



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

EDDIE JOHNSON,)

Defendant-Appellant.)

Filed November 30, 1983

3-348
83-34

Appeal from Black Hawk District Court - Dennis D. Damsgaard, Judge.

Defendant appeals his conviction of second-degree burglary in violation of Iowa Code § 713.1. **AFFIRMED.**

LuAnn White, Assistant Appellate Defender, for defender-appellant.

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

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

DONIELSON, P.J.

Defendant appeals his conviction of second-degree burglary in violation of Iowa Code § 713.1. He contends there was insufficient evidence to support his conviction and that he was given ineffective assistance of counsel when his trial attorney failed to move for a directed verdict of acquittal. We affirm.

The residence of Linda Shepard and Mark Vogel was burglarized on October 30, 1981. Money was taken, including change from two goblets on a dresser. Police investigating the crime found fingerprints on one of the goblets. Only one was good enough for comparison with police records; an identification expert testified it belonged to defendant and not to either victim. The victims testified that they had never met defendant, he had never been to their home, and was never given permission to do so. They also testified that they entertained fairly large groups of people frequently. Defendant testified and denied having ever been in the victims' home. He denied the fingerprint was his, apparently contending it was unclear. The jury found defendant guilty of burglary in the second degree. This appeal followed.

We need not determine if defendant's trial attorney was ineffective in failing to move for a directed verdict of acquittal. Even if such a motion was called for, no prejudice resulted (see Henderson v. Scurr, 313 N.W.2d 522, 524 (Iowa 1981)) because we think it is clear that there was sufficient evidence to support defendant's conviction. In determining such claims, we examine all of the evidence in the light most favorable to the State. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). In this case, there is no question that the victims' home was burglarized; the only issue was the identity of the perpetrator. The fingerprint on the goblet from which some money was taken was positively identified as belonging to defendant. Defendant does not challenge the procedure by which his print was identified on the goblet; he only denies the print was his. Since circumstantial and direct evidence are equally probative, Iowa R. App.

P. 14(f)(16), the fingerprint constitutes sufficient evidence by which a rational jury could conclude that defendant committed this burglary. The conviction is affirmed.

AFFIRMED.