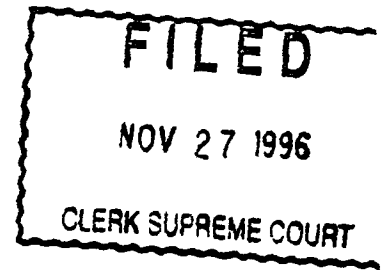


IN THE COURT OF APPEALS OF IOWA

No. 6-645 / 96-76



STATE OF IOWA,
Appellee,

vs.

MICHAEL GAGE LEWIS,
Appellant.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble,
Judge.

Michael Lewis appeals the judgment and sentence entered upon his conviction
of first-degree robbery in violation of Iowa Code section 711.2 (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Sharon R. Stevens, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney
General, John P. Sarcone, County Attorney, and Odell McGhee, Assistant County
Attorney, for appellee.

Considered by Habhab, P.J., and Streit and Vogel, JJ.

VOGEL, J.

On June 8, 1995, Hy-Vee employee Scott Giannola was working at the cigarette counter when a woman, Susan Luncsford, approached and asked for five cartons of cigarettes. Giannola gave her the cartons; however, she did not purchase them at his counter. As five cartons of cigarettes is an unusually large purchase and cigarettes are a frequently stolen item, Giannola and another store employee, Todd Hepler, tried to keep watch over Luncsford while she was in the store. They briefly lost visual contact of her and when she reappeared she no longer had the cartons of cigarettes in her shopping cart.

Giannola and Hepler followed Luncsford and confronted her in the store parking lot. They returned to the store with Luncsford and searched unsuccessfully for the cartons. Giannola and Hepler then told her a video camera had recorded her activities and they were going to call the police. Based on their conversation with Luncsford, Hepler went out to the parking lot to look for a four-door maroon-colored car in the parking lot. After he was unable to find the car, Hepler returned to the store.

A short time later Giannola, Hepler, and Luncsford were again in the parking lot. The three of them were attempting to locate the same car. Once again, they were unsuccessful in locating the car. As they were about to go back into the store, Luncsford started to try to run away and a four-door maroon-colored car came sliding up. Giannola was trying to restrain Luncsford and keep her from running away. A

man got out of the car holding a knife, and told the Hy-Vee employees to leave “his woman” alone. Giannola released Luncsford, she got into the car, and the car drove away at a high rate of speed. Giannola memorized the license plate number.

Approximately two hours later, police stopped a car in West Des Moines which matched the description and had the license plate number given by Hepler and Giannola. Neither the cartons of cigarettes nor a knife was found in the car. Defendant Michael Lewis was driving the car with two passengers. Giannola was taken to the scene where he identified Lewis as the man who held the knife in the Hy-Vee parking lot. Giannola also identified one of the passengers as Luncsford. Lewis was arrested and charged with first-degree robbery.

At the close of the State’s evidence Lewis moved for a judgment of acquittal. The motion was denied. The jury found Lewis guilty as charged. The district court denied Lewis’s motion for new trial and motion in arrest of judgment.

Lewis appeals.

The sole issue on appeal is whether there was sufficient evidence to support Lewis’s conviction for first-degree robbery. Our standard of review is for errors at law. *State v. Phams*, 342 N.W.2d 792, 795 (Iowa 1983).

We examine the record to determine if substantial evidence, together with all reasonable inferences arising from the evidence, support’s the jury’s verdict. *State v. Terry*, 544 N.W.2d 449, 451 (Iowa 1996). 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 fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.*

The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Phanhsouvanh*, 494 N.W.2d 219, 223 (Iowa 1992); *State v. Walker*, 538 N.W.2d 316, 319 (Iowa App. 1995). Circumstantial evidence is just as probative as direct evidence. *State v. Parrish*, 502 N.W.2d 1,3 (Iowa 1993); *State v. Garr*, 461 N.W.2d 171, 173 (Iowa 1990). We consider all evidence presented at trial, not just the evidence supporting the verdict. *State v. Liggins*, 524 N.W.2d 181, 186 (Iowa 1994); *State v. Constable*, 505 N.W.2d 473, 478 (Iowa 1993). A verdict is binding unless the finding is clearly against the weight of the evidence. *Terry*, 544 N.W.2d at 451; *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993); *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981).

The thrust of Lewis’s appeal is there was insufficient evidence regarding his intent to commit theft or to aid and abet Luncsford in committing theft to find him guilty of first-degree robbery. We find there was sufficient evidence of Lewis’s intent under the aiding and abetting theory presented by the State.

The State must show Lewis knew of the crime at or before its commission. *State v. Lewis*, 514 N.W.2d 63, 66 (Iowa 1994). “But such proof need not be — and

frequently cannot be -- established by direct proof. The proof may be either direct or circumstantial.” *Id.* Neither knowledge nor proximity, standing alone, is enough to prove aiding and abetting. *Id.* However, “such factors in combination with circumstantial evidence such as ‘presence, companionship, and conduct before and after the offense is committed’ may be enough from which to infer a defendant’s participation in the crime.” *Id.* (quoting *State v. Miles*, 346 N.W.2d 517, 520 (Iowa 1984)).

When Giannola testified at trial, he stated shoplifting can many times involve two or three people acting together. The co-participants will either act as decoys or will hand off the stolen merchandise one or more times in order to confuse the employees. Hepler testified he saw Lewis enter the store prior to Luncsford asking for the cartons of cigarettes. When asked on cross examination whether it could have been another person he saw, Hepler responded, “It could have been, but I don’t believe it was.” The jury was free to accept or disregard this testimony. *See State v. Ruiz*, 496 N.W.2d 789, 792 (Iowa App. 1992). In addition, the testimony indicated that, while Luncsford took five cigarette cartons from the cigarette counter, she left the store without any cigarettes. Subsequent searches for the five cartons of cigarettes were unsuccessful. The strong inference is the five cartons were handed off one or more times to one or more accomplices. As Hepler placed Lewis in the store prior to Luncsford obtaining the cigarettes, the jury could have reasonably inferred Luncsford and Lewis were accomplices.

We also find the jury could have reasonably concluded Lewis was an accomplice in the shoplifting based on Hepler's and Giannola's actions after they conversed with Luncsford. After telling Luncsford they were going to call the police, numerous searches of the parking lot were made in an attempt to locate a particular car. When a maroon four-door car came sliding up to the store, Hepler realized the car matched the description of the car they had been looking for. Lewis was identified as the driver of the maroon four-door car.

There was also significant evidence regarding Lewis's participation in the driving the getaway car. Lewis drove up to Hepler, Giannola, and Luncsford at a high rate of speed, sliding to a stop in front of them. The car Lewis was driving matched the description of the vehicle Hepler and Giannola had been looking for. Holding a knife in his hand, Lewis demanded Giannola let go of his woman. Giannola testified Lewis held the knife in a threatening manner and he was afraid. Both Giannola and Hepler were wearing Hy-Vee identification and were dressed in a manner consistent with Hy-Vee employees, with Hepler wearing a Hy-Vee store apron. After Luncsford entered the car, Lewis drove away from the scene at a high rate of speed. While Lewis attempts to argue his behavior was consistent with a person who was aiding a woman under attack, we find a jury could reasonably conclude Lewis's behavior was more consistent with someone who was knowingly helping Luncsford escape the scene of a crime.

We conclude there was substantial evidence to support the jury's verdict. We affirm Lewis's conviction of first-degree robbery.

AFFIRMED.