

IN THE COURT OF APPEALS OF IOWA

No. 3-251 / 12-0775
Filed April 10, 2013

STATE OF IOWA,
Plaintiff, Appellee,

vs.

JASON WAYNE ROBISON,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Chris Foy,
Judge.

Jason Robison appeals his conviction for theft in the third degree.

AFFIRMED.

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

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 Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

Jason Robison appeals his conviction for theft in the third degree, alleging insufficient evidence. Because the minutes of testimony and accompanying affidavits describe video footage of Robison as the only individual entering and exiting the business at the time of the theft, we find ample circumstantial evidence to affirm the district court's determination he committed the crime.

I. Background Facts and Proceedings

The minutes of testimony and accompanying affidavits establish the following facts. Lori Smith owns Lori's Creative Images, a beauty salon located in Willowbrook Mall in Mason City. On the morning of September 13, 2011, she walked a patron out of her salon and returned with her next customer, Bob Cameron. As they approached her business, Cameron said, "That guy just came out of your shop," referring to an approaching individual later identified as Robison. Robison asked Smith if she took walk-ins for haircuts. When Smith said no, Robison left the mall. Smith returned to her store to find her cash register drawer ajar. The register was missing \$305 in checks and \$250 in cash.

On September 20, 2011, the State filed a trial information charging Robison with one count of burglary in the third degree, in violation of Iowa Code sections 713.1 and 713.6A(1) (2011), and enhanced by section 902.8 and 902.9; and one count of third-degree theft, in violation of sections 714.1(1), 714.2(3), and 714.3.

Robison's first trial ended in a mistrial on November 30, 2011. During the jury selection process at Robison's retrial, he waived his right to a jury. The

parties agreed a bench trial would commence based on the minutes of testimony, a police officer's affidavit and attached incident report, and Smith's statement. On March 28, 2012, the district court found Robison not guilty of third-degree burglary but guilty of third-degree theft. The court sentenced him to incarceration not to exceed two years and a \$625 fine. Robison appeals.

II. Scope and Standard of Review

We review a claim that insufficient evidence supports a conviction for errors at law. *State v. Dewitt*, 811 N.W.2d 460, 467 (Iowa 2012). We view the record in the light most favorable to the State to determine whether the conviction is supported by substantial evidence. *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011). Substantial evidence is that which would convince a rational fact-finder of the defendant's guilt beyond a reasonable doubt. *Dewitt*, 811 N.W.2d at 467. If the record contains substantial evidence, the district court's findings are binding. *Id.*

The State holds the burden to prove each fact necessary to constitute the crime charged, "and the evidence presented must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture." *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011) (internal quotation marks omitted).

III. Analysis

In its written ruling, the district court decided the State proved the following elements of theft in the third degree:

1. On September 13, 2011, Defendant took possession or control of checks and cash;
2. Defendant did so with the intent to deprive Lori's Creative Images of the checks and cash;

3. At the time, the checks and cash belonged to Lori's Creative Images; and
4. The value of the checks and cash taken by the defendant exceeded \$500 but was not more than \$1,000.

The court determined the State also proved Robison had been twice before convicted of theft.

Robison challenges the State's proof of the first two elements. He asserts no witness saw him actually take the checks and cash, only that he was seen entering and exiting the salon. Robison relies on cases involving constructive possession of contraband to reinforce his sufficiency argument on the theft offense. He contends because the record does not show how long Smith was absent, or how many other individuals entered the business while she was gone, the State failed to meet its burden.

The State asserts surveillance footage at the mall shows only one person, identified as Robison, entered the salon while Smith was outside. The State argues that because Robison was in exclusive control of the premises, one can infer he took the cash and checks into his possession. The State also argues that circumstantial evidence proves Robison's intent to permanently deprive, since when he spoke with Smith, he did not return the items.

Although the stipulated record does not hold direct evidence of Robison removing money from the cash register, it is replete with circumstantial evidence showing he committed the theft. "Circumstantial evidence is equally probative as direct evidence for the State to use to prove a defendant guilty beyond a reasonable doubt." *Id.* at 172.

The minutes show Kent Hall, the mall manager, reviewed surveillance footage of the time period when Smith was gone from the salon. The surveillance showed only one individual enter and exit the business. With the help of a technician, Hall captured and enhanced a still photograph of that individual, whom Smith identified as Robison.

Officer Charlie Conner also reviewed the footage, and saw a man move a trash can in front of a restaurant and then walk toward Smith's salon. After passing the door and looking inside, he turned back to quickly enter, then left within a very short time. The man shared a brief exchange with Smith and Cameron before exiting the mall. Officer Conner identified Robison from the footage, as did two other officers at the jail holding Robison.

In Smith's minute of testimony, she recalled her register was closed and contained the missing money when she walked her customer out, and that it was open when she returned with Cameron. Given the circumstantial evidence of video footage showing only one person enter the salon during the time Smith was gone, the trier of fact could infer the individual who entered the business took the money. Because several witnesses identified Robison as the man in the video, the State's evidence supports the identity element of the offense.

Intent is seldom susceptible to proof by direct evidence. *State v. Sinclair*, 622 N.W.2d 722, 780 (Iowa Ct. App. 2000). Proving intent usually depends on circumstantial evidence and the inferences a fact-finder may draw from the evidence. *Id.* Officer Conner's minute of testimony described Robison's surreptitious entrance into the salon and near immediate departure. Robison had

the opportunity to return the goods to Smith during his conversation with her but continued out of the mall. Such circumstantial evidence is sufficient to show an intent to permanently deprive.

We find the circumstantial evidence detailed in the minutes of evidence was strong enough to support each element of third-degree theft.

AFFIRMED.