IN THE COURT OF APPEALS OF IOWA

No. 22-2061
Filed March 27, 2024

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NOAH CHRISTOPHER SCOTT,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Wyatt Peterson, Judge.

The defendant appeals from his convictions for two counts of first-degree robbery, raising claims involving double jeopardy, the sufficiency of the evidence, and the mandatory minimum imposed at sentencing. **AFFIRMED.**

Martha J. Lucey, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

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

Considered by Tabor, P.J., Greer, J., and Potterfield, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2024).

POTTERFIELD, Senior Judge.

Noah Scott was convicted of two counts of first-degree robbery and sentenced to two concurrent twenty-five-year terms of imprisonment; he is required to serve 70% of the sentence before becoming eligible for parole or work release.[1] On appeal, Scott argues (1) we should adopt more protective double jeopardy standards and, based on those heightened protections, grant his motion to dismiss; (2) in the alternative, there is not substantial evidence to support his convictions; and (3) the district court failed to consider all pertinent information before requiring him to serve 70% of the imposed sentenced as a mandatory minimum.

I. Background Facts and Proceedings.

The State charged Scott with two counts of first-degree robbery and one count of conspiracy to commit a forcible felony. He pled not guilty, and the case proceeded to a jury trial in May 2022.

On the first day of the first trial, Scott moved for mistrial. He argued the prosecutor made improper statements during voir dire. Specifically, Scott pointed to the prosecutor's comments and questions about whether prospective jurors would have an issue with Scott exercising his Fifth Amendment right not to testify and possible reasons for exercising the right. The district court granted the mistrial.

After Scott's second trial on the same charges was scheduled, he moved to dismiss the charges against him. He asserted the Double Jeopardy Clause of the

[1] The jury also found Scott guilty of conspiracy to commit a forcible felony; the district court concluded it merged with the other charges and only entered convictions on the two robbery charges.

Fifth Amendment to the United States Constitution protected him from facing a second prosecution after his first trial ended in a mistrial due to prosecutorial misconduct that was intended to goad him into moving for a mistrial. The State resisted, noting that—when granting the motion for mistrial—the court concluded the prosecutor's "comments may have been made, and the court understood them to be made supposedly for defendant's benefit and designed to keep the jury from speculating on the reasons for the defendant's possible failure to take the stand." The court denied Scott's motion to dismiss, concluding the grounds for mistrial did not constitute prosecutorial misconduct and the prosecutor was not intending to goad the defendant into moving for a mistrial.

Scott's second trial took place over four days in September; the jury found him guilty as charged. At sentencing, the court merged the conspiracy conviction with the robbery convictions and then sentenced Scott to twenty-five years for each robbery. He was ordered to serve the two sentences concurrently. Recognizing that Iowa Code section 902.12(3) (2022) required Scott to serve "between one-half and seven-tenths of the maximum term of the person's sentence as determined" before becoming eligible for parole or work release, the ordered Scott to serve 70% of the twenty-five-year sentence imposed.

Scott appeals.

II. Discussion.

A. Double Jeopardy.

Scott challenges the denial of his motion to dismiss, which was based on a double jeopardy claim. Our review is de novo. *State v. Lindell*, 828 N.W.2d 1, 4

(Iowa 2013) ("We review double jeopardy claims de novo, due to their constitutional nature.").

When Scott moved for mistrial, he relied on the double jeopardy protection afforded him by the Fifth Amendment to the United States Constitution. *See* U.S. Const. amend. V ("[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb."). And the district court applied the appropriate standards when denying his motion. *See Oregon v. Kennedy*, 456 U.S. 667, 673–76 (1982) (holding that "[p]rosecutorial conduct that may be viewed as harassment or overreaching . . . does not bar retrial," but the double jeopardy bar on additional prosecution will attach if the court finds the prosecutor's actions were intended to "goad" the defendant into requesting a mistrial). On appeal, Scott does not argue the district court misapplied or got the *Kennedy* rule wrong. Rather, he asks us to adopt more protective standards under the Iowa Constitution and apply them to his case.

Scott did not argue for a different standard under the Iowa Constitution—and in fact, did not even mention the Iowa Constitution—to the district court, so we question whether this issue is properly preserved. *See State v. Derby*, 800 N.W.2d52, 60 (Iowa 2011) ("Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal." (citation omitted)). But even if the issue is properly before us, we do not have the authority to overturn supreme court precedent. *State v. Hastings*, 466 N.W.2d 697, 700 (Iowa Ct. App. 1990) ("We are not at liberty to overturn Iowa Supreme Court precedent."); *see also State v. Laub*, ___ N.W.3d ___, ___, 2024 WL 500644, at *4 (Iowa 2024) (citing authority about "vertical precedents" and how lower courts

have no authority to depart from them when they apply). And our supreme court has declared "that the same principles [enunciated in *Kennedy*] are applicable in applying the double jeopardy protection afforded under the Iowa Constitution." *State v. Rademacher*, 433 N.W.2d 754, 757 (Iowa 1988) (citing *State v. Bell*, 322 N.W.2d 93, 94 (Iowa 1982)).

Because Scott does not challenge the district court's ruling on his double jeopardy claim, and because we are not at liberty to adopt different standards, we do not consider this issue further.

B. Sufficiency of the Evidence.

Scott challenges the sufficiency of the evidence supporting both of his robbery convictions.

> "We review the sufficiency of the evidence for correction of errors at law." We consider all evidence, not just the evidence supporting the conviction, and 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 evidence."
>
> In evaluating the sufficiency of the evidence, we consider whether "the finding of guilt is supported by substantial evidence in the record." Substantial evidence "means a person may not be convicted based upon mere suspicion or conjecture." "Substantial evidence exists when the evidence 'would convince a rational fact finder the defendant is guilty beyond a reasonable doubt.'"

State v. Ernst, 954 N.W.2d 50, 54 (Iowa 2021) (internal citations omitted).

Here, it is undisputed that an armed robbery took place at the Outpost Bar & Grill during the early morning hours of February 10, 2022. The district court admitted video from a security camera inside of the bar showing two individuals armed with guns come into the bar, interact with the two patrons (Sonja and Jon) and the bartender (Dylan), and take cash from the register before leaving. And

Sonja, Jon, and Dylan all testified at trial, providing more specifics about what occurred during the armed robbery.[2]

Scott's challenge on appeal is that the State failed to prove he was either one of those two armed individuals. *See State v. Cashen*, 666 N.W.2d 566, 569 (Iowa 2003) ("The State has the burden to 'prove every fact necessary to constitute the crime with which the defendant is charged.'" (citation omitted)); *State v. Jensen*, 216 N.W.2d 369, 374 (Iowa 1974) ("Identity is an element of a criminal offense which the State must prove beyond a reasonable doubt."). Scott suggests the only evidence to establish he was one of the robbers was the testimony of fifteen-year-old Laney, an accomplice. *See* Iowa R. Crim. P. 2.21(3) ("A conviction cannot be had upon the testimony of an accomplice or a solicited person, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense."). And because accomplice testimony must be corroborated, he maintains his convictions are not supported by substantial evidence.

According to the evidence presented by the State, Sonja and Jon went to the Outpost Bar & Grill around 11:00 p.m. on February 9, which was a weeknight. It was generally just them and the bartender, Dylan, at the bar until about

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[2] The uncontested jury instructions required the State to prove:

> 1. On or about the 10th day of February, 2022, [Scott] had the specific intent to commit a theft.
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> 2. To carry out his intention or to assist him in escaping from the scene, with or without the stolen property, [Scott] threatened Dylan. . . with or purposely put Dylan . . . in fear of immediate serious injury.
>
> 3. [Scott] was armed with a dangerous weapon.

The State had the same burden to prove the second count of first-degree robbery, with Sonja being the named victim in place of Dylan.

12:40 a.m. on February 10, when a guy walked in. The guy did not order a drink or food, and he did not use the restroom. Once he walked out, Dylan, Sonja, and Jon conferred and decided the interaction seemed strange; Dylan called the non-emergency phone number for the local police department and requested a walk-through. Just a few minutes later, before the local police arrived, two individuals armed with guns entered the bar. They took the money from the cash register, Dylan's wallet, and Sonja's purse before leaving. After they exited, Dylan, Jon, and Sonja called 911 to report the robbery and then decided to try to follow the robbers' vehicle. They drove behind the vehicle they believed the robbers had left in until a local law enforcement officer met up with them and took over. As the lead vehicle fled at high rates of speed, a number of local enforcement agencies became involved. Eventually, stop sticks were deployed and the lead vehicle stopped after crashing on a curve in a rural area. All occupants of the vehicle fled.

Laney was apprehended almost immediately; she gave herself up after she heard the officers bring dogs to the area. When officers searched the crashed car, they found handguns, Dylan's wallet, and Sonja's purse. Another occupant, Tyden, was also quickly apprehended after he activated a motion sensor light a few hundred yards from the crash site. Scott and the final occupant were taken into custody later in the day on February 10 after the gas station in a town several miles from the crash reported two suspicious individuals.

Laney testified Scott was one of the three guys she picked up on the night of February 9 while driving her mother's car. One of the other guys went into the bar first and then, after he returned to the car, Scott and the third guy walked in the direction of the bar. Once they came back to the car, the four drove away, with

police officers soon giving chase. The four only stopped when their vehicle ended up in a ditch. At that point, the individuals scattered.

Laney's testimony is not the only evidence tying Scott to the armed robbery. In the video from the bar, one of the armed men is wearing a shiny, red winter coat with a hood. When Scott was taken into custody on February 10, he was wearing a shiny red coat. When he got to the police station, officers noted Scott's shoelaces had cockleburs attached, his red coat was ripped, and his hands had scrapes—suggesting he may have been walking through wooded or less maintained areas. Additionally, a chip bag was found behind the bar—where the security footage showed the robber in the red coat stood at the cash register—and the Iowa Division of Criminal Investigations recovered an impression of a shoeprint from it. After comparing the shoes Scott was wearing at the time he was taken into custody on February 10 with the impression, the criminalist testified Scott's shoes "were consistent in overall physical size and also tread design." The criminalist could not say that specific pair of shoes created the impression, but they were "included in the population of shoes that could have made that impression." Finally, a detective testified as to a few jailhouse phone calls between Scott and various individuals on the day he was taken into custody; Scott told one person, "I fucked up," and—after his mother asked him about the robbery—told her, "I'm not going to cry" about it and "I did that shit." In a call with his brother, who told him the police found two "pipes"—or guns[3]—at the scene, Scott asked which two, stating that he came up with one in the midst of things. This claim matched what

[3] The detective testified without objection that a pipe is another word for a gun.

occurred on the video from the security camera—Dylan initially raised his own handgun at the robbers before putting it down.

While only the accomplice explicitly identified Scott and no DNA evidence tied Scott to the recovered guns, Dylan's wallet, or Sonja's purse, substantial evidence supports the determination that Scott was one of the armed robbers.

C. Sentencing.

Scott challenges the sentence imposed by the district court, arguing the court erred when it ordered him to serve 70% of the twenty-five-year term before becoming eligible for parole or work release without considering all the factors required by Iowa Code section 901.11.

Section 901.11(3) requires the court to determine when a defendant convicted of first-degree robbery will first become eligible for parole or work release "based upon all pertinent information including the person's criminal record, a validated risk assessment, and the negative impact the offense has had on the victim or other persons." At sentencing, the court stated:

> The Court is required to determine at the time of sentence when you would be eligible for parole or work release, and that has to be between one-half and seven-tenths or 70 percent of the maximum term of the sentence. There's a number of factors that the court is to consider, and those are listed in Iowa Code section 901.11(3). One of those is the negative impact the offense has had on the victim or other persons.
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> I've mentioned [Sonja] and her victim impact statement. I haven't mentioned yet but that is important in addition to the other comments I made that she apparently suffers from post-traumatic stress disorder from this, and she's angry and paranoid as a result of this—being a victim of this offense and that she's always looking over her shoulder. All of those things are very understandable and reasonable in the court's opinion based upon the evidence that was presented in the case, and so when I consider the factors under 901.11(3), I determine that you shall not be eligible for parole or work release until you have served 70 percent of the maximum term of

> each of these sentences, pursuant to Iowa Code sections 902.12(3) and 901.11(3).

Scott points to this statement and claims the court relied on only the negative impact on the victims when deciding to impose the greatest mandatory minimum allowed. *See* Iowa Code § 902.12(3) (allowing the court to order the defendant to serve "between one-half and seven-tenths of the maximum term of the person's sentence" before becoming eligible for parole or work release).

We note that the court's statement about the impact on Sonja and the mandatory minimum it decided to impose came after the court already explicitly contemplated a number of other factors and then ordered Scott to serve concurrent twenty-five-year terms. *Cf. State v. Hill*, 878 N.W.2d 269, 275 (Iowa 2016) (requiring the court to provide reasons specifically supporting its decision to impose consecutive sentences while allowing "the court [to] rely on the same reasons for imposing a sentence of incarceration"). Plus, the court's failure to explicitly acknowledge or mention a sentencing factor "does not necessarily mean it was not considered." *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa Ct. App. 1995). On this record, we cannot say the district court failed to consider the pertinent information before imposing the 70% mandatory minimum; the court neither failed to comply with section 901.11(3) or abused its discretion when determining the appropriate sentence.

III. Conclusion.

We are not at liberty to adopt a new standard for reviewing double jeopardy claims under the Iowa Constitution, substantial evidence supports the determination Scott was one of the armed robbers, and the district court neither

erred nor abused its discretion in ordering Scott to serve 70% of the mandatory minimum before becoming eligible for parole or work release. For these reasons, we affirm.

AFFIRMED.