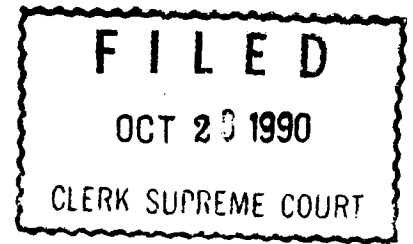


IN THE COURT OF APPEALS OF IOWA

No. 0-383 / 89-1428



STATE OF IOWA,

Appellee,

vs.

CHARLES BAILEY,

Appellant.

360

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

The defendant appeals from his conviction, following a jury trial, for first-degree burglary. He challenges the sufficiency of the evidence to support the conviction.

AFFIRMED.

Raymond E. Rogers, State Appellate Defender, and Andi S. Lipman, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General; Ann E. Brenden, Assistant Attorney General; Thomas S. Mullin, County Attorney; and Mark A. Campbell, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

DONIELSON, J.

Charles Bailey was physically assaulting his girlfriend and another woman in an apartment the two women shared when the occupants of a neighboring apartment intervened because of the noise. The neighbors allowed the two women into their apartment and then barred the door to keep Bailey out. Bailey banged on the door, insisting on being allowed entry. At the request of Bailey's girlfriend, the neighbors relented and let Bailey in. When Bailey again became violent, the neighbors asked him to leave and he complied. However, within minutes, Bailey either pushed or kicked in the door to the neighbors' apartment and assaulted one of the neighbors.

On the basis of these events, Bailey was charged with first-degree burglary. The State relied on a theory that Bailey had re-entered the neighbors' apartment without permission, and that he had done so with the intent to commit an assault. A jury found Bailey guilty of first-degree burglary. Bailey appeals from the resulting conviction. He challenges the sufficiency of the evidence to prove the elements of first-degree burglary.

I. Scope and standard of review. Our scope of review is on assigned error only. Iowa R. App. P. 4 The standard of review in challenging the sufficiency of the evidence is well established. State v. Lampman, 342 N.W.2d 77, 81 (Iowa App. 1982). We will uphold a verdict where there is substantial evidence in the record tending to support the charge. State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981).

When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the state, including legitimate inferences and presumptions that fairly and reasonably may be deduced from the evidence in the record. State v. Hall, 371 N.W.2d 187, 188 (Iowa App. 1985); 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. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981). It is necessary to consider all the evidence in the record, and not just the evidence supporting the verdict, to determine whether there is substantial evidence to support the charge. Hall, 371 N.W.2d at 188; Bass, 349 N.W.2d at 500. Substantial evidence means evidence which would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. Hall, 371 N.W.2d at 188; State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984).

Bailey contends the State failed to prove either: (1) that he lacked permission or authority to re-enter the neighbors' apartment, or (2) that he had re-entered the apartment with the intent to commit an assault. We now affirm.

II. Permission to enter. Iowa Code section 713.1 (1989) defines burglary:

Any person, having the intent to commit a felony, assault or theft therein, who, having no right,

license or privilege to do so, enters an occupied structure, . . . commits burglary.

(Emphasis added.) Any person who intentionally or recklessly inflicts physical injury on another while perpetrating a burglary commits burglary in the first degree. Iowa Code § 713.3 (1989).

Bailey asserts he had the same permission and authority to re-enter the apartment as he had upon his initial entry, which had been just minutes before. The jury was entitled to infer permission was withdrawn when Bailey was asked to leave the apartment and permission was not given for Bailey's re-entry. There is substantial evidence of defendant's lack of right, license, or privilege to re-enter the neighbors' apartment.

III. Intent to commit an assault. Iowa law clearly recognizes that "[i]ntent is rarely capable of direct proof and must usually be shown by circumstantial evidence." State v. Delay, 320 N.W.2d 831, 835 (Iowa 1982). Given that criminal intent is rarely susceptible to direct proof, the fact finder may determine intent by such reasonable inferences and deductions as may be drawn from facts proved by evidence. State v. Serr, 322 N.W.2d 96, 101 (Iowa App. 1982). In the case of burglary, intent can be gathered from what a defendant later said and from violent conduct which followed the entry. See State v. Franklin 368 N.W.2d 716, 718-19 (Iowa 1985).

Bailey argues he did not enter the apartment with the intent to commit assault. However, the evidence presented indicated Bailey had assaulted at least three people prior to his initial entry into the neighbors' apartment; he had been asked to leave the neighbors' apartment after again becoming violent; he assaulted a woman outside of the apartment; he forced his way back into the neighbors' apartment while they were attempting to close the door; and upon re-entry, Bailey again assaulted at least one person. We believe there was substantial evidence from which the jury could infer Bailey re-entered the apartment with the specific intent to commit assault.

Defendant's conviction for first-degree burglary is affirmed.

AFFIRMED.