



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed December 17, 1987
vs.	)	372
JACK REX PIGMAN,	)	<u>7-541</u>
Defendant-Appellant.	)	87-99

Appeal from the Iowa District Court for Linn County (No. CRF 9915A),
Lynne E. Brady and William R. Eads, Judges.

Defendant appeals from his convictions of attempted burglary in the second
degree and possession of burglar tools. **AFFIRMED.**

Charles L. Harrington, Appellate Defender, and Linda Del Gallo, Assistant
Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; David L. Dorff, Assistant Attorney
General; and Jerry Vander Sanden, Assistant County Attorney, for plaintiff-
appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

PER CURIAM**373**

The defendant appeals from his convictions of attempted burglary in the second degree and possession of burglar tools, contending that the trial court erred in: (1) ruling that evidence of the nature of his prior conviction of third-degree theft was admissible for impeachment purposes; and (2) holding that a storage shed constitutes an "occupied structure" within the meaning of Iowa Code section 702.12 (1985). We affirm.

The defendant was accused of attempted burglary in the second degree and possession of burglar tools. He filed a pretrial motion in limine seeking to prevent the State from referring to a 1980 conspiracy conviction and from inquiring into the nature of a 1985 third-degree theft conviction for impeachment purposes. The trial court sustained the motion as to the conspiracy conviction but denied it as to the theft conviction. The court ruled that the State could reveal the nature of the 1985 theft conviction if the defendant did not elicit such testimony. Based on this ruling, defense counsel elicited such information on direct examination of the defendant at trial.

On September 12, 1986, the defendant filed a motion to dismiss, alleging that the storage shed which he had supposedly attempted to enter was not an "occupied structure" within the meaning of Iowa Code section 702.12 (1985), and thus his acts did not constitute attempted burglary under section 713.2. Because the parties stipulated that a person could enter the storage shed, the trial court held that it was an "occupied structure" and overruled the motion to dismiss. The jury subsequently found the defendant guilty as charged, and the trial court sentenced him to concurrent prison terms. Defendant appeals.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4.

I. We address defendant's first contention that the trial court erred in admitting evidence of defendant's prior theft conviction for impeachment purposes. He claims the prejudicial effect of this evidence outweighs the probative value.

Rulings regarding the admissibility of prior convictions to attack credibility are within the trial court's discretion and will be disturbed only when such discretion has been abused. State v. Hackney, 397 N.W.2d 723, 726 (Iowa 1986). The admissibility of evidence of prior convictions is governed by Iowa R. Evid.

609. Rule 609(a) provides:

Rule 609. Impeachment by evidence of conviction of crime.

(a) General rule. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime involving dishonesty or false statement shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime constituted a felony, aggravated misdemeanor, or other crime punishable by imprisonment in excess of one year pursuant to the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect.

Rule 609(a) closely parallels the standard first set forth in State v. Martin, 217 N.W.2d 536, 542 (Iowa 1974), that evidence of a witness's prior felony conviction is admissible if (1) the felony involved dishonesty or false statement; and (2) the judge determines that any danger of unfair prejudice does not substantially outweigh the probative value of the prior conviction, taking into account such factors as (a) the nature of the conviction, (b) its bearing on veracity, (c) its age, and (d) its propensity to improperly influence the minds of the jurors. State v. Latham, 366 N.W.2d 181, 184 (Iowa 1985). The Martin court stated:

The theory of impeachment under this section is that the moral qualities of a witness, including an accused, can throw some light on the probability of his truthfulness, because as he speaks they will influence him to be sincere or the reverse. Since present character is thus being used to throw light on the probability of speaking the truth it is necessary that the present character be proved. Because character cannot be brought into court and shown to the jury or trier of fact at the moment the witness speaks it is necessary,

for the purpose of demonstrating the witness' character for truthfulness as he speaks from the stand, to go back to his character at a prior time.

Martin, 217 N.W.2d at 542.

We find evidence of defendant's recent prior theft conviction was highly probative of defendant's credibility and properly admitted by the trial court for impeachment purposes. Theft is a crime involving dishonesty or false statement. See State v. Willard, 351 N.W.2d 516, 518 (Iowa 1984) (no error in prosecution for theft involving motor vehicle in allowing State to ask defendant whether he had ever been convicted of a felony involving stolen vehicles, since theft is a felony involving dishonesty or false statement). Defendant's theft conviction was only a year old at the time of trial. This made it particularly probative of defendant's credibility and veracity in the instant case.

In addition, we find defendant was not prejudiced by allowing the evidence of his prior conviction. The State did not elaborate on the circumstances of the prior conviction. Furthermore, the trial court submitted a limiting instruction to the jury, stating:

The defendant has admitted he has been previously convicted of a public offense.

Evidence as to the conviction of a public offense of a person is a recognized method of impeaching a witness and discrediting their testimony. However, this evidence may be used only for that purpose and no other.

It is for you to determine whether the witness has been impeached by this evidence. If you find him to be impeached, you may, but are not required to, disregard the testimony of that witness; but, you should not disregard it if the testimony is corroborated by other credible evidence or if, for any reason, you believe the testimony to be true.

Thus, we find defendant's first contention to be without merit and affirm the trial court in admitting the evidence of defendant's prior conviction.

II. We next address defendant's second contention of error by the trial court. Defendant filed a motion to dismiss arguing that the detached storage shed in question which defendant allegedly attempted to enter was not an occupied structure within the meaning of Iowa Code section 702.12 (1985), and thus defendant's acts did not constitute attempted burglary under Iowa Code section 713.2 (1985).

Iowa Code section 713.2 (1985) defines attempted burglary as a wrongful attempt to break, enter, or remain in "an occupied structure." Iowa Code section 702.12 (1985) defines an "occupied structure" as follows:

702.12 Occupied structure.

An "occupied structure" is any building, structure, appurtenances to buildings and structures, land, water or air vehicle, or similar place adapted for overnight accommodation of persons, or occupied by persons for the purpose of carrying on business or other activity therein, or for the storage or safekeeping of anything of value. Such a structure is an "occupied structure" whether or not a person is actually present. However, for purposes of chapter 713, a box, chest, safe, changer, or other object or device which is adapted or used for the deposit or storage of anything of value but which is too small or not designed to allow a person to physically enter or occupy it is not an "occupied structure."

The shed was adapted for the storage and safekeeping of property having value; i.e., a lawn tractor, snowblower, lawn trimmer, gas cans, and "a few other tools." Defendant argues that the shed was not designed to allow a person to physically enter and occupy it and thus falls within the exception in Iowa Code section 702.12. We find this argument unpersuasive: defendant admits a person could physically enter the shed, and the trial court so found.

We find the trial court did not err in overruling defendant's motion to dismiss and affirm the trial court's holding that a storage shed constitutes an "occupied structure" within the meaning of Iowa Code sections 702.12 and 713.2.

AFFIRMED.