

IN THE COURT OF APPEALS OF IOWA

No. 7-223 / 96-0880

JUN 26 1997

STATE OF IOWA,
Plaintiff-Appellee,

000675

vs.

WINSTON JORDAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul,
Judge.

Winston Jordan appeals the judgment and sentence entered upon his
convictions of first-degree robbery, second-degree robbery, two counts of conspiracy
to commit a forcible felony, and assault while participating in a felony causing serious
injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, Thomas S. Mullin, County Attorney, and Karrie S. Kelly, Assistant County
Attorney, for appellee.

Considered by Habhab, C.J., and Cady and Streit, JJ.

STREIT, J.

Winston Jordan appeals the judgment and sentence entered upon his convictions of first-degree robbery, second-degree robbery, two counts of conspiracy to commit a forcible felony, and assault while participating in a felony causing serious injury in violation of Iowa Code sections 711.1(1)(a), 708.3, 711.1(1), 711.2, 703.2 and 711.3 (1995). He argues the evidence was insufficient to support his convictions.

In the early morning hours of October 14, 1995, cousins Fernando and Jose Flores were in their car in a Sioux City 7-Eleven parking lot. Teresa Lettmon spoke to Jose and Fernando as Fernando showed her \$100-150 in cash. She agreed to have sex with them for money and told them to follow her as she drove her car to her house.

Several of Lettmon's acquaintances, including Winston Jordan and Martin Dowd, were also at the 7-Eleven. Lettmon apparently told Jordan, when Dowd was nearby, Jose and Fernando had some money.

Jose and Fernando followed Lettmon to her house. Once there, Lettmon directed them to Brenda Hough's house which was around the corner. At Hough's house Antonio Jordan came to the door, talked to Lettmon, and handed her a condom. Lettmon eventually told Jose and Fernando she had changed her mind about sex and they left the house.

As Jose and Fernando were walking to their car a person wearing a Halloween-type mask approached Jose pointing a gun and asked for “all the money.” Fernando and Jose ran away in different directions. Fernando saw Lettmon’s car following him and ran. The car driver, wearing the same mask, got out, pointed a gun at him, and demanded the money. Fernando gave the man his money and watch. The man then shot Fernando three times.

Winston Jordan, Antonio Jordan, Martin Dowd, and Teresa Lettmon were charged for their involvement in the robbery of Jose and Fernando Flores. Lettmon pleaded guilty to conspiracy to commit a forcible felony and testified against the defendant at his jury trial.

The jury found the defendant guilty of the first-degree robbery of Fernando, the second-degree robbery of Jose, two counts of conspiracy to commit a forcible felony, and assault while participating in a felony. The court sentenced him to an indeterminate term of imprisonment not to exceed twenty-five years on the first-degree robbery conviction, and two terms not to exceed ten years on the second-degree robbery and conspiracy convictions. The assault conviction was subsumed in the robbery convictions. The court ordered the sentences to run concurrently.

The defendant appeals. He argues the evidence was insufficient to establish his guilt of the offenses beyond a reasonable doubt.

I. Standard of Review. We review Jordan's claim that the evidence was insufficient to support his conviction by examining the record in the light most favorable to the State. *See State v. Terry*, 544 N.W.2d 449, 450 (Iowa 1996). We look for substantial evidence, including any inferences arising from the evidence, to support the jury's verdict. *Id.* at 451. If the verdict is supported by substantial evidence, it is binding on this court. Iowa R. App. P. 14(f)(1). Evidence that could convince a trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt is substantial evidence. *Terry*, 544 N.W.2d at 451.

II. Preservation of Error. Defense counsel made a motion for judgment of acquittal at the close of the State's evidence on each count, but did not encompass a specific sufficiency-of-evidence argument as to each offense charged. The State argues error was preserved only on the defendant's claim insufficient evidence supports the robbery charge.

Making a motion for judgment of acquittal does not preserve error where there was no reference to grounds in the district court. *See State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996). Defense counsel, upon making his motion, argued the State failed to prove the defendant was involved in the crimes "under either the aiding and abetting theory or as the principle." The State claims defense counsel's argument could apply only to the two counts of robbery, and not to the two conspiracy charges or the charge of assault while participating in a felony.

The charge of assault while participating in a felony (the robbery charge) requires the same essential elements of the robbery offense. The robbery also permeates the two conspiracy charges. We find error has been preserved as to the defendant's challenge to the sufficiency of evidence on each of his five convictions.

III. Sufficiency of the Evidence. Having concluded error was preserved on all counts, we reject the argument by Jordan there was not sufficient evidence to support the convictions. Jordan bases his claim that the evidence against him is lacking on the fact Lettmon, the State's key witness, received a plea bargain. He argues the plea bargain was so favorable to Lettmon, the bargain taints her testimony.

It is the function of the jury to sort out the evidence presented and place credibility where it belongs. *State v. Trammell*, 458 N.W.2d 862, 863 (Iowa App. 1990). It was up to the jury to determine the credibility of Lettmon's testimony. We determine there was other evidence to support Lettmon's testimony and find it credible.

Direct and circumstantial evidence are equally probative so long as the evidence raises "a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture." *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981). Three witnesses placed defendant at the 7-Eleven store and later at Lettmon's house with Martin Dowd during the early morning hours of October 14, 1995. Lettmon also testified it was the defendant who told her to take the Flores cousins to the other

house. Lettmon then decided not to have sex and walked the Flores cousins out to their car where the attempted robbery took place. Two witnesses testified defendant had been wearing a black and white checkered jacket earlier that evening—the same jacket the man with the mask was wearing while attempting to rob Jose Flores. The masked man in the checkered jacket also robbed and shot Fernando. We find there was substantial, both direct and circumstantial, evidence to support the jury verdicts finding the defendant guilty on all counts.

AFFIRMED.