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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

STATE OF IOWA,)
)
Appellee,)
)
vs.)
)
JOE DEAN WAHLERT,)
)
Appellant.)

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61315

Appeal from the Polk District Court - A. B. Crouch, Judge.

Defendant appeals from judgment and sentence imposed for breaking and entering.
Affirmed.

R. Earl Barrett, of Des Moines, for appellant.

Richard C. Turner, Attorney General, Raymond Sullins, Assistant Attorney General,
and Dan Johnston, Polk County Attorney, for appellee.

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

PER CURIAM

Defendant, Joe Dean Wahlert, appeals from judgment and sentence imposed upon his conviction of the offense of breaking and entering in violation of § 708.8, The Code, 1977. The issues presented concern (1) the sufficiency of the evidence to withstand defendant's motion for directed verdict; and (2) whether the trial court erred in excluding evidence of the conviction of another person for the same offense. We affirm the trial court on both issues.

I. Defendant assigns as error the denial of his motion for directed verdict which challenged the sufficiency of the evidence to create a jury question.

On appeal from a criminal conviction based on jury verdict, where the sufficiency of the evidence to support the verdict is challenged, this court views the evidence in the light most favorable to the State and accepts as established all reasonable inferences tending to support the verdict. *State v. Overstreet*, 243 N.W.2d 880, 884 (Iowa 1976). It is necessary to consider only the supporting evidence; the jury, not this court, resolves questions of fact and credibility of witnesses. *State v. Rosewall*, 239 N.W.2d 171, 173 (Iowa 1976). The finding of guilt by the jury is binding on us unless we find it is without substantial support in the record or is clearly against the weight thereof. *State v. Overstreet*, supra; *State v. Menke*, 227 N.W.2d 184, 188 (Iowa 1975). Without detailing all of the evidence pointing toward defendant as a perpetrator of the offense charged, we conclude, in application of the foregoing principles, that the record before us is sufficient to sustain the jury's verdict.

II. Defendant also claims the trial court erred by sustaining the State's objection to evidence of (1) a cover sheet from the county attorney's information showing that Ricky Vester was charged with the same breaking and entering; and (2) an order of the district court showing that Vester had pled guilty to that charge. Defendant contends these items were admissible as judicial records of the State under § 622.52, The Code, and that they provide the defendant "a defense to the crime for which he is charged." We disagree. As was stated in *State v. Rosenberg*, 238 Iowa 621, 625, 27 N.W.2d 904, 907 (1947):

"When a defendant offers proof tending to incriminate another in the crime charged, it must be confined to substantive facts that are inconsistent with his guilt..."

The items offered by defendant in this case fail to meet this test. Based upon the evidence which was presented during the trial, which included testimony involving both defendant and Vester with the break-in, the fact of Vester's conviction was not inconsistent with defendant's guilt. The State's objection to the proffered exhibits was properly sustained. See also Phillips v. State, 154 Neb. 790, 798-800, 49 N.W.2d 698, 704-05 (1951).

We have considered all issues presented and find no basis for reversal.

AFFIRMED.