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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

465

STATE OF IOWA,)

Plaintiff-Appellee,) Filed on May 28, 1985

vs.)

KRIS HENRY KOOPMAN,) 5-171
84-1160

Defendant-Appellant.)

Appeal from the Iowa District Court for Black Hawk County - Peter Van Metre, Judge.

Defendant appeals from his conviction of burglary in the second degree in violation of Iowa Code section 713.5 (1983). AFFIRMED.

Thomas J. Miller, Attorney General of Iowa, and Joseph Weeg, Assistant Attorney General, for plaintiff-appellant.

Charles Harrington, Appellate Defender, and John P. Messina, Assistant Appellate Defender, for defendant-appellee.

Heard by Snell, P.J., Hayden, and Sackett, JJ.

HAYDEN, J.

Defendant appeals from his conviction of burglary in the second degree in violation of Iowa Code section 713.5 (1983). On appeal defendant argues that the trial court erred in admitting evidence of his prior participation in a similar crime.

On January 16, 1984, a Waterloo business known as Electric Park Lanes was burglarized sometime after 1:45 a.m. Defendant's car was found parked nearby at the Cattle Congress grounds. Two sets of footprints were observed at the scene and the same type of footprints were found near defendant's car. Troy Trent testified that he and defendant committed the burglary. Defendant denied participation in the offense and presented an alibi defense. Over defendant's objection the trial court admitted evidence that defendant had pled guilty to burglarizing the same business in 1981.

Our review of this proceeding is on assigned error. Iowa R. App. P. 4; State v. Cuevas, 322 N.W.2d 910, 911 (Iowa Ct. App. 1982).

Evidence of a prior crime is generally inadmissible to show defendant's guilt of a later offense. State v. Walsh, 318 N.W.2d 184, 185 (Iowa 1982). Iowa Rule of Evidence 404(b) provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

In the present case the State argues that the evidence is admissible on the issue of the identity of the perpetrator of the burglary. Defendant contends that the two crimes are not sufficiently similar to make the first one relevant on this issue.

The supreme court has stated that the two crimes must be strikingly similar or involve circumstances of a unique nature. State v. Walsh, 318 N.W.2d at 186. Although the court has rejected the "signature" test, the court noted that the difference between its approach and the "signature" approach "is one of only slight degree." Id. In State v. Cott, 283 N.W.2d 324 (Iowa 1979), the defendant was

convicted of lascivious acts with a child based upon an incident in a Des Moines department store. The trial court allowed testimony of an eight-year-old girl regarding her involvement in similar incidents with defendant in Ames sixteen months earlier. Id. at 325. On appeal the supreme court held that the prior conviction was relevant and was properly admitted. Regarding the similarity of the crimes the court stated:

> In both the Ames and Des Moines incidents, the man removed his clothing and induced the little girl to touch his genitals. Also, he either removed or had the girl remove her pants and then touched the girl's pubic area. Both girls were given small amounts of money and instructed to tell their families that they had found it. Moreover, the victim of the Ames incidents also identified defendant as the assailant.

Id. at 328.

We find that the present case also has sufficient similarities between the two crimes that the prior crime is relevant to the identity of the perpetrator of the second crime. The evidence showed that the same business was burglarized each time and that both burglaries occurred in the early morning hours. In both cases defendant's car was parked on the nearly Cattle Congress grounds. The same door, the north rear door of the bowling alley, was entered both times and in both cases the same type of tools were used to pry open the door. The tools were then disposed of behind the business. In both cases all of the arcade games were broken into and money was also taken from a coin changer behind the counter. An accomplice was involved in both crimes. Although some of these factors weigh more heavily than others, we are persuaded, especially by the cars being parked in the same general location when viewed in conjunction with the other factors, that the crimes are sufficiently similar.

We are also persuaded that the trial court did not abuse its discretion in deciding that the danger of unfair prejudice created by the evidence of the prior crime did not substantially outweigh its probative value. Walsh, 318 N.W.2d at 187; Cott, 283 N.W.2d at 329.

AFFIRMED.