

**IN THE COURT OF APPEALS OF IOWA**

No. 1-157 / 10-0987  
Filed April 13, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**AMANDA BEVAR,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Webster County, Kurt L. Wilke,  
Judge.

Amanda Bevar appeals her conviction for first-degree robbery.

**REVERSED.**

Jon Beaty, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney  
General, Ricki Osborn, County Attorney, and Jennifer Bonzer, Assistant County  
Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.  
Tabor, J., takes no part.

**DANILSON, J.**

Amanda Bevar appeals her conviction for first-degree robbery, contending there is insufficient evidence of intent to commit a theft. She insists the items taken were merely tools for her attempted escape from jail. Because there is not substantial evidence from which a jury could find Bevar intended more than a temporary dispossessing of another's property, see *State v. Berger*, 438 N.W.2d 29, 31 (Iowa 1989), we reverse the conviction.

**I. Background Facts and Proceedings.**

Amanda Bevar attempted to escape from jail. At about 2:00 a.m. on August 16, 2009, a jailer, Erin Fiala, was making routine cell checks. Bevar was able to overpower Fiala, put her in a choke hold, and grab her Maglite (a large, heavy flashlight). Bevar used the Maglite to repeatedly strike Fiala in the head. Bevar picked up Fiala's keys, unlocked the door of another inmate, Jasmine Watts, and the two left the cellblock area. Another jailer who was in the control room, Shane Allen, saw the inmates as they ran by and pursued them. Watts stopped at Allen's command, but Bevar kept going. She used the keys to unlock another door that led her to the first floor of the law enforcement center. As she opened the door to the first floor lobby, Police Sergeant Chuck Guthrie saw Bevar and ran after her. Bevar reversed course and ran back up the stairs. She encountered Allen as he was coming down the stairs. When joined by Guthrie, Allen was able to secure Bevar.

Guthrie found Fiala's keys in the stairwell. Fiala's flashlight was found in the cellblock later that morning. Fiala found her handheld scanner propping open a jail door.

Bevar was charged with first-degree robbery, attempted murder, assault while participating in a felony, and escape. She essentially conceded escape and assault during opening statements at the subsequent jury trial. She challenged the charges of attempted murder and robbery. The jury convicted her of first-degree robbery, assault while participating in a felony, assault with intent to inflict serious injury, and escape. On appeal Bevar challenges only the first-degree robbery conviction, asserting there is insufficient evidence of intent to commit a theft to sustain the conviction.

## **II. Scope and Standard of Review.**

We review challenges to the sufficiency of the evidence supporting a guilty verdict for correction of legal error. *State v. Heard*, 636 N.W.2d 227, 229 (Iowa 2001). We will uphold a verdict if substantial record evidence supports it. *Id.* “Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt.” *Id.* “In assessing the sufficiency of the evidence, we consider all the evidence in the record, but we view the record in the light most favorable to the State.” *State v. Corsi*, 686 N.W.2d 215, 218 (Iowa 2004).

## **III. Discussion.**

Iowa Code section 711.1 delineates that a person commits robbery if “having the intent to commit a theft,” that person does any of three acts<sup>1</sup> “to assist or further the commission of the intended theft or the person’s escape from the scene thereof with or without the stolen property.” Iowa Code § 711.1 (2009).

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<sup>1</sup> The offending acts include: committing an assault, threatening another with immediate serious injury, or threatening “to commit immediately any forcible felony.” Iowa Code § 711.1.

A person commits theft when the person “[t]akes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.” *Id.* § 714.1. The intent to deprive “requires more than a temporary dispossessing of another’s property, although a deprivation is not necessarily a permanent thing.” *State v. Berger*, 438 N.W.2d 29, 31 (Iowa Ct. App. 1989). Our supreme court has noted that an essential element of theft is the intent to permanently deprive the owner of her property and:

[b]ecause proof that the defendant acted with the specific purpose of depriving the owner of his property requires a determination of what the defendant was thinking when an act was done, it is seldom capable of being established with direct evidence. Therefore, the facts and circumstances surrounding the act, as well as any reasonable inferences to be drawn from those facts and circumstances, may be relied upon to ascertain the defendant’s intent.

*State v. Schminkey*, 597 N.W.2d 785, 789 (Iowa 1999).

Bevar acknowledges, “To escape, she assaulted a jailer, took her keys and used those keys to unlock doors.” In Instruction 21, the jury was instructed in part that “intent to deprive” means to “permanently withhold, or cause it to be withheld for an extended period of time, or under such circumstances that its value is lost.”

The State argues that the jury reasonably could find the value of a jailer’s keys is in the security they provide; that is, keys keep inmates where they are to be and keep inmates out of those places they are not to be. Thus the jury could find that having taken the jailer’s keys and used them, the value of the keys was lost. Additionally, because the keys were found in the stairwell where Bevar had

struggled with law enforcement, a reasonable inference arises that Bevar intended to take the keys with her.

We acknowledge there is no direct evidence of Bevar's intent. The circumstances surrounding the taking of the keys reflects that during the assault, Fiala thought Bevar was trying to escape so Fiala tried to hand Bevar the keys. However, the keys fell to the floor while the assault continued. Ultimately, Bevar picked up the keys and left Fiala to unlock Watts's cell. Bevar and Watts headed to the door but Watts returned to Fiala. Fiala then told Watts "she had to go because Bevar was coming back to kill me." Bevar never asked for the keys. Rather, Fiala offered the keys to her, apparently to encourage Bevar to leave and discontinue the assault. This conclusion is supported by Fiala's instruction to Watts to leave so Bevar did not come back to kill her. After Bevar was captured, the keys were found in the stairwell, and the flashlight and handheld scanner were found in the cellblock.

We find no merit in the State's argument that the fact the keys were found in the stairway suggests Bevar intended to permanently deprive the jailer of the keys. We can equally surmise that Bevar retained possession of the keys in the event she may have needed them to unlock another door to escape. We also are unconvinced there was any loss value by the temporary dispossession of the keys, flashlight, or handheld scanner.

Even if Bevar intended to assault Fiala to facilitate an escape, the record lacks evidence that Bevar specifically intended to steal the keys, flashlight, or handheld scanner. In a factually similar case the Tennessee Supreme Court concluded:

After thoroughly reviewing the record we are convinced that defendant's only intent was to escape and the taking of the keys was done only for the purpose of delaying pursuit by . . . police officials. In other words, there was only a single continuous intent to escape. Robbery requires an intent to steal the property of the owner. The proof of such intent is lacking in the record.

*Young v. State*, 487 S.W.2d 305, 308 (Tenn. 1972).

Another court facing the same issue where jailhouse keys were forcibly taken from a jailer stated:

What was the object of appellant in forcibly taking the keys from the jailer? Was it to permanently appropriate the same? If so, of what use could they be to him except to liberate himself and make his escape? Did he desire to release himself from confinement or was it his purpose to permanently appropriate the keys? They were of no value to anyone except to the jailer who could use them for the purpose and only the purpose for which they were made. Which is the most natural and logical conclusion to be drawn from the facts and circumstances disclosed by this record? A person's desire to enjoy liberty is certainly much greater than his desire to permanently appropriate the keys which he could not put to any other use except to liberate himself from confinement. What could be the object of a sane man stealing something that had no pecuniary or monetary value and especially is this true if he were going to remain in jail? . . . While it is true that ordinarily the question of intent is usually one to be determined by the jury from all the facts and circumstances, still, if the facts and circumstances are such as will not justify or authorize the jury's conclusion, then it is the solemn duty of this court, under the law and on its oath, to set it aside.

*Bailey v. State*, 139 S.W.2d 599, 600 (Tex. Crim. App. 1940); *but see Fitzgerald v. State*, S.W.2d 428, 428 (Tex. Crim. App. 1954) (affirming robbery conviction where jail inmate escaped "and carried keys with him").<sup>2</sup> We acknowledge an intent to permanently deprive may arise in a factually different case involving an

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<sup>2</sup> The 5th Circuit Court of Appeals subsequently criticized the *Fitzgerald* ruling, however, by describing the charge as a "legally tenuous charge of robbery" and as an "appellate misadventure." *Fitzgerald v. Estelle*, 505 F.2d 1334, 1340, 1341 (5th Cir. 1975).

escape. But here, the natural and logical conclusion is Bevar intended to liberate herself, not permanently deprive Fiala of the keys, flashlight, and handheld scanner.

Because these facts do not provide substantial evidence to support the jury's verdict, we reverse.

**REVERSED.**