

IN THE COURT OF APPEALS OF IOWA

No. 3-210 / 12-0673
Filed May 15, 2013

STATE OF IOWA,
Plaintiff, Appellee,

vs.

JASON WAYNE ROBISON,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Stephen P. Carroll and James M. Drew, Judges.

Jason Robison appeals his conviction on the charges of burglary in the third degree as a habitual offender, driving while barred, and theft in the third degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Jason Wayne Robison, Fort Dodge, appellant pro se.

Thomas J. Miller, Attorney General, Teresa Baustian, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and William J. Hoekstra, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

BOWER, J.

Jason Robison appeals his conviction on the charges of burglary in the third degree as a habitual offender, driving while barred, and theft in the third degree. Robison argues there was insufficient evidence to establish the element of identity. Because we find sufficient evidence to support the convictions, we affirm.

I. Background Facts and Proceedings

On the morning of September 16, 2011, Denise Jeffrey observed an unfamiliar gold colored vehicle outside of a rural home and noticed a man walking around the residence. Denise contacted her husband, Randall Jeffrey, and asked him to investigate. Randall drove towards the residence and observed the gold vehicle stopped along a county road. A man was seen putting two long items into the vehicle. Pulling up alongside the vehicle, Randall asked the driver, who had moved to the driver's seat, what he was doing and heard the man reply, he was fine. Randall then asked the man what he was stealing. The man responded by driving off at a high rate of speed. Randall memorized the license plate and immediately contacted authorities.

Randall gave chase and located the car near a set of railroad tracks. The driver of the vehicle was seen discarding two long objects, later found to be firearms, into a field. The vehicle then drove away through the field and along the right-of-way.

During the investigation police contacted three witnesses to examine a photo line-up, only one witness positively identified Robison. Randall Jeffrey's

initial police report, given minutes after the incident, was inconsistent with Robison's hair color, weight, and clothing. Robison was, however, positively identified by all witnesses at trial.

At the close of the evidence Robison made a motion for judgment of acquittal. The district court denied the motion, and the jury returned guilty verdicts.

II. Standard of Review

Our review is for errors at law. *State v. Donaldson*, 663 N.W.2d 882, 885 (Iowa 2003).

III. Discussion

A. Preservation of Error

The State argues Robison failed to preserve error on the issues raised on appeal. Issues must ordinarily be raised and decided by the district court before we will decide them on appellate review. *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012). In the present matter, we are satisfied that the issues presented today were properly preserved. Robison made his motion and focused primarily upon the intent element of burglary. One of the major issues during trial, however, was identity. Robison moved for a directed verdict and argued that the State's evidence failed to prove all of the elements. We believe the district court was well aware of the issue of identity and ruled accordingly. We find that error was preserved.

B. Identity

Robison was charged with the offenses of burglary in the third degree as a habitual offender, pursuant to sections 713.6A(1), 902.8, and 902.9(3) (2011); driving while barred, pursuant to section 321.561; and theft in the third degree, pursuant to section 714.1, 714.2(3) and 714.3. It is essential that the identity of the accused must be proven before a conviction can result. Robison argues the evidence is insufficient to establish his identity and a directed verdict of acquittal is required.

The law surrounding motions for judgment of acquittal is well settled in this state:

When reviewing the sufficiency of evidence, we view the evidence in the light most favorable to the State, including all legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. It is necessary to consider all of the evidence and not just the evidence supporting the verdict. A jury verdict is binding upon this court and will be upheld unless the record lacks substantial evidence to support the charge. Substantial evidence means evidence which would convince a rational trier of fact that the defendants are guilty of the crime charged beyond a reasonable doubt.

State v. Blair, 347 N.W.2d 416, 418-19 (Iowa 1984). Our inquiry is into whether a rational finder of fact would reach the jury's conclusion in this case.

Robison argues the evidence of identity presented was insufficient to convict him. Although initial identifications were inconsistent, inaccurate, and two of three photo lineups failed to identify Robison, there was sufficient evidence to link him to the crimes. Randall Jeffrey, the witness with the greatest opportunity to observe Robison, successfully identified him in a photo lineup. Though his initial description did not match Robison's height, weight, hair color, or clothing,

the fact that Randall identified Robison in the photo lineup is compelling evidence. Equally compelling is the testimony of Pam Stumo, who owned the gold colored vehicle driven by Robison. Stumo testified she had befriended Robison and he had borrowed her vehicle at the time the crimes were committed. She also testified that Robison returned the car with corn stalks in the hood and damage to the vehicle, consistent with Randall's explanation of the events. Also, Stumo testified that Robison told her a vehicle matching the description of Randall's pulled up beside him and interacted with him in a way consistent with Randall's testimony. This evidence, taken in the light most favorable to the State, is sufficient to establish Robison's identity in this case.¹

AFFIRMED.

¹ Robison also raises a claim of ineffective assistance of counsel. The claim, however, specifically relates to preservation of error on the sufficiency argument. We have found that error was preserved on that claim. As a result, there is no corresponding ineffective-assistance-of-counsel argument to consider.