

IN THE COURT OF APPEALS OF IOWA

No. 3-404 / 12-0985
Filed May 30, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERTA ANN JAMES,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Nathan A. Callahan, District Associate Judge.

Roberta James appeals from her conviction for theft in the third degree.

AFFIRMED.

Roberta A. James, Tripoli, appellant pro se.

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold, Assistant Appellate Defender, for appellant.

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

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

DOYLE, P.J.

This appeal arises from a shoplifting incident that occurred at a Waterloo Hobby Lobby store on December 11, 2010. Roberta James appeals from the judgment and conviction entered following a jury trial and guilty verdict on the charge of theft in the third degree, in violation of Iowa Code section 714.1(1) (2009). On appeal, she asserts there was insufficient evidence that she had the intent to deprive Hobby Lobby of its merchandise. She also raises additional issues pro se. We affirm.

I. Background Facts and Proceedings.

A reasonable jury could have found the following facts. On December 11, 2010, Roberta James was shopping in a Waterloo Hobby Lobby store. A store employee was told by the cashier that a “suspicious” person had come into the store, and the employee was asked to go back to the jewelry section of the store “to keep an eye on what’s happening.” The employee went to that section and observed James shopping for items used for making jewelry such as bracelets and necklaces. She thought it suspicious that James “would take four or five things off the rack and maybe put back one, but not that many went into the cart.” She observed James do this at least four times. She saw James place about a dozen items in her shopping cart. She did not observe James place any items in her purse, and she did not see any items in the purse.

After the assistant store manager was told by another store employee that James had placed items in her purse, she confronted James. The assistant manager could see “product” in James’s purse, i.e., she observed several jewelry product tags in the purse. James’s purse was very full. She also observed about

three or four jewelry items in James's shopping cart. The assistant manager asked to look inside the purse. James said she would like to wait until she got to the front of the store because she had prescriptions in her purse. James started walking away and quickly went around a corner to the scrapbooking aisle. The assistant manager then heard "the plop of product falling in the cart." She said the sound of the "plop" was consistent with jewelry product hitting the plastic shopping cart. She did not hear any scrapbooking material go into the cart, and when she caught up with James, she did not observe any scrapbooking material in the cart.

James kept shopping, placing a t-shirt and some unfinished wood products in her cart. The assistant manager followed James to the front of the store. As she did so, she observed James looking through her purse "to make sure there were no more products in there." She saw James taking things out of her purse. When they reached the front of the store, the jewelry items in James's cart were rung up on the cash register. The items totaled \$731.31. The non-jewelry items were not included in the total.

At some point while James was shopping, the police were called. An officer arrived as the items were being rung up. The officer opined the merchandise being rung up would fit in James's large-sized purse.

Following a jury trial, James was found guilty of third-degree theft. James appeals.

II. Scope and Standards of Review.

Our review of claims of insufficient evidence to support a conviction is for correction of errors at law. Iowa R. App. P. 6.907; *State v. Brubaker*, 805 N.W.2d

164, 171 (Iowa 2011). A jury's findings of guilt are binding on appeal if supported by substantial evidence. *State v. Enderle*, 745 N.W.2d 438, 443 (Iowa 2007). Substantial evidence exists to support a verdict when the record reveals evidence that could convince a rational trier of fact a defendant is guilty beyond a reasonable doubt. *Brubaker*, 805 N.W.2d at 171. In making this determination, we consider all of the evidence in the record in the light most favorable to the verdict and make all reasonable inferences that may fairly be drawn from the evidence. *Id.* "However, it is the State's 'burden to prove every fact necessary to constitute the crime with which the defendant is charged, and the evidence presented must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture.'" *Id.* (quoting *State v. Kemp*, 688 N.W.2d 785, 789 (Iowa 2004)).

III. Discussion.

A. Intent to Deprive.

On appeal, James asserts that when confronted by the store manager, she was still shopping, she had not passed the "purchase point," she never attempted to leave the store with the merchandise, and the items in her purse were not concealed and were visible. Based on these assertions, James argues there was insufficient evidence of theft because the State failed to prove she had the intent to deprive Hobby Lobby of the merchandise. We disagree.

A person commits a theft when the person takes possession or control of the property of another with the intent to deprive the other thereof. Iowa Code § 714.1(1). Concerning the "the intent to deprive the other thereof" element of

the crime, our legislature has expressly provided that concealing unpurchased items is material evidence of this element:

The fact that a person has concealed . . . unpurchased property of a store or other mercantile establishment, either on the premises or outside the premises, is material evidence of intent to deprive the owner, and the finding of . . . unpurchased property concealed upon the person or among the belongings of the person, is material evidence of intent to deprive.

Id. § 714.5; see also *State v. Humburd*, 178 N.W.2d 318, 318-19 (Iowa 1970) (finding sufficient evidence to support a shoplifting charge where a security guard observed a defendant take items from grocery store shelves and place them in her purse, but a later search of the purse did not disclose the items allegedly stolen). James's claim that the merchandise was not concealed also fails. To be sure, the tags of a few of the items were visible to the assistant store manager when she first observed James's purse, but nearly two hundred jewelry items were recovered from the shopping cart after James removed them from her purse and placed them in the cart before getting to the front of the store. A jury could reasonably infer that James's actions in placing the numerous jewelry items in her purse established her intent to deprive.

B. Pro Se Issues.

Additionally, James sets forth various statements and assertions in her pro se brief. The brief fails to comply with the rules of appellate procedure in a number of ways governing form and content. We are not bound to consider a party's position when the brief substantially departs from the rules of appellate procedure. See *In re De Tar*, 572 N.W.2d 178, 180 (Iowa Ct. App. 1997). Moreover, we do not consider issues raised for the first time on appeal. *Meier v.*

Senecaut, 641 N.W.2d 532, 537 (Iowa 2002). Therefore, we do not consider James's pro se brief.

IV. Conclusion.

When viewing the evidence in the light most favorable to the State, we conclude there is substantial evidence from which a rational jury could conclude beyond a reasonable doubt that James had the intent to deprive Hobby Lobby of its merchandise. Because substantial evidence supports the jury's verdict, we affirm.

AFFIRMED.