IN THE COURT OF APPEALS OF IOWA

No. 7-747 / 96-2255

000431

STATE OF IOWA,

Plaintiff-Appellee,

vs.

JESSE J. FISCHER,

Defendant-Appellant.

FILED
MAR 27 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Winneshiek County, John Bauercamper, Judge.

Defendant challenges the sufficiency of the evidence to support his conviction for second-degree burglary. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, and Andrew F. Van Der Maaten, County Attorney, for appellee.

Considered by Cady, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

This is an appeal by a defendant challenging his conviction for burglary in the second degree in violation of Iowa Code sections 713.1 and 713.5. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Jesse Fischer had previously been charged with a criminal offense. Melissa Culpepper and Jeremy Wemark had given police officers written statements in the matter and were expected to testify at the criminal trial. On May 27, 1996, Fischer threatened Culpepper at a local bar. After Wemark, who was Culpepper's fiancé, showed up, they left the bar. Fischer followed them out and smashed the windshield of Wemark's car.

Wemark and Culpepper drove home. Fischer followed. The couple's home has an enclosed entry area where they keep an air conditioner, washer, and dryer. Fischer opened the door to the entry area and walked in. He shouted more threats and then left.

Fischer was charged with second-degree burglary, tampering with a witness, and criminal mischief. A jury found him guilty of all three charges. Fischer now appeals.

Fischer contends there was insufficient evidence to support his conviction for second-degree burglary. He claims the porch area which he entered was open to the public. He believes the porch should be considered a means of access or egress from the main door of the home.

When a criminal defendant challenges the sufficiency of evidence to support a conviction, we review all of the evidence in the record in a light most favorable to the State. *State v. Garr*, 461 N.W.2d 171, 173 (Iowa 1990). We must uphold the conviction if there is substantial evidence in the record to support it. *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990).

We find there was substantial evidence in the record to support Fischer's conviction. The photographs show the area which Fischer characterizes as a porch was actually an enclosed entry area, which appears to be an addition to the original brick structure. We find this area could not be considered open to the public. Culpepper and Wemark kept several expensive items in the entry area. We also note the doorbell was outside the entry area, so there was no need for the general public to enter the area as a means of reaching the main door.

We affirm defendant's conviction for burglary in the second degree. Costs of this appeal are assessed to Fischer.

AFFIRMED.