IN THE COURT OF APPEALS OF IOWA

No. 0-207 / 98-1630
Filed June 14, 2000

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CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

BRIAN S. ROBINSON,
Appellant.

Appeal from the Iowa District Court for Wapello County, E. Richard Meadows, Jr., Judge.

Defendant appeals the judgment and sentence entered upon a jury verdict finding him guilty of third-degree criminal mischief in violation of Iowa Code sections 716.1 and 716.5 (1997). **REVERSED AND REMANDED.**

Linda Del Gallo, State Appellate Defender, David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Denise A. Timmins, Assistant Attorney General, Victoria Siegel, County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

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VOGEL, P.J.

Brian Stuart Robinson appeals the judgment and sentence entered upon a jury verdict finding him guilty of third-degree criminal mischief in violation of Iowa Code sections 716.1 and 716.5 (1997). We find the trial court gave an incorrect marshalling instruction, which required the jury to find only a general intent rather than the requisite specific intent. Accordingly, we reverse and remand for a new trial.

Background facts. On December 5, 1997, Robinson went to Ottumwa Water Works to sign up for services. He was required to pay a past due bill, pay a fifty dollar deposit and present a photo identification. Claiming the need to produce a photo identification was "ridiculous," he became angry. He turned to leave the office, pushed his palms against the glass portion of the door with enough force to break it, and injured himself in the process. Robinson was subsequently charged and convicted of criminal mischief in the third degree.

Scope of review. We review a trial court's formulation of jury instructions for errors of law. Iowa R. App. P. 4; *see State v. Kellogg,* 542 N.W.2d 514, 516 (Iowa 1996); *see also State v. Breitbach,* 488 N.W.2d 444, 449 (Iowa 1992). A misstatement of law in a jury instruction is reversible error. *Heldenbrand v. Executive Council of Iowa,* 218 N.W.2d 628, 639 (Iowa 1974).

Jury instruction. Robinson alleges the marshalling instruction to the jury misstated the applicable law, requiring a reversal of his conviction. Iowa Code section 716.1 (1997) states:

> Any damage, defacing, alteration, or destruction of tangible property is criminal mischief when done intentionally by one who has no right to so act.

The marshalling instruction stated:

> The State must prove all the following elements of Criminal Mischief:
>
> 1. On or about the 5th day of December 1997, the defendant damaged, altered, defaced, or destroyed tangible property belonging to the Ottumwa Water Works.
> 2. The defendant *intended to do the act* which damaged, defaced, altered or destroyed the property.
> 3. When the defendant damaged, defaced, destroyed or altered the property he did not have the right to do so.
>
> If the State has proved all of the elements, the defendant is guilty, and you must then determine the degree of Criminal Mischief, as explained to you in Instruction No. 14. If the State has failed to prove any one of the elements, the defendant is not guilty. (emphasis added)

Robinson argues the plain language of the statute denotes a specific intent to cause damage to property. The instruction given to the jury allowed for a finding of general intent, that is an intent to commit the act without specifically intending the resulting damage.

The primary goal of statutory construction is to determine and give effect to the legislature's intent. *State v. Johnson*, 528 N.W.2d 638, 640 (Iowa 1995). That intent is evidenced by the words used in the statute. *State v. Adams*, 554 N.W.2d 686, 689 (Iowa 1996). In the absence of a legislative definition of a term or a particular meaning in the law, we give words their ordinary meaning. *State v. White*, 545 N.W.2d 552, 555 (Iowa 1996).

The requisite intent for criminal mischief under the same statute has previously been addressed in *State v. Chang*, 587 N.W.2d 459 (Iowa 1998). The

court found the plain language of the statute required a specific intent to cause damage rather than a general intent merely to do the act without intending the resulting harm. *Id.* at 461. "The language of this statute does not speak to acts causing damage but to the damage itself." *Id.* The State, however, contends that because the legislature did not use more specific language, it desired a general intent to attach to this crime and urges this court to reconsider *Chang.* We decline to do so. Further, we conclude the court erred in instructing the jury that the State only needed to prove Robinson intended to do the act rather than intended to cause the damage.

Robinson next contends the court erred in denying his motion for judgment of acquittal arguing the evidence was not sufficient to prove specific intent to cause damage to the door. A jury's guilty verdict is binding upon us unless we conclude the record lacks substantial evidence to support such a finding. *State v. Bush,* 518 N.W.2d 778, 779 (Iowa 1994). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Taft,* 506 N.W.2d 757, 762 (Iowa 1993). Substantial evidence does not, however, denote some elevated quantity of proof. *State v. Anderson,* 517 N.W.2d 208, 211 (Iowa 1994). Rather, the relevant question in our review of the case "is whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of facts could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

It is clear from the record that Robinson was angry, pushed the door with excess force, and caused the glass to break. There is sufficient evidence as could convince a rational juror that Robinson is guilty beyond a reasonable doubt of intending to cause the damage to the glass door.

Accordingly, we reverse and remand for a new trial.

REVERSED AND REMANDED.