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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Appellee,

v.

DAVID COGHLAN,

Appellant.

Filed November 10, 1977

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Appeal from Jones District Court - Ansel J. Chapman, Judge.

Appeal from conviction of breaking and entering. Affirmed.

Nancy J. Shimanek, of Shimanek & Shimanek, of Monticello, for appellant.

Richard C. Turner, Attorney General, and Stephen E. Locher, Jones County Attorney, for appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant, David Coghlan, appeals his conviction of breaking and entering the Koob Garage near Monticello, in violation of section 708.8, The Code, challenging the sufficiency of the evidence. Specifically, defendant insists the jury should not have been permitted to infer his guilt merely upon proof of possession and sale to Katz Salvage of several radiators stolen from the garage just hours previously.

Defendant possessed recently stolen property. That possession, coupled with evidence of surrounding circumstances, justifies the inference that he committed the breaking and entering. *State v. Lewis*, 242 N.W.2d 711, 723 (Iowa 1976) (Mason, J., for a plurality of four). Before this inference may be permitted, however, the record must disclose circumstances relating to defendant's possession such that "the evidence warrants a finding beyond a reasonable doubt of the presumed fact defendant committed the breaking and entering from the proved fact he possessed recently stolen property." *Lewis*, *supra*.

Standards for appellate review of sufficiency of evidence are set out in *State v. Overstreet*, 243 N.W.2d 880, 883-84 (Iowa 1976). Viewing the evidence in the light most favorable to the State, it could be found that defendant was driving around Monticello during the night of the theft, as late as 3:00 a.m. He was with a companion; thus he would have aid for gaining entrance to the garage through a window five feet above ground level, and in handling the stolen radiators. He had some familiarity with the Koob Garage and the business it conducted because of recent errands to the garage. The old quarry area where defendant claimed he found the radiators during an early morning ride was being kept free of junk.

The circumstances surrounding defendant's possession and sale of the radiators as disclosed by the evidence permit the inference that he committed the breaking and entering. We cannot say that the jury verdict was without substantial support. Trial court did not err in overruling defendant's motions for directed verdict.

AFFIRMED.