FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

458

STATE OF IOWA,

Plaintiff-Appellee,

vs.

ROBERT EMORY EPPERSON,

Defendant-Appellant.

Filed August 29, 1985

5-338
84-1585

Appeal from the Iowa District Court for Black Hawk County - L. D. Lybbert, Judge.

Defendant appeals his conviction of second-degree burglary in violation of Iowa Code section 713.5. AFFIRMED.

Charles L. Harrington, Appellate Defender, and Deborah A. Goins, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Ann E. Brenden, Assistant Attorney General, for plaintiff-appellee.

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

DONIELSON, P.J.

Defendant appeals his conviction of second-degree burglary in violation of Iowa Code section 713.5. He asserts that the trial court erred in denying his motions for judgment of acquittal because insufficient evidence existed on the intent element of the charged crime. We affirm.

On April 27, 1984, the Waterloo police arrived at a local tavern in the early morning hours and noticed a broken window. The officers observed defendant lying under a pool table inside the bar. Defendant then came to the window and was handcuffed. At booking, defendant had in his possession twenty-five cents and a pack of cigarettes. Defendant apparently stated that he entered the bar in order to sleep and not to steal. He subsequently told an officer that he did not want to talk because he had "messed up."

Defendant testified that after he entered the bar he lit a cigarette, opened the cupboards and looked in, walked back in front of the cooler, and saw spotlights while walking back towards the pool table. He stated that he then crawled under the pool table.

Defendant also testified that he broke into the tavern in order to get out of the rain. Defendant admitted that he was not in a life-threatening situation and that alternative shelter was available to him. Defendant was living at his father's house which was less than one block from the tavern.

Defendant further testified that he had frequented the tavern on several occasions and knew of its operations.

The tavern owner testified that although nothing was missing, cabinet doors behind the bar were open. She also testified that juke box money was kept in the cabinet.

At the close of State's evidence, and at the close of all evidence, defendant moved for a judgment of acquittal. The motion asserted that, based on the

evidence, a rational fact finder could not find beyond a reasonable doubt proof of the necessary intent element of theft. The court overruled defendant's motion.

Defendant claims that proof of the intent element was not shown beyond a reasonable doubt by the prosecution. Defendant takes solace in the fact that defendant only opened a cabinet door and was not arrested with any stolen property. Defendant further notes he cooperated with the police upon his arrest.

Our scope of review is based on substantial evidence that could "convince a rational trier of fact that defendant is guilty beyond a reasonable doubt." State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). The evidence is viewed in the light most favorable to the prosecution. Id.

It is well-settled that the intent element is rarely shown by direct proof and is appropriately shown by circumstantial evidence. State v. Morelock, 164 N.W.2d 819 (Iowa 1969). It is also the law in Iowa that "intent to steal may be inferred from the actual breaking and entering of a building which contains things of value . . ." Id. at 822. The jury could have easily concluded that defendant's presence in the bar created an inference of intent to steal. When combined with evidence of defendant's knowledge of the tavern's operation and the opened cabinet which was where the jukebox money was kept, the jury had sufficient evidence upon which to find intent. The fact that no evidence was introduced to show something was actually stolen is of little consequence to the issue of intent. See State v. Allnutt, 158 N.W.2d 715, 716 (Iowa 1968).

Similarly, defendant does not cite any authority for the proposition that cooperation with police after the arrest negates the intent element. Thus, we are amply persuaded the jury returned a verdict which was supported by the evidence.

AFFIRMED.