

IN THE COURT OF APPEALS OF IOWA

No. 22-1330
Filed February 21, 2024

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ERIC DEWAYNE WADE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Scott J. Beattie, Judge.

A defendant appeals his conviction for robbery in the second degree.

AFFIRMED.

Martha J. Lucey, State Appellate Defender, and Theresa R. Wilson,
Assistant Appellate Defender, for appellant.

Brenna Bird, Attorney General, and Martha E. Trout, Assistant Attorney
General, for appellee.

Considered by Tabor, P.J., and Badding and Chicchelly, JJ.

TABOR, Presiding Judge.

A jury convicted Eric Wade of robbery in the second degree based on evidence that he approached a convenience store clerk, told her not to “try any funny shit,” and demanded money from the cash registers. Wade now appeals his conviction, contending the State offered insufficient evidence to prove the assault or threat element of robbery. Viewing the evidence in the light most favorable to the State, we find there was sufficient evidence to support the conviction.

I. Facts and Prior Proceedings

On a November morning in 2021, a man—later identified as Wade—entered a Casey’s convenience store in Des Moines. Wade arrived around 7:30 in the morning, approached the clerk, S.O., who was working in the front of the store alone, and asked her for a Swisher cigar. Wade was wearing a mask over his mouth and nose, socks over his hands, and a sweatshirt with the hood pulled up so tightly around his face that his eyes were barely visible. His face almost completely covered, Wade’s appearance signaled to S.O. that something was “off,” but she retrieved the cigar as requested. As she began ringing up the cigar, Wade put his knuckles on the counter, leaned in close, and warned her not to “try any funny shit.” He then demanded money from the cash register. She complied. While handing over one- and five-dollar bills from the register, S.O. managed to trigger the silent alarm. Wade then instructed her to open the safe, but his plan changed when she informed him that the time-release safe would take ten minutes to unlock. As an alternative, he told her to open the second cash register. She did as directed and handed over the money from the second register.

Before leaving the store, Wade turned to the clerk and ordered her to go to the kitchen, which she did. S.O. told her coworker what happened and called the police. Soon after receiving that report, officers found a man matching Wade's description riding his bike near the store. The officers found a BB gun and \$236 cash in his sweatshirt pockets.

Following Wade's arrest, the State charged him with robbery in the first degree, alleging he was armed with a dangerous weapon. At trial, the State amended the trial information to charge robbery in the second degree in violation of Iowa Code sections 711.1(a)–(b) and 711.3 (2021). The jury convicted him. Wade now appeals his conviction, challenging the sufficiency of the evidence.

II. Scope and Standard of Review

We review sufficiency of the evidence challenges for correction of errors at law. See *State v. Crawford*, 974 N.W.2d 510, 516 (Iowa 2022). Under this standard, we view the record “in the light most favorable to the State” and draw all legitimate inferences to support the verdict. *Id.* (quoting *State v. Kelso-Christy*, 911 N.W.2d 663, 666 (Iowa 2018)). We will uphold a verdict if it is supported by substantial evidence. *Id.* Evidence is substantial if it could persuade a rational jury that Wade is guilty beyond a reasonable doubt. See *id.*

III. Analysis

To convict Wade of second-degree robbery, the jury had to find two elements beyond a reasonable doubt. First, the State had to prove that Wade had the specific intent to commit theft. Second, the State had to prove that, to carry out his intention or escape from the scene, Wade either a) assaulted S.O. or b) threatened her with or purposely put her in fear of immediate serious injury.

Iowa Code § 711.1. Wade argues that the State presented insufficient evidence to prove either alternative of the second element.

a. Sufficiency of the Evidence on Assault Alternative

In considering the first alternative under Iowa Code section 711.1(1)(a), the jury was instructed that assault occurred if Wade:

- 1) . . . did an act which was specifically intended to:
 - a) result in physical contact which was insulting or offensive to [S.O.]
 - or
 - b) place [S.O.] in fear of an immediate physical contact which would have been painful, injurious, insulting or offensive to her[; and]
- 2) . . . had the apparent ability to do the act.

Using this definition, we find sufficient evidence of assault exists in the record.

Wade argues that the evidence does not support a finding of assault because he spoke quietly and did not make physical contact. He also points to his own testimony that he did not intend to put anyone in fear of harm, and he would have simply left the store had S.O. refused to give him the money he demanded. Yet intent may be inferred from the defendant's actions and the circumstances of the transaction. *State v. Keeton*, 710 N.W.2d 531, 534 (Iowa 2006); see also *State v. Taylor*, 689 N.W.2d 116, 132 (Iowa 2004) (“[A]n actor will ordinarily be viewed as intending the natural and probable consequences that usually follow from his or her voluntary act.”).

It is uncontested that Wade's purpose for coming into the store was to obtain money. Wearing a mask and a hooded sweatshirt, with the hood pulled up tightly around his face, Wade put his knuckles on the counter and leaned into the clerk, who was shorter than he was. In her 911 call, S.O. told the dispatcher that

Wade's hands looked like "footballs" he was wearing so many layers. He warned her not to "try any funny shit" before demanding the cash.

Although Wade testified that he did not purposefully put the clerk in fear of painful, injurious, insulting, or offensive contact, the jurors did not believe him. And they did not have to. A fact finder could reasonably infer from Wade's words, actions, and appearance that he did in fact intend to place the clerk in fear of immediate physical contact that would be painful, injurious, insulting, or offensive if she did not comply. The evidence satisfied the assault element of robbery.

Wade attempts to distinguish his case from *State v. Copenhaver*. See 844 N.W.2d 442, 451–52 (Iowa 2014). The facts aren't identical, but he falls short. Copenhaver entered a bank wearing a mask, handed a note to the teller stating his intent to rob the bank, and demanded money. *Id.* at 451. Similarly, Wade obscured his identity with a mask and hood, wore socks on his hands, entered the store in the early morning hours, leaned in close to a solitary clerk, threatened her while demanding money, took the cash, and before leaving directed the clerk to walk toward the kitchen. In context, these acts support a finding of assault. See *State v. Heard*, 636 N.W.2d 227, 228, 232 (Iowa 2001) (holding that defendant's placement of a bag over his head and socks over his hands when instructing the clerk to give him money put the clerk in fear that she would be harmed if she failed to comply, constituting assault). Under these circumstances, a reasonable jury

could find sufficient evidence that Wade assaulted S.O. to carry out his intent to commit theft or to escape from the scene.

b. Sufficiency of the Evidence of Threat Alternative

Nor is it unreasonable under these facts for a jury to conclude that Wade's phrasing of his demand for money reflected an intent to threaten S.O. His initial warning to the clerk to not "try any funny shit" could reasonably be seen as threatening language under the circumstances, invoking fear of immediate physical contact should she defy his orders. *See generally Mellerio v. Nooth*, 379 P.3d 560, 564 (Or. Ct. App. 2016) (characterizing "don't try anything funny" statement during robbery as a threat).

Taken together with his verbal communication, Wade's body language and suspicious attire contributed to the intimidating nature of the encounter and would naturally place a victim in fear. And the clerk *was* scared. *See Keeton*, 710 N.W.2d at 535 (noting that while focus is on defendant, victim's perceptions are "properly considered in determining intent"). S.O. testified that she was unwilling to "find out the consequences" if she did not comply with Wade's demands. She also recalled the fear Wade evoked when he ordered her to go to the kitchen, stating that her "heart literally dropped" thinking of turning her back to the man who just demanded money from her. When she got to the kitchen, her coworker "could tell she was pretty [shaken] up." This record contains sufficient evidence to convince a rational trier of fact that Wade intended to threaten S.O. with or purposefully put her in fear of immediate serious injury.

AFFIRMED.