

IN THE COURT OF APPEALS OF IOWA

No. 2-964 / 11-1893
Filed November 29, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ASA JASON WINTERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Asa Winters appeals his convictions for first-degree robbery, willful injury causing serious injury, and intimidation with a dangerous weapon. **AFFIRMED.**

Patrick W. O'Bryan of O'Bryan Law Firm, Des Moines, for appellant.

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

Considered by Potterfield, P.J., and Danilson and Tabor, JJ.

POTTERFIELD, P.J.

Asa Winters appeals his first-degree robbery, willful injury causing serious injury, and intimidation with a dangerous weapon convictions. He contends there is insufficient evidence to corroborate Baron Booker's testimony that Winters participated in a December 29, 2009 armed robbery of a liquor store with Booker. He asserts he was elsewhere on the night in question and argues there was no physical evidence that he was in the store on December 29.

I. Background Facts and Proceedings.

In the early morning hours of December 29, 2009, Waqar Ahmad was stocking shelves at the East Fourth Liquor Store in Waterloo, Iowa. The store was equipped with video surveillance and the following described robbery was captured on videotape.¹ Three men entered the store. Ahmad described one of the men as having "light skin," five feet, seven inches tall, and armed with a handgun. Another man was "tall and skinny" and he was armed with a "long gun." A third man entered the store, jumped over the counter, went to the cash register, physically removed it from the counter, and ran out of the store with it, followed by the other two men.

When the men entered the store, one of them yelled at Ahmad not to move. Ahmad put his hands up and when he did so, the man holding the handgun shot him.² Ahmad recognized the man who shot him as a regular customer in the store.

¹ Mehnde Khin, the owner of the East Fourth Street liquor store, provided the surveillance video to the police.

² Ahmad was struck by a single shot in the right arm. The bullet traveled through his arm and reentered his body, lodging in his collar bone, where it remains. The shot

On December 31, 2009, Waterloo police were dispatched to the Broadway Liquor Store after being called by Ijaz Haq, the manager of the Broadway Liquor Store. Haq's liquor store had been robbed on December 23, 2009, by three individuals he recognized as regular customers after he watched surveillance video of the robbery.³ The three men returned to the store on December 31 and Haq feared the store was going to be robbed again.

When police arrived at Haq's liquor store, Winters was standing outside a Blue Ford Explorer. Two other men were inside the store, Baron Booker and Najuan Decatur. All three men were taken into custody at that time.

This appeal concerns Winters's subsequent convictions for first-degree robbery, willful injury causing serious injury, and intimidation with a dangerous weapon resulting from the December 29, 2009 robbery of the East Fourth Liquor Store. He contends there is insufficient evidence to corroborate Booker's testimony and there was no physical evidence that he was in the store.

II. Scope and Standards of Review.

Challenges to the sufficiency of the evidence are reviewed for correction of errors at law. *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011). We examine the evidence in the light most favorable to the State and draw all fair and reasonable inferences that may be deduced from the evidence. *State v. Hennings*, 791 N.W.2d 828, 832–33 (Iowa 2010). "If a verdict is supported by

damaged a nerve resulting in paralysis to his arm. Ahmad regained some movement in the arm, however, he cannot open his hand.

³ Winters previously was convicted of first-degree robbery in the December 23, 2009 robbery of the Broadway Liquor Store, along with Booker and Decatur. His conviction was affirmed by this court. See *State v. Winters*, No. 10-1665, 2011 WL 5387293, at *6 (Iowa Ct. App. Nov. 9, 2011).

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.” *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005). “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.” *State v. Neitzel*, 801 N.W.2d 612, 624 (Iowa Ct. App. 2011) (citation omitted).

Iowa Rule of Criminal Procedure 2.21(3) prohibits a conviction “upon the testimony of an accomplice . . . , unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.” However, corroborative evidence need not be strong “so long as it can fairly be said that it tends to connect the accused with the commission of the crime and supports the credibility of the accomplice.” *State v. Barnes*, 791 N.W.2d 817, 824 (Iowa 2010).

II. Discussion.

Baron Booker testified that he, Winters, and Decatur committed a robbery of East Fourth Liquor Store on December 29, 2009. Booker said the three men went into the store at various times to “case” the store and bought cigarettes and alcohol. After casing the store, the men plotted the robbery. Booker decided he would handle the .380 handgun, Winters would have a shotgun and would hold the door during the robbery, and Decatur would “grab the money.” Booker further testified that during the robbery, he wore blue gloves, black pants from his job at McDonald’s, and had a shirt wrapped around his face. He testified Winters

was dressed in black with a “half cut ski mask.” After the men got dressed in the Ford Explorer, they parked the vehicle by Saxton and Iowa Streets. They waited outside the store to make sure there were no police cars driving by before they entered.

Booker, armed with the handgun, was the first to enter the store. He pointed the gun at the clerk, Ahmad, and stood in front of the counter. Winters stood at the door armed with the shotgun. Decatur stood next to Booker at the counter. Decatur told Booker to “shoot by the bottles to let [the store clerk] know” the men were serious. In discharging his weapon, Booker hit Ahmad, who fell to the ground. Decatur jumped over the counter, grabbed the cash register, and ran out the front door. Winters also fled the scene with Booker trailing behind. The men threw the cash register down on the ground, removed the money from it on their way back to the parked Ford Explorer, and drove away.

Booker’s testimony is corroborated by the liquor store surveillance video, which shows—all as described by Booker—three men entering the store, taking positions in the store armed with weapons, taking the cash register, and leaving the store. The three men were dressed as Booker testified. The video also shows that prior to the robbery, an individual wearing a gray hat can be seen in the store making a purchase. The person wearing the gray hat was Decatur; a gray hat was found on Decatur’s possession when he was apprehended.

Further corroboration is shown. Booker stated he was five feet seven inches tall and Winters was the tallest of the three men. At the time of their arrest, Booker’s height was noted as five feet seven inches tall, Decatur was five feet nine inches tall, and Winters was six feet tall.

After the police arrived on the scene of the robbery on the 29th, a K-9 officer searched outside the liquor store. The K-9 picked up a scent north of the store and found discarded Iowa lottery tickets, pieces of a cash register, and money. The scent trail ended at the intersection of Saxon and Iowa Streets, where Booker stated they had parked the Ford Explorer. The three men, Booker, Winters, and Decatur, were arrested two days later; Winters and Decatur were in the Broadway Liquor Store and Booker stood nearby, next to a Ford Explorer.

Inside the store after the December 29th robbery, another officer, Jacque Pritchard, recovered a spent shell casing on the floor of the liquor store near the injured Ahmad. The shell casing was analyzed and determined to have been fired from the gun found in the Ford Explorer, a .380 handgun under the front seat with its serial numbers scratched off. Also found in the vehicle: sand paper on the front seat, a box of blue latex gloves, a partial mask, a black "do-rag" on the front driver's seat, black stocking caps, and a pair of black McDonald's pants.

In addition, Haq—the manager of the Broadway Liquor Store where Booker, Winters, and Decatur were apprehended—knew Ahmad and visited him in the hospital while he was recovering from his gunshot wound. Ahmad told Haq what happened during the robbery. Haq watched the surveillance video of the East Fourth Street Liquor Store and recognized the three men in the video as the same three who had robbed his liquor store on December 23, 2009. Even though Haq was not present at either robbery, he knew the men because they were regular customers in his store; they came to the store two to three times a day, and always came in together. Haq was shown a photo lineup and was "100 percent sure" Winters was the person holding the "long gun" in the East Fourth

Street Liquor Store—and the person wielding the hand gun at the Broadway Liquor Store robbery. Haq testified that the person holding the long gun during the December 29, East Fourth Liquor Store robbery was the person who, on December 23, had the handgun during the robbery of his store.

This evidence sufficiently corroborates Booker's testimony. The jury was not required to believe Winters's claim that he was elsewhere when the robbery occurred. See *State v. Arne*, 579 N.W.2d 326, 328 (Iowa 1998) (noting the credibility of witnesses is particularly for the jury to determine). Because the evidence corroborates the testimony of Booker, there is substantial support for the robbery, willful injury, and intimidation with a dangerous weapon convictions. We therefore affirm.

AFFIRMED.