

IN THE COURT OF APPEALS OF IOWA

No. 7-460 / 96-1466

000331

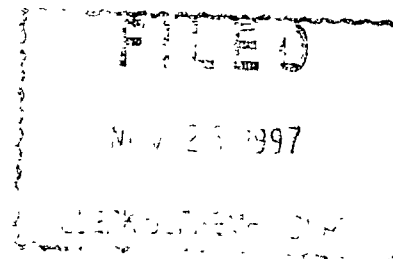
STATE OF IOWA,

Plaintiff-Appellee,

vs.

JODI ANN DEVOSS,

Defendant-Appellant.



Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

Defendant appeals from judgment and sentence entered, following a jury trial, for first-degree robbery. **AFFIRMED.**

James M. Stein of Wells, Bowman & Smith, Davenport, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, William E. Davis, County Attorney, and Kelly G. Raines, Assistant County Attorney, for appellee.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Defendant appeals from judgment and sentence entered following a jury trial for first-degree robbery. She argues there was insufficient evidence to support her knowledge or encouragement of the crime. She also argues the trial court abused its discretion in failing to grant her requested continuance three days before trial. We affirm.

Jodi Ann DeVoss was charged with first-degree robbery in violation of Iowa Code section 711.1 (1996) as a result of events which took place on the evening of January 3, 1996. Kimberly Maggio Taylor went to a bar on that evening to meet a friend about renting an apartment. She was carrying over \$450 she planned to use for the deposit and rent. At the bar, she saw an acquaintance, Nathaniel Williams, who was with his friend Kevin Watson. Taylor did not know Watson. She asked Williams for a quarter so she could play darts, but he responded she was the one with all the money and could afford the dart game on her own. Taylor eventually left the bar with Watson to get cigarettes, but instead Watson decided to drive around for awhile with Taylor in the car. Eventually, they picked up DeVoss and Williams at an intersection.

The four individuals then went to a known crack house. Williams asked Taylor for money to buy marijuana, but she refused. Watson and Williams then went inside the crack house while DeVoss and Taylor stayed in the car and conversed. Watson and Williams exited the crack house but did not return to the car. Instead,

DeVoss got out of the car and spoke with them. Taylor was the only person left in the car and started to feel uneasy. DeVoss got back into the car and Taylor asked her if she was going to be robbed. DeVoss responded in the negative, but Taylor decided it was time to hide her money. She informed DeVoss she was going to hide her money and proceeded to do so in her pockets, socks, and bra. She also told DeVoss she was going to hide money in her underwear, but changed her mind.

Watson and Williams then returned to the car. Watson was in the driver's seat beside Taylor. Williams sat in the back seat directly behind Taylor and next to DeVoss. Taylor told Watson she wanted to go home. Watson then drove to the riverfront and parked the car. Williams and Watson got out of the car and opened the trunk. Taylor was frightened she was going to be robbed, but DeVoss remained calm. The men returned to the car at which time Watson hit the automatic door locks. Williams then grabbed Taylor from behind and put a sharp object to her throat and Watson retrieved a gun from the glove box and pointed it at Taylor's head. Williams asked her for her money and told her to take it from her socks, pockets, and bra. Taylor only removed the money from one side of her bra. At that time, DeVoss whispered to Williams. Thereafter, Williams ordered Taylor to take the additional money from the other side of her bra. She was also forced to remove her pants so she could be checked for money she had placed in her underwear. Watson eventually raped Taylor, leading to additional charges against him. Taylor was able to escape

the car and later flag down a passing car, which is when the incident was reported to law enforcement officers.

During the early morning hours of January 4, 1996, law enforcement officers followed Watson to a convenience store. He was apprehended at that time and informed the officers Williams and DeVoss were at a motel. Cocaine and other drug paraphernalia were recovered from the room which had been rented by DeVoss. The police interviewed DeVoss on three different occasions. On each occasion, she gave a different version of the incident. First, she completely denied the incident. At her second interview, she admitted Williams had robbed Taylor, but claimed she was not involved. She did, however, admit they had purchased crack and went to a motel where it was used. During her third interview, she finally admitted they had stopped at a crack house and she had spoken with Watson and Williams outside the car.

The jury returned a guilty verdict against DeVoss. She appeals, claiming there is insufficient evidence to show she had knowledge of the robbery or encouraged its commission.

I. SUFFICIENCY OF THE EVIDENCE. We review challenges to the sufficiency of evidence for errors at law. Iowa R. App. P. 4; *State v. Kraklio*, 560 N.W.2d 16, 17 (Iowa 1997). In evaluating such a claim we view the evidence in a light most favorable to upholding the jury's verdict. *Kraklio*, 560 N.W.2d at 17. We give the State all reasonable inferences and presumptions the evidence will bear.

State v. Liggins, 557 N.W.2d 263 (Iowa 1996). The verdict is binding on us unless the record contains no substantial evidence to support it. *Kraklio*, 560 N.W.2d at 17. Evidence is substantial if it could convince a rational trier of fact that the accused is guilty beyond a reasonable doubt. *Id.* Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). 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. *Liggins*, 557 N.W.2d at 269. Additionally, discrepancies in testimony, in and of themselves, do not preclude proof beyond a reasonable doubt. *See generally State v. Phanhsouvanh*, 494 N.W.2d 219, 223 (Iowa 1992) (jury could adopt evidence it found credible); *State v. Forsyth*, 547 N.W.2d 833, 836 (Iowa App. 1996) (jury's function to determine credibility and resolve conflicts in evidence). A jury's assessment of credibility may only be ignored on appeal when the testimony is so impossible, absurd, and self-contradictory that it may be deemed a nullity. *See State v. Smith*, 508 N.W.2d 101, 103 (Iowa App. 1993).

We have reviewed the evidence in this case and conclude it is sufficient to show the defendant had knowledge of the robbery or encouraged its commission. It is clear from the evidence DeVoss was the only person present with Taylor when she discussed hiding her money in her pockets, socks, and bra. In addition, Taylor indicated in the presence of DeVoss she was going to hide money in her underwear, but changed her mind. Taylor never told DeVoss of this change. During the robbery,

Williams ordered Taylor to take money from her pockets, socks, and bra. After DeVoss whispered to Williams, he ordered Taylor to take money out of the other side of her bra, as well as her underwear. The evidence in this case is overwhelming to the effect that DeVoss had knowledge of the robbery or encouraged its commission. It is also clear DeVoss shared in the fruits of this robbery. *State v. Barnes*, 204 N.W.2d 827, 828-29 (Iowa 1972) (subsequent conduct is relevant only insofar as it tends to prove defendant's *prior* encouragement or participation). We therefore affirm on this issue.

II. REQUEST FOR CONTINUANCE. DeVoss's counsel requested a continuance of this matter three days prior to trial in an attempt to call Williams as a witness on behalf of the defendant. The court overruled said motion. A ruling denying a motion for continuance is discretionary and calls for a reversal only upon a showing of abuse of discretion. *State v. LaGrange*, 541 N.W.2d 562, 564 (Iowa App. 1995). Appellant counsel conceded that at the time this continuance motion was argued before the trial court Williams had been charged in this matter. Williams and his counsel had given every indication that Williams would be taking the Fifth Amendment unless immunity was granted by the State. Appellate counsel also conceded the State was opposed to granting Williams any form of immunity. These factors lead us to the conclusion the trial court did not abuse its discretion in

overruling this motion for continuance made three days prior to trial. We therefore affirm on this issue.

We have reviewed the issues raised by defendant on appeal and conclude the verdict of the jury and the decision of the trial court with regard to the motion for continuance should be affirmed.

AFFIRMED.