IN THE COURT OF APPEALS OF IOWA

No. 2-444 / 91-1678

FILED
OCT 08 1992
CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

JOHN G. BOWDRE,

Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Edward B. deSilva, Judge.

John Bowdre appeals his judgment and conviction, following a jury trial, for burglary in the second degree and attempted burglary. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Kevin Cmelik, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Robert P. Ewald, Assistant Attorney General, William E. Davis, County Attorney, and Hugh Pries, Assistant County Attorney, for appellee.

Heard by Donielson, P.J., and Sackett, J., and Keefe, S.J.*

Senior Judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

PER CURIAM

Defendant John G. Bowdre appeals his conviction for burglary in the second degree and attempted burglary in violation of Iowa Code sections 713.2, 713.5 and 713.6 (1989). We affirm.

A Davenport police officer responded to a call and watched defendant and another man pound on a screen door, punch out the screen and window in a vacant home, attempting to enter the house. The officer then observed the pair go to a second vacant house and try to break in the main door and windows, finally kicking out a boarded basement window in the house and entering the house through the window. Footprints revealed defendant had looked at the plumbing in the house. Leaving the house, defendant was arrested, and in his car police officers found binoculars, a flashlight, a roll of electrical tape, a propane torch, pliers and a screwdriver.

Defendant contends he should have had a judgment of acquittal because there was not substantial evidence to support the charges. A verdict will be upheld where there is substantial evidence to support the charge. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). In determining whether there is substantial evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record. See State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). We affirm on this issue.

Defendant further contends his trial counsel was not effective because his attorney did not move to have the items taken from his car removed from evidence. Defendant contends these items were not relevant after the trial court dismissed a charge of possession of burglar tools. We disagree. The fact defendant had easy access to tools to assist in breaking in a house and removing metal is clearly relevant to the issues created by the remaining charges. See State v. Plaster, 424 N.W.2d 226, 229 (Iowa 1988). The evidence is not unfairly prejudicial. See Plaster, 424 N.W.2d at 231.

AFFIRMED.