

IN THE COURT OF APPEALS OF IOWA

No. 7-756 / 06-2115
Filed October 24, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

GADET WIW KANG,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Artis Reis, Judge.

Gadet Kang appeals his convictions for robbery in the first degree and burglary in the third degree. **AFFIRMED.**

John Heinicke of Kragnes & Associates, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney General, John P. Sarcone, County Attorney, and George Karnas, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

HUITINK, P.J.

Gadet Kang appeals his convictions for robbery in the first degree in violation of Iowa Code sections 711.1 and 711.2 and burglary in the third degree in violation of section 713.6A(2) (2005). Kang's sole contention on appeal is that his convictions are not supported by substantial evidence. We affirm.

I. Background Facts and Proceedings

Kang was charged with the foregoing offenses based on allegations he robbed Ryan Meeker, broke into Meeker's car, and took Meeker's proof of insurance card from the glove box of the car. According to the State's theory of the crimes, Kang confronted Meeker on a Des Moines street and asked him for money. When Meeker refused, Kang made a threatening gesture toward Meeker with his arms and told Meeker, "I'm not asking, I'm telling you." Feeling threatened, Meeker punched Kang in the face, and in the ensuing struggle, Kang swung a broken beer bottle at Meeker. Meeker sustained a cut on his finger while trying to restrain Kang. After the two separated, Meeker retreated to a nearby apartment, called the police, and was taken to a hospital for treatment. Upon his return from the hospital, Meeker discovered his car, parked near the scene of his encounter with Kang, had been broken into and the interior had been ransacked.

When the police located Kang, he attempted to flee. Kang was carrying an automobile antenna at the time he was arrested. A search of his person produced a proof of insurance card for Meeker's car. Under the State's theory, Kang used the antenna to break into Meeker's car and took Meeker's proof of insurance card from the glove box.

Kang denied making any threatening gestures towards Meeker or demanding money from him. According to Kang, he asked Meeker for a dollar, Meeker refused, the two exchanged racial epithets, and he acted in self-defense after Meeker punched him in the face. Kang also denied breaking into Meeker's car and taking Meeker's insurance card. He told police he found the card on the ground after he fought with Meeker. He also denied using the antenna to break into Meeker's car.

At trial, Kang claimed self-defense and twice moved for judgment of acquittal. Both motions were denied. The jury found Kang guilty, and Kang was sentenced to concurrent twenty-five and two-year terms on the robbery and burglary charges.

II. Standard of Review

We review challenges to sufficiency of the evidence for correction of errors at law. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997).

III. Sufficiency of Evidence

A jury's verdict is binding on appeal if it is supported by substantial evidence. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence is "such evidence as could convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt." *State v. Gay*, 526 N.W.2d 294, 295 (Iowa 1995). Evidence, however, that only raises "suspicion, speculation, or conjecture" does not constitute substantial evidence. *State v. Randle*, 555 N.W.2d 666, 671 (Iowa 1996) (quoting *State v. Barnes*, 204 N.W.2d 827, 829 (Iowa 1972)).

When reviewing challenges to sufficiency of the evidence, we view the evidence “in the light most favorable to the State, including legitimate inferences and presumptions that fairly and reasonably may be deduced from the evidence in the record.” *State v. Hoeck*, 547 N.W.2d 852, 859 (Iowa Ct. App. 1996). “Although direct and circumstantial evidence are equally probative, the inferences to be drawn from the proof in a criminal case must ‘raise a fair inference of guilt as to each essential element of the crime.’” *State v. Speicher*, 625 N.W.2d 738, 741 (Iowa 2001) (quoting *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992)). In addition, we must consider all of the evidence, not just that which supports the jury’s verdict. *State v. Conroy*, 604 N.W.2d 636, 638 (Iowa 2000). Finally, “[a] jury is free to believe or disbelieve any testimony as it chooses and to give as much weight to the evidence as, in its judgment, such evidence should receive.” *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996).

A. Robbery in the First Degree

A defendant commits robbery in the first degree when (1) the defendant had the specific intent to commit a theft, (2) to carry out his intention or to assist him in escaping from the scene with or without the stolen property, the defendant either (a) commits an assault on another or (b) threatens another with or purposefully puts that person in fear of immediate serious injury, and (3) the defendant either (a) purposefully inflicts or attempts to inflict serious injury or (b) is armed with a dangerous weapon. Iowa Code §§ 711.1, .2. When the defendant alleges self-defense, the State has the burden to prove the defendant’s actions were not justified. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993).

Contrary to Kang's assertions, we find the trial record contains substantial evidence supporting each of the foregoing elements of robbery. Meeker's testimony concerning Kang's demands for money and threatening gestures are substantial evidence of both Kang's specific intent to commit a theft and his threatening Meeker or putting him in fear of immediate serious injury. See Iowa Code §§ 702.18, 708.1 (defining serious injury and assault); see also *State v. Heard*, 636 N.W.2d 227, 231 (Iowa 2001). Additionally, Meeker's testimony that Kang swung at him with a broken beer bottle is substantial evidence that he either attempted to inflict serious injury or was armed with a dangerous weapon. See Iowa Code § 702.7 (defining a dangerous weapon as "any sort of instrument or device which is actually used in such a way as to indicate the user intended to inflict serious injury and when so used is capable of inflicting death").

We also reject Kang's assertion that the evidence supports his self-defense theory that Meeker initiated the altercation and that he was justified in using force to save himself from imminent danger, death, or injury. It is sufficient to note that the jury was presented with two very different versions of who initiated the altercation resulting in the criminal charges against Kang. The jury was free to accept all, part, or none of the conflicting evidence concerning these events. See *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994), *overruled on other grounds by State v. Heemstra*, 721 N.W.2d 549, 558 (Iowa 2006). The fact that the jury disbelieved Kang's version of events does not mean the State's evidence indicating that Kang started or continued the altercation resulting in Meeker's injury was insubstantial. See *Thornton*, 498 N.W.2d at 673. We accordingly affirm on this issue.

B. Burglary in the Third Degree

A defendant commits burglary in the third degree when (1) the defendant enters another's vehicle, (2) the vehicle is an occupied structure, (3) the defendant did not have permission or authority to enter the vehicle, and (4) the defendant did so with the specific intent to commit a theft therein. Iowa Code §§ 713.1, .6A(2).

Kang argues there is insufficient evidence supporting the jury's implicit findings that he entered Meeker's car or that he did so with the intent to commit a theft. We disagree.

As noted earlier, Kang had Meeker's proof of insurance card on his person when Kang was arrested. Meeker testified he kept his insurance card in the glove box of his car. In addition, Kang was holding an automobile antenna that, according to a police officer's testimony, could have been used to break the window in Meeker's car. Based on this evidence, the jury could reasonably conclude Kang entered Meeker's car and took Meeker's insurance card.

“[T]he element of intent in burglary is seldom susceptible to proof by direct evidence.” *State v. Finnel*, 515 N.W.2d 41, 42 (Iowa 1994) (quoting *State v. Olson*, 373 N.W.2d 135, 136 (Iowa 1985)). “Usually proof of intent will depend upon circumstantial evidence and inferences drawn from such evidence.” *Id.* at 42; see also *State v. Allnutt*, 261 Iowa 897, 905, 156 N.W.2d 266, 271 (1968), *overruled on other grounds by State v. Gorham*, 206 N.W.2d 908, 909 (Iowa 1973) (“It is almost uniformly held that where one breaks and enters the property of another in the nighttime an inference may be drawn that he did so to commit larceny.”). The jury, based on the circumstantial evidence already mentioned,

could reasonably conclude Kang entered Meeker's car with the intent to commit a theft. We accordingly affirm on this issue.

AFFIRMED.