

IN THE COURT OF APPEALS OF IOWA

No. 1-714 / 11-0314
Filed January 19, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ETHEN EDDIE RICHARD AYERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Marsha M. Beckelman, Judge.

The defendant appeals from his conviction for first-degree robbery, challenging the sufficiency of the evidence. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Tyler J. Buller, Legal Inter, Jerry Vander Sanden, County Attorney, and Jason Burns, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

MULLINS, J.

Ethen Ayers appeals from his conviction of first-degree robbery in violation of Iowa Code sections 711.1(1) and 711.2 (2009). He challenges the sufficiency of the evidence. Because we find there was sufficient evidence from which the jury could have reasonably found beyond a reasonable doubt that Ayers either intended to participate as a principal in the robbery or that he aided and abetted Vincent Connors knowing that Connors intended to rob the victim, we affirm.

I. Background Facts and Proceedings.

On January 3, 2010, Matt Dostal was walking home from work when a vehicle approached him from behind and stopped in the street. Connors got out of the car and ran up to Dostal, demanded his money and threatened him with a knife. Dostal refused and Connors kicked Dostal's lunch box out of his hand. Ayers, Chris Curley, and Trae Finn got out of the car and all four men attacked Dostal, punching, kicking, and stabbing him. The attack stopped when a woman from a nearby house turned on the porch light and yelled that police were on their way. Ayers's fifteen-year-old sister was in the car, but called 911 and ran away when the attack occurred.

Ayers, Curley, Connors, and Finn were all charged with first-degree robbery in violation of Iowa Code sections 711.1(1) and 711.2. The charge against Ayers was amended to include aiding and abetting as an alternative method of committing the crime. See Iowa Code § 703.1 (providing that a person who aids and abets in the commission of a crime shall be tried and punished as principals). In January 2011, Ayers and Connors were tried to a

jury. Ayers was found guilty as charged. He appeals and raises a sufficiency-of-the-evidence argument.

II. Sufficiency of the Evidence.

We review challenges to the sufficiency of the evidence for correction of errors at law. If a verdict is supported by substantial evidence, we will uphold a finding of guilt. Substantial evidence is that upon which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. The State must prove every fact necessary to constitute the crime with which the defendant is charged. The evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture. In conducting our review, we consider all the evidence in the record, that which is favorable as well as unfavorable to the verdict, and view the evidence in the light most favorable to the State.

State v. Neitzel, 801 N.W.2d 612, 624 (Iowa Ct. App. 2011) (internal citations and quotation marks omitted).

Ayers asserts there was not sufficient evidence he had the intent to commit a theft, arguing there was no proof he knew Connors intended to rob Dostal. See *State v. Wedebrand*, 602 N.W.2d 186, 189 (Iowa Ct. App. 1999) (“If specific intent is an element of the offense charged, a person may be convicted on a theory of aiding and abetting if the person participates with the requisite intent . . . or with the knowledge that the principal possesses the requisite intent.” (citations and internal quotation marks omitted)). The evidence demonstrated that just prior to the robbery, five people were in the car—Curley was driving, with Finn in the passenger seat, and Connors, Ayers’s sister, and Ayers in the backseat of the car. There was evidence that Connors and Ayers each had a knife. Connors told Curley to stop the car and clearly indicated he was going to rob the man walking down the street. Curley testified Connors used the word

“rob” when stating what he was going to do, and Ayer’s sister, who was reluctant to testify, admitted that in her deposition she stated Connors used the word “rob.” Finn testified that he did not know exactly what Connors said, but it was something like “I’m about to go get him.” Curley and Finn both testified that when Connors approached Dostal on the sidewalk they heard Connors say to Dostal, “Give me your money.” When Dostal refused and tried to defend himself, Curley, Finn, and Ayers exited the vehicle, joined Connors and they all began beating Dostal. Ayers’s sister called 911 and ran away.

Ayers’s argument focuses on the differences between the witnesses testimony. It is the jury’s duty to assess the credibility of witnesses and to assign the evidence presented whatever weight it deems proper. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). From the evidence presented to the jury, the jury could have reasonably found that Connors told Curley to stop the car and announced he was going to rob the victim, which Ayers heard because he was sitting in the backseat with Connors. Moreover, Ayers’s actions during the robbery also support this finding—once Dostal refused to give Connors his money, Ayers got out of the car and attacked Dostal. See *Weddebrand*, 602 N.W.2d at 189 (“Proof of the requisite intent or malice aforethought may be accomplished by inferences made from the acts and conduct of the defendant and the means used in doing the wrongful and injurious acts.”). There was sufficient evidence from which the jury could have reasonably found beyond a reasonable doubt that Ayers either intended to participate as a principal in the

robbery or that he aided and abetted Connors knowing that Connors intended to rob Dostal. We affirm.

AFFIRMED.