IN THE COURT OF APPEALS OF IOWA

No. 7-228 / 96-956

000385

STATE OF IOWA,

Appellee,

vs.

CARDELL WALKER,

Appellant.

FILED
AUG 22 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, Lawrence H. Fautsch, Judge.

Cardell Walker appeals from his conviction for second-degree robbery. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and D. Raymond Walton, Assistant County Attorney, for appellee.

Heard by Habhab, C.J., Cady, and Streit, JJ., but decided en banc.

CADY, J.

Cardell Walker appeals his conviction, following a jury trial, for second-degree robbery. Walker contends there was insufficient evidence to support the robbery conviction. We affirm the conviction.

The State charged Walker with robbery in the second degree after he stole a canned ham from a grocery store and assaulted a store employee in the parking lot of the store. The employee, Justin Helms, was restocking shelves when he first observed Walker in the store. Walker looked suspicious to Helms. He decided to watch Walker until he was called to the front of the store to bag groceries. While Helms was bagging groceries he saw Walker leave the store. There was a bulge in the back of his coat. Helms suspected Walker was shoplifting. He notified another employee of his suspicion and followed Walker out the door. Helms then confronted Walker in the store's parking lot and asked if he could see under his coat. Although there was nothing in the coat, Helms saw a canned ham under a car next to Walker. Helms picked up the ham and handed it to another employee. The canned ham was marketed under the name "Corn King". Its retail price was $11.92.

Helms attempted to bring Walker back to the store with him. Walker objected. As Helms started to grab Walker, Walker swung and struck Helms in the head. Walker then began to run. Helms pursued Walker and tackled him to the ground. With the help of another employee, Helms restrained Walker until the police arrived.

Walker was found guilty of second-degree robbery following a jury trial. Walker filed a motion for new trial asserting the verdict was contrary to the evidence. The trial court denied the motion and sentenced Walker to an indeterminate ten year prison term.

Walker appeals. He claims the evidence is insufficient to support the robbery charge. He contends the parking lot assault did not elevate the petty shoplifting crime into the felony offense of robbery, but constituted separate misdemeanor crimes of simple theft and simple assault.

I. Scope of Review

Our review is for errors at law. Iowa R. App. P. 4. All of the evidence in the record is reviewed in a light most favorable to the State when sufficiency of evidence is challenged by a criminal defendant. *State v. Jordan*, 409 N.W.2d 184 (1987). We are bound by the jury's verdict when it is supported by substantial evidence. Iowa R. App. P. 14(f)(1). Substantial evidence is defined as evidence which could convince a rational trier of fact that defendant is guilty beyond a reasonable doubt. *Jordan*, 409 N.W.2d at 184-85.

II. Sufficiency of Evidence.

Robbery as defined in Iowa Code section 711.1 is primarily concerned with the use or threat of violence as a means of accomplishing a theft. Iowa Code § 711.1 (1995); John L. Yeager & Ronald L. Carlson, *Iowa Practice: Criminal Law and Procedure* § 252, at 68 (1979). The Iowa legislature expanded the common law

000388

definition of robbery in 1976 to include any assault which helps a defendant escape from the scene of the theft. *State v. Terry*, 544 N.W.2d 449, 451-52 (Iowa 1996). The legislature's concern for protecting the victim of a theft against violence has been recognized by upholding robbery convictions over claims the assault did not assist or further the defendant's escape. *See Terry*, 544 N.W.2d at 452; *Jordan*, 409 N.W 2d at 186. Here, defendant argues a reasonable line should be drawn to limit the "shoplifter robbery" law to cases where the theft remains in progress at the time of assault. In so doing, the harsh consequences of serving a long prison term for a petty theft would be avoided.

We do not believe our statute permits us to draw the rigid line of limitation suggested by the defendant. Theft becomes robbery when defendants commit an assault "to assist or further . . . [their] escape from the scene [of the theft]." Iowa Code § 711.1. This standard focuses on the facts of each case, not a bright line for thieves to distinguish between assault and robbery. Thus, whether an assault assists an escape from a theft scene or is a post-escape activity is a question for the jury based on the particular facts of each case. *Jordan*, 409 N.W.2d at 186. In *Jordan*, the conviction was upheld because a reasonable jury could have found the defendant was in the process of escaping when he was confronted by security personnel and attempted to break free. *Id.* The court rejected Jordan's argument that the assault was not close enough in time to the taking of the jewelry to assist his escape from the theft scene. *Id.* at 185.

Likewise, in *Terry* the court found the jury could have reasonably believed Terry had not completed his escape when he hid under an automobile to avoid detection. *Terry*, 544 N.W.2d at 452. The jury also was not required to find Terry had completed his escape when he emerged from under the car and assaulted the security officer. *Id.* at 453. The court's holding in *Terry* emphasized any assault which helps a defendant escape from the theft scene is within the terms of Iowa Code section 711.1. *Id.* at 452. Furthermore, we rejected the use of any words which would impose rigid restrictions on defining when a defendant is in the process of escaping. *Id.*

Walker attempts to distinguish *Jordan* and *Terry* by claiming the shoplifters in those cases committed an assault to further escape from a theft in progress. In contrast, Walker claims the theft was terminated in this case when Helms retrieved the dropped ham.

As in *Jordan* and *Terry*, we believe reasonable jurors could find Walker was in the process of escaping when he was confronted by the store's employees and attempted to break free. Discarding the canned ham in the parking lot outside the store did not abrogate the theft, the scene of the theft or the escape. The evidence was sufficient to find Walker guilty of second-degree robbery. Accordingly, we affirm Walker's conviction for second-degree robbery based on the commission of an assault in the furtherance of an escape from the scene of the theft of a canned ham.

AFFIRMED.

000390

All judges concur except Sackett, J., who specially concurs.

SACKETT, J. (concurring specially)

I concur specially. The majority has correctly applied the law. Defendant stole a canned ham worth less than $12. Store employees retrieved the ham. They physically attempted to force defendant back to the store and defendant threw a blow. Under current law, these facts support a conviction for robbery in the second degree and a ten-year indeterminate prison term.

Defendant is wrong in what he did. Yet, had the theft of the ham and the blow happened at different times, defendant would have been guilty of petty shoplifting and simple assault and would have faced no more than a possible fine and jail time. The legislature defines the crimes. We, as judges, are bound to follow these dictates. While the resulting sentence appears harsh on the facts before us, if changes are to be made, they need to be made by the legislature.