motion for mistrial because there was nothing about Bartenhagen's appearance indicating he was in custody. As for questioning jurors, the court expressly permitted counsel to question prospective jurors about their observations. Despite that express permission, Bartenhagen stipulated to waive reporting of jury selection when that questioning would have occurred. As a result, we have no record of what questions, if any, were asked of prospective jurors about seeing Bartenhagen escorted to the courthouse.

We review Bartenhagen's challenge to the voir dire process and to the denial of the motion for mistrial for abuse of discretion. *State v. Martin*, 877 N.W.2d 859, 865 (Iowa 2016) (jury selection); *State v. Brown*, 996 N.W.2d 691, 696 (Iowa 2023) (motion for mistrial).

We start with Bartenhagen's claim that he should have been allowed to question the jurors one-on-one. This claim fails for the simple reason that the court permitted Bartenhagen to question prospective jurors about this topic. As there is no record of jury selection, we don't know whether Bartenhagen questioned the prospective jurors on this issue. Whether or not he did was his choice, so there is nothing for us to review.

Moving to the claim that the court should have granted a mistrial, mistrials are to be granted "when 'an impartial verdict cannot be reached.'" *State v. Newell*, 710 N.W.2d 6, 32 (Iowa 2006) (quoting *State v. Piper*, 663 N.W.2d 894, 902 (Iowa 2003)). We begin by noting that the rule is clear that "an accused should not be compelled to go to trial in prison or jail clothing." *See Estelle v. Williams*, 425 U.S. 501, 504 (1976). But Bartenhagen was not seen in jail clothing in the courtroom. Rather, he was potentially seen outside the courtroom in the same civilian clothes he wore in the courtroom while accompanied by two officers. Our supreme court has recognized that the realities of trial require a balancing of "fair trial demands with security and safety." *State v. Ellis*, 350 N.W.2d 178, 183 (Iowa 1984) (quoting *State v. Kile*, 313 N.W.2d 558, 562 (Iowa 1981)). Because of that need to strike a balance, we are deferential to the district court, which is in a better position to determine whether that balance was achieved. *Id.* In assessing the district court's decision, we "consider the length of time involved in the incident, the circumstances under which the incident occurred, whether it occurred in the courtroom, and whether the jury was otherwise aware the defendant was incarcerated." *Id.*

Here, the incident was brief and did not occur in the courtroom. In fact, we have no record affirmatively establishing that any of the prospective jurors even saw Bartenhagen. Further, Bartenhagen was not handcuffed or shackled, and his clothing did not identify him as an inmate. *See State v. Schmidt*, No. 07-2152, 2009 WL 776577, at *4 (Iowa Ct. App. Mar. 26, 2009) (finding no cause for a mistrial where defendant, unshackled and in street clothes, was seen briefly in the presence of two officers outside the courtroom by several jurors). After considering these factors, we conclude the district court did not abuse its discretion in denying Bartenhagen's motion for a mistrial.

V. Conclusion

We find sufficient evidence supports both convictions. With regard to the driving-while-barred charge, we find no abuse of discretion in the district court's decisions to allow admission of only part of the body-camera recording and deny Bartenhagen's motion for mistrial. As Bartenhagen was permitted to individually question prospective jurors as to whether they saw him escorted by officers to the courthouse and he made no record of whether he did or didn't, we have nothing to review on that issue.

AFFIRMED.