

IN THE COURT OF APPEALS OF IOWA

No. 2-395 / 10-0552
Filed June 13, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FREDRICK THOMAS KIRBY,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James D. Coil,
District Associate Judge.

Fredrick Kirby appeals his conviction of criminal mischief in the fourth
degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Brian Williams, Assistant
County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

MULLINS, J.

Fredrick Kirby appeals his conviction of criminal mischief in the fourth degree. See Iowa Code §§ 716.1, 716.6 (2009). He argues that the district court erred in denying his motion for judgment of acquittal. Because we agree with the district court that the State presented sufficient evidence to deny Kirby's motion for judgment of acquittal, we affirm.

I. Background Facts and Proceedings

Gracia Stafford met Fredrick Kirby in 2006 when he came to volunteer at the food bank where she worked. Both Stafford and Kirby later were employed by the maintenance department at Tyson's. Stafford and Kirby socialized together outside of work, including a dinner on Stafford's birthday with her son. Stafford saw the relationship as "cordial," but Kirby sent her flowers on Valentine's Day and made sexual advances to Stafford at work, including pressing himself against her and grabbing himself in front of her. Stafford refused all of Kirby's advances. Kirby loaned Stafford \$100 to fix a backed up toilet, money Stafford never repaid. Kirby later discovered that Stafford had a new boyfriend and at work demanded repayment of the \$100, sometimes in a verbally abusive manner.

Ronald Pettigill worked as the maintenance supervisor at Tyson's. Around 5:30 a.m. on August 27, 2009, Pettigill was sitting in his vehicle in the parking lot and observed Kirby enter the lot in his truck, stop just ahead of him, and then drive away. Shortly thereafter, Pettigill saw Kirby approach a parked vehicle, lie down on the wet ground, and remain under the front of the vehicle for three to

five minutes. Kirby then rose, put something in his pocket, and left. It was a rainy morning, but Pettigill had a clear view. Pettigill wrote down the license number of the car Kirby laid under and gave it to Tyson's security.

Later that morning, Stafford was informed by her support manager that there was damage to her car and found screws in both front tires. Her supervisor plugged the tires well enough that she could drive to the police station, where photographs of the damage were taken. After unsuccessful repairs, she finally replaced the damaged tires in December of 2009 at a cost of \$312.09.

On October 9, 2009, the State charged Kirby with one count of fourth-degree criminal mischief, in violation of Iowa Code sections 716.1 and 716.6. A trial was held December 15, 2009. Kirby moved for judgment of acquittal, which was denied. The jury returned a guilty verdict on December 22, 2009. Kirby filed a notice of appeal on April 1, 2010.

II. Standard of Review

"A motion for judgment of acquittal is a means of challenging the sufficiency of the evidence, and we review such claims for correction of errors at law." *State v. Serrato*, 787 N.W.2d 462, 465 (Iowa 2010). If the verdict is supported by substantial evidence, we will uphold a finding of guilt. *Id.* "Evidence is substantial if it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *State v. Hearn*, 797 N.W.2d 577, 579 (Iowa 2011). In making this determination, we consider all the evidence and the record, not just the evidence supporting the verdict. *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 evidence.” *State v. Quinn*, 691 N.W.2d 403, 407 (Iowa 2005).

At trial, the State must prove every element of the crime charged beyond a reasonable doubt. *State v. Gibbs*, 239 N.W.2d 866, 867 (Iowa 1976). The State’s evidence “must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture.” *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981). In weighing the evidence, direct and circumstantial evidence are equally probative. *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011).

III. Analysis

In order for the jury to convict Kirby, the State had to prove all of the following elements of criminal mischief beyond a reasonable doubt:

1. On or about the 27th day of August, 2009, the defendant damaged, altered, defaced, or destroyed tires belonging to Gracia Stafford.
2. The defendant acted with the specific intent to damage, deface, alter, or destroy the property.
3. When the defendant damaged, defaced, altered, or destroyed the property, he did not have the right to do so.¹

Kirby argues that the State had insufficient evidence to support a conviction because the State could not prove beyond a reasonable doubt that he was the one who damaged the tires. No eye witnesses observed him damaging the tires. Testimony at trial revealed that there is vandalism in the Tyson parking lot occasionally, and the damage may have occurred before Kirby arrived.

¹ Because Kirby does not assert the law in the instructions was incorrect, we examine his claims in view of the instructions given to the jury. *State v. Nitchee*, 720 N.W.2d 547, 556 (Iowa 2006).

When viewed in the light most favorable to the State, both the direct and circumstantial evidence are sufficient to support a finding of Kirby's guilt. A direct eyewitness saw Kirby enter a parking lot in which he did not park, stop to look around, then return to lay on the wet ground in the rain beneath the front of a car for three to five minutes. The same witness saw Kirby depart after putting something in his pocket and testified that Kirby did not work that day. Later that morning, screws were discovered in the front tires of the same car. The car belonged to Stafford. She owed Kirby money and had rebuffed his romantic advances. The evidence showed he had not accepted the rejection well. From these facts, the jury could reasonably draw a fair inference that Kirby intentionally damaged Stafford's tires. There is no dispute that he had no right to do so. The trial court committed no error in denying Kirby's motion for judgment of acquittal.

AFFIRMED.