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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed November 26, 1985 398
vs.	)	
CLIFFORD GENE HALL,	)	5-459 84-1756
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Lucas County - Jack D. Levin, Judge.

Defendant appeals from his conviction of second-degree burglary in violation of Iowa Code sections 713.1 and 713.5, and the finding of being a habitual offender in violation of Iowa Code sections 902.8 and 902.9(2). **AFFIRMED.**

Charles Harrington, Appellate Defender, and B. John Burns, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, Lona Hansen, Assistant Attorney General, and Warren L. Burge, Assistant County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

DONIELSON, J.

Defendant appeals from his conviction of second-degree burglary in violation of Iowa Code sections 713.1 and 713.5, and the finding of being a habitual offender in violation of Iowa Code sections 902.8 and 902.9(2). Defendant asserts that his conviction was not supported by substantial evidence. He also asserts that the trial court erred in denying his motion for new trial which was based on the grounds of jury misconduct.

Defendant was charged by trial information with second-degree burglary in violation of Iowa Code sections 713.1 and 713.5. The information further alleged that defendant was a habitual offender in violation of Iowa Code sections 902.8 and 902.9(2).

At trial, a tavern owner testified that on January 17, 1984 he discovered his establishment had been broken into the previous night. He stated that change had been removed from a pool table, juke box, and video game. He also stated that a cigarette rack had been emptied and a dish of marked coins taken consisted of quarters and dimes. The tavern owner identified the marked coins exchanged at a bank and cigarettes found in defendant's trailer were similar to the items taken from the tavern. He admitted under cross-examination, however, that some marked coins could have been given out in change to customers.

A bank teller testified that on January 20, 1984, a woman presented $60 to $70 worth of coins to be changed. She stated that the coins were quarters and dimes which appeared to be freshly washed. She also stated that some of the coins had been marked. The teller further testified that she reported the license number of the vehicle in which the woman departed.

According to the testimony of police officers, the vehicle in which the woman departed from the bank belonged to defendant. On January 31, 1984, officers searched defendant's trailer and found several cigarette packages.

The officers also recovered two pairs of snowmobile boots which, in the opinion of the sheriff, matched footprints in the area of the break-in.

Defendant testified that he did not commit the burglary. He admitted that he and his wife had taken a jar of change to the bank, but he explained that he received the coins as part of an exchange for a motorcycle. Defendant further claimed that he bought the seized cigarettes from a truck driver for $30.

A defense witness testified that he had given defendant $100 in coins as part of an exchange for a motorcycle. This witness indicated that the change was not limited to dimes and quarters. Another defense witness testified that he received several cartons of cigarettes from the truck driver who allegedly sold cigarettes to defendant.

At the close of State's evidence and at the close of all evidence, defendant moved for directed verdict of acquittal on grounds there was insufficient evidence to support a jury verdict. The court overruled defendant's motions. The jury then found defendant guilty of second-degree burglary.

Defendant filed a motion for new trial asserting, in part, that the jury verdict was contrary to the evidence and that the jury was guilty of misconduct during its deliberations. Defendant attached an affidavit from one of the jurors in support of the jury misconduct claim. The affidavit contained allegations that during deliberations the jury discussed the case against defendant's wife. The affidavit also contained an allegation that during deliberations a jury member stated defendant had broken into a relative's machine shed.

Prior to sentencing, the court heard testimony from several jurors. The juror who signed the affidavit testified that the statements were correct. Other jurors testified that they had no recollection of extraneous statements made

during deliberations. The court denied the motion for new trial by finding the alleged misconduct, if any, did not warrant a new trial.

Defendant claims there was insufficient evidence to support the conviction. Defendant concedes the State made a prima facie case but failed to sufficiently rebut the defense according to defendant.

I.

On appeals regarding sufficiency of the evidence, the evidence is viewed in the light most favorable to the State. State v. Doss, 355 N.W.2d 879, 878 (Iowa 1984). We may indulge in all legitimate inferences arising reasonably and fairly from the evidence. Id. A recent Iowa case noted that:

> Although [defendant's] evidence, if deemed credible by the jury, would substantiate defendants' alibi and serve to acquit defendants, we note that the jury is at liberty to believe or disbelieve the testimony of witnesses as it chooses, and give such weight to the evidence as in its judgment the evidence was entitled to receive. The very function of the jury is to sort out the evidence presented and place credibility where it belongs. (Authorities)

State v. Blair, 347 N.W.2d 416, 420 (Iowa 1984).

Our task on review is to determine if substantial evidence exists from which a rational factfinder could hold defendant guilty of the charged offense beyond a reasonable doubt. See State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). In this case such evidence exists.

Defendant offered testimony that even though his wife cashed marked coins from the tavern, defendant received such coins from a third party in exchange for a motorcycle. The tavern operator did indicate that it was not impossible for some of his marked coins to have inadvertently been circulated. Defendant also contends that even though cigarette packages were found on his premises, he bought the cigarettes from a truck driver who might have stolen the cigarettes. While defendant's explanations are not beyond the realm of

possibilities, the jury's verdict was not unreasonable especially when viewing the explanations together. The jury could have disregarded defendant's version of the facts which would have been entirely appropriate.

The record contained circumstantial evidence which, if believed by the jury, showed defendant was in Lucas and the tavern on the night of the burglary. The coins in defendant's wife's possession and cigarettes found on defendant's premises, in addition to other testimony, provided sufficient evidence for a jury to conclude defendant perpetrated the crime.

II.

Defendant also contends that juror misconduct denied him a fair trial. We disagree. The trial court has broad discretion on a motion for new trial based on juror misconduct. State v. Harrington, 349 N.W.2d 758, 761 (Iowa 1984); State v. Cuevas, 288 N.W.2d 525, 535 (Iowa 1980). The test in Iowa for jury misconduct involves a three-pronged analysis: (1) the evidence from the jurors must consist only of objective facts as to what actually occurred in or out of the jury room bearing on misconduct, (2) the acts or statements complained of must exceed tolerable bounds of jury deliberation by constituting jury misconduct, and (3) it must appear the misconduct was calculated to, and it is reasonably probable it did, influence the verdict. State v. Cullen, 357 N.W.2d 24, 27 (Iowa 1984); see also Rhiner v. City of Clive, No. 84-502, slip op. at 26-27 (Iowa Aug. 21, 1985); State v. Christianson, 337 N.W.2d 502, 504 (Iowa 1983); Harris v. Deere & Co., 263 N.W.2d 727, 729-30 (Iowa 1978).

The first prong of Cullen requires objective facts as to what occurred. A juror may not submit the factors which influenced the verdict because such facts "inhere" in the verdict. Iowa R. Evid. 606(b); State v. Rouse, 290 N.W.2d 911, 916 (Iowa 1980).

A five-member jury panel rendered the verdict against Hall. Only one juror testified that during deliberations the defendant's prior criminal activities and his wife's conviction for burglary were discussed. The other four jurors claim either that such statements were never made or that the statements were made after the jury voted. While there is disputed testimony as to whether such comments were made, we find that the comments, if made at all, were more likely made after deliberations so as to preclude any unreasonable influence the alleged comments had on the verdict. We find that the trial court did not abuse its discretion in denying the motion for new trial.

For these reasons defendant's conviction is affirmed.

AFFIRMED.