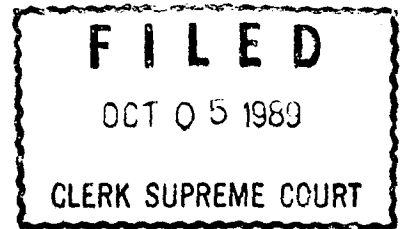


IN THE COURT OF APPEALS OF IOWA

9-398 / 88-1635



STATE OF IOWA,

Appellee,

vs.

RONALD JAMES WILMINGTON,

Appellant.

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

Defendant was tried to a jury and convicted of
second-degree burglary. He appeals. **AFFIRMED.**

William L. Wegman, State Public Defender, and Barbara
M. Anderson, Assistant State Public Defender, for the
appellant.

Thomas J. Miller, Attorney General of Iowa; Mark Joel
Zbieroski, Assistant Attorney General; William E. Davis,
Scott County Attorney; and Hugh J. Pries, Assistant County
Attorney; for the appellee.

Considered by Donielson, P.J., and Schlegel and Hayden,
JJ.

HAYDEN, J.

Defendant was convicted by a jury of second-degree burglary in violation of Iowa Code sections 713.1 and 713.5. The State's evidence was wholly circumstantial. Defendant claims the trial court erred in denying his motions for judgment of acquittal, new trial, and in arrest of judgment. Defendant alleges there was insufficient evidence to support a burglary conviction. We affirm.

Richard Permantier testified that on May 8, 1988, at approximately 10:45 p.m., he left his house on his motorcycle to run a short errand. When he left, the door to his garage, which faced an alley, was open. When he returned to the alley approximately fifteen minutes later, he saw the defendant standing next to his garage near a car in the alley. The car's trunk, driver's side front door, and passenger's side rear door were open. He noticed his lawn mower had been moved approximately five feet from the back of the garage and defendant was standing near it. Defendant testified he was in the alley looking for pop cans.

Our review is for correction of errors at law. Iowa R. App. P. 4.

The principles of law for reviewing motions on sufficiency of evidence are well established:

When reviewing the sufficiency of evidence, we view the evidence in the light most favorable to the State, including all legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. It

is necessary to consider all of the evidence and not just the evidence supporting the verdict. A jury verdict is binding upon this court and will be upheld unless the record lacks substantial evidence to support the charge. Substantial evidence means evidence which would convince a rational trier of fact that the [defendant is] guilty of the crime charged beyond a reasonable doubt.

State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). Direct and circumstantial evidence are equally probative so long as the evidence raises a fair inference of guilt and does more than create speculation, suspicion, or conjecture. State v. Wheeler, 403 N.W.2d 58, 60 (Iowa App. 1987). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16).

Albeit, the evidence before the jury in this case was circumstantial, it is no less probative or substantial than direct evidence. We hold there is substantial evidence in this record to support the charge of second-degree burglary. We will uphold a verdict where there is substantial evidence in the record tending to support it. Wheeler, 403 N.W.2d at 60.

AFFIRMED.