IN THE COURT OF APPEALS OF IOWA

No. 8-413 / 97-1548

STATE OF IOWA,

Plaintiff-Appellee,

vs.

NORRANCE ADOLPH REYERSON,

Defendant-Appellant.

FILED
AUG 28 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Cerro Gordo County, Gilbert K. Bovard, Judge.

Defendant appeals from the judgment and sentence entered upon his conviction of second-degree robbery in violation of Iowa Code section 711.3 (1997). **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Paul L. Martin, County Attorney, and Carlyle Dalen, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Streit, JJ.

000599

SACKETT, P.J.

Defendant-appellant Norrance Adolph Reyerson appeals from the judgment and sentence entered upon his conviction of second-degree robbery in violation of Iowa Code section 711.3 (1997). Defendant contends the district court erred in (1) overruling his motion for judgment of acquittal, and (2) failing to submit a claim-of-right jury instruction. We affirm.

Defendant bought a beer on February 24, 1997, at Tommy's North End Lounge in Mason City. The bartender testified defendant paid for the beer with a $10 bill, received change, and then asked the bartender if he had a $100 bill in the cash register. The bartender opened the register to show defendant the largest bill there was a $50 bill. The bartender testified defendant then came around the bar, grabbed the bartender's hair, held a pocket knife toward the bartender's throat, and screamed he was lying and had cheated defendant. Defendant subsequently released the bartender, took the $50 bill, and left the bar. Defendant was apprehended a short time later. He denied he had a $50 bill. A $50 bill was found on defendant's person after a search by the arresting officer. No knife was found.

Defendant was charged with second-degree robbery. A defense witness testified he gave defendant $300 in cash, including a $100 bill, a few days before the incident.

Defendant made a motion for judgment of acquittal contending there was not substantial evidence to support a finding beyond a reasonable doubt he intended to commit a crime. His argument was he was taking property he was under the impression he owned because he believed the bartender had cheated him by giving him change for $10 when he had given the bartender a $100 bill. Defendant contends even if there is evidence he was mistaken, this is not sufficient to show he acted with the requisite intent.

The district court overruled defendant's motion for judgment of acquittal. The jury returned a verdict of guilty and defendant was eventually sentenced for an indeterminate ten-year term of incarceration.

Defendant first contends the motion for judgment of acquittal should have been sustained. In addressing this issue, we view the evidence in a light most favorable to the State. *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981); *State v. Williams*, 179 N.W.2d 756, 758 (Iowa 1970). The jury's finding of guilt is binding upon this court unless there is no substantial evidence in the record to support it or such finding is clearly against the weight of the evidence. *Schrier*, 300 N.W.2d at 306. Substantial evidence means such evidence as could convince a rational trier of fact defendant is guilty of the crime charged beyond a reasonable doubt. *Id.* It is sufficient to raise a fair inference of guilt as to each essential element of the crime, although the evidence

must do more than raise suspicion, speculation, or conjecture. *State v. LaPointe*, 418 N.W.2d 49, 51 (Iowa 1988); *Williams*, 179 N.W.2d at 758.

There is no direct evidence of defendant's intent, though there is circumstantial evidence. Circumstantial evidence is as probative as direct evidence if it raises a fair inference of guilt and does more than create speculation, suspicion, or conjecture. *State v. Delay*, 320 N.W.2d 831, 835 (Iowa 1982); *State v. Salkil*, 441 N.W.2d 386, 388 (Iowa App. 1989). Defendant's conduct in coming behind the bar, drawing a knife, and taking money from the bartender is sufficient circumstantial evidence to prove his intent. The trial court properly denied defendant's motion for judgment of acquittal.

Defendant contends the trial court erred in failing to give a requested instruction, "You cannot take your own property." There are no facts here to support a finding defendant took his own property. Looking at the evidence in the light most favorable to defendant, he thought at the very most he was entitled to additional change from the bartender. Yet, there was no evidence the bartender had the $100 bill defendant claimed to have given him. There is no evidence to support a claim the $50 bill defendant took belonged to him.

Additionally, as the trial court theorized, the fact defendant had to take property of another was adequately covered in the jury instructions given. The second-degree robbery marshaling instruction requires the jury to find defendant had

a specific intention to commit a theft. The instructions defined "theft" as taking possession or control of the property of another, or property in the lawful possession of another, with the intent to permanently deprive the other of their property.

If the jury instructions are otherwise adequate, the failure to submit a particular instruction is not error. *See State v. Lott*, 255 N.W.2d 105, 108-09 (Iowa 1977). We affirm on this issue.

AFFIRMED.