

**IN THE COURT OF APPEALS OF IOWA**

No. 6-614 / 05-1469  
Filed September 7, 2006

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**WAYNE EARL BYRD,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Defendant-appellant, Wayne Byrd, appeals from his conviction and sentence for second-degree robbery. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Martha Lucey, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Jeff Noble, Assistant County Attorney.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

**SACKETT, C.J.**

Defendant-appellant, Wayne Byrd, appeals from his conviction and sentence for second-degree robbery. He contends the evidence is insufficient to sustain the conviction. We affirm.

As the defendant left a Wal-Mart store after purchasing batteries, the alarm activated, which beeped and played a message asking him to step back inside the store. The store cashier asked the defendant to come back inside the store. An off-duty police officer, working as a security guard, Ben Carter asked the defendant to come back inside the store. The defendant ignored the requests and walked quickly out of the store. As Officer Carter started toward the defendant, he ran; the officer pursued. They ran across the parking lot to an adjoining business that sells small truck trailers. The defendant ran behind a trailer a few seconds before the officer and was out of sight for those seconds. When the officer came around the trailer, he came face-to-face with the defendant, who was aggressive and combative. The two struggled. Two more police officers arrived. It took all three officers to subdue the defendant. Officer Carter received bruises and scratches and his pants were torn during the struggle. The other officers received minor scratches.

Officer Carter tested the defendant's coat, shoes, and the bag with the batteries to see if any of these items would activate the alarm. They did not. When he searched the scene of the struggle, the he found a portable CD player in its original plastic packaging lying under a trailer within ten feet of where the defendant had struggled with the officers. The packaging was scratched. The officer tested the CD player and it activated the alarm. A Wal-Mart employee

verified the CD player was from that store. No one in the store saw the defendant take the CD player.

We review sufficiency-of-the-evidence claims for correction of errors at law. We uphold a verdict if substantial evidence supports it. "Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." Substantial evidence must do more than raise suspicion or speculation. We consider all record evidence not just the evidence supporting guilt when we make sufficiency-of-the-evidence determinations. However, in making such determinations, we also 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) (citations omitted).

In order to prove second-degree robbery, the State was required to prove the defendant (1) had the specific intent to commit a theft and (2) committed an assault on Officer Carter in carrying out the theft or escaping from the scene. The defendant does not challenge the assault element.

The defendant contends the evidence is insufficient because (1) the State did not demonstrate the defendant ever had possession of the CD player, (2) the cashier did not notice anything concealed under the defendant's coat when he purchased the batteries, and (3) there was no motive, as the defendant already had a CD player and also had plenty of money. He argues the evidence "may provoke some suspicion" but a conviction may not rest on mere suspicion. See *State v. Brown*, 569 N.W.2d 113, 115 (Iowa 1997) ("We do not uphold a verdict on evidence that merely raises suspicion, speculation, or conjecture regarding guilt.").

Concerning the theft, the district court concluded:

The defendant's behavior once he triggered the security alarm and his refusal to stop notwithstanding that several demands

were made by employees of Wal-Mart as well as uniformed Officer Ben Carter leads the court to believe that the defendant had taken something from the store without purchasing same.

The defendant's flight from the scene and the assault[ive] behavior he engaged in with not only Officer Carter but the backup officers is a factor that the court can consider in determining the defendant's guilt or innocence. Intentional flight of the defendant and his conduct when confronted by the officer in the parking lot are factors this court as the trier of fact may consider in light of all the other evidence in this case, in determining his guilt or innocence.

Notwithstanding the record evidence that no one actually saw the defendant take the CD player nor was there any video camera tape of the theft or any fingerprints available the court is still satisfied that the State has established the intent to commit a theft and the theft itself beyond a reasonable doubt. All relevant items of the defendant were taken back through the alarm system and none of these items triggered the alarm. It was only the Wal-Mart new CD player still in its original package found under the trailer in close proximity to the defendant's assault on the officer that triggered the alarm.

(Citation omitted).

We conclude the evidence, with the reasonable and legitimate inferences that may be drawn from it, as noted by the district court, is sufficient to convince a reasonable fact finder the defendant is guilty beyond a reasonable doubt. We uphold the verdict of the district court.

**AFFIRMED.**