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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed October 27, 1981

vs.)

RONALD GENE BROWN,) 1-183/65007

Defendant-Appellant.)

Appeal from Polk District Court - Anthony M. Critelli, Judge.

Defendant appeals his conviction of second degree burglary in violation of sections 713.1 and 713.3, The Code 1979. AFFIRMED.

Thomas R. Isaac, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Lona Hansen, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Defendant appeals his conviction of second degree burglary in violation of sections 713.1 and 713.3, The Code 1979. On appeal, defendant asserts the trial court abused its discretion in refusing defendant's requested jury instruction that knowledge of a crime and proximity to the crime scene are insufficient to prove defendant aided and abetted the crime. Defendant also asserts that the evidence was insufficient to convict defendant of burglary either as a principal or as an aider and abettor. Defendant requests a new trial. Our review is limited to errors at law. Iowa R. App. P. 4. We affirm.

I.

On October 14, 1979, the Des Moines police responded to a report of a residential burglary in progress. The reporting witness observed defendant carry a black garbage sack to a yellow car, drive away, and return with the car twenty minutes later. Defendant then went to the garage and again returned to the car with a black sack. When a car approached on the street, defendant dropped the sack and began to walk west down the street. When the police arrived, stolen items from the garage were found in both the yellow car and the black garbage bag. There was no evidence that defendant actually entered the burglarized garage, but the evidence clearly shows that defendant drove the car to the scene of the crime and that he carried the black garbage bag containing stolen items to the car. The police apprehended defendant on a street near the residence and apprehended defendant's brother, Donald Brown, and another person in the burglarized garage.

At trial, defendant moved for a directed verdict, asserting that the evidence was insufficient to convict him of burglary as either a principal or as an aider and abettor. The motion was overruled.

Defendant also requested a jury instruction that "defendant's knowledge of a crime or proximity to the crime scene are insufficient in and of themselves to convict him of aiding and abetting." This instruction was refused by the trial court on grounds that it was covered in substance by instructions 13 and 15 quoted below:

> Instruction 13:
>
> The mere fact that the defendant was present at the scene of an alleged crime in and of itself is not conclusive of his guilt and is but one fact and circumstance that you can consider in determining the guilt or innocence of the defendant.

Instruction 15:

> To "aid and abet" means to knowingly assent to an act or to lend countenance or approval either by active participation in it or by some manner knowingly advising or advising or encouraging the act prior to or at the time of its commission. However, mere proximity to or presence at the scene of the crime is not sufficient.

II.

We have examined the instructions actually given and defendant's requested instruction. We conclude that the requested instruction was properly refused by the trial court because the points raised by it were substantially covered by instructions 13 and 15. State v. Harrington, 284 N.W.2d 244, 250 (Iowa 1979).

III.

In order to determine whether the evidence was sufficient to find defendant guilty of burglary in the second degree, we view the evidence in the light most favorable to the state. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). The evidence is sufficient to support a finding of guilt if a rational fact-finder could find guilt beyond a reasonable doubt. Id. at 339. We are mindful that it is for the fact-finder to determine the weight of evidence and the credibility of witnesses. Id. at 341. Both direct and circumstantial evidence are equally probative. State v. O'Connell, 275 N.W.2d 197, 205 (Iowa 1979).

We find that the evidence in this case was sufficient to support defendant's conviction. One witness observed defendant twice at the scene of the burglary carrying a garbage sack to a yellow car which was later found to contain stolen items. These facts, combined with other evidence in the record, are sufficient to affirm defendant's conviction.

AFFIRMED.