

FILED

DEC 21 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-529 / 89-10

STATE OF IOWA,

Plaintiff-Appellee,

vs.

ALVIN B. MILLER,

Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County,
C.H. Pelton, Judge.

The defendant appeals from his conviction, following a jury trial, for second-degree burglary. He challenges the sufficiency of the evidence to prove that he had intended to commit a theft or other offense inside the building where he was found. **REVERSED.**

Raymond E. Rogers, State Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General; Thomas H. Tauber, Assistant Attorney General; and William E. Davis, Scott County Attorney; for the appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden,
JJ.

SCHLEGEL, J.

The defendant appeals his conviction, following a jury trial, for second-degree burglary. He challenges the sufficiency of the evidence to prove that he had intended to commit a theft or other offense inside the building where he was found.

When the manager of a dry cleaning establishment returned from a Saturday lunch break, he discovered the defendant standing in his private office. There was evidence that the defendant could only have gotten into the office from a private doorway restricted to employees, since he would have been seen by the employees on duty if he had entered through either of the public doors. Members of the public had innocently entered the building through the private doorway on other occasions, but they had never before progressed so far through private areas that they reached the manager's office.

When the manager confronted the defendant in his office, the defendant claimed he had been looking for a job. When the manager asked another employee to call the police, the defendant became irate. The defendant was then permitted to leave.

On the basis of this incident, the defendant was later charged with second-degree burglary. A jury found him guilty of that charge, and he has now appealed from the resulting conviction and sentence.

Our standard of review is well settled. A verdict will be upheld where there is substantial evidence to support the charge. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. Id. The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

The only issue before us is whether there was sufficient evidence to show intent to commit a theft or other crime while on the premises. There is no direct evidence of this intent, therefore the inferences drawn from the evidence must have been sufficient to convince a rational trier of fact the defendant is guilty beyond a reasonable doubt.

The only reasonable inference to be drawn from these facts was that the defendant was not where he was supposed to be. There was clear evidence that members of the general public had also entered through the door that defendant used. The fact that defendant could have been looking for a job makes his entry through a door marked

"employees only" even more reasonable. In addition, the fact that he was found "waiting" in the manager's office--the person most likely to do the hiring--only supports the defendant's story. The State seems to place great emphasis on the fact that the defendant did not have an application for employment in his possession and yet wants us to ignore the fact that the defendant had touched nothing in the office, even though a burglary in broad daylight would seem to require a certain amount of speed. The anger of the defendant might be a natural reaction to being accused of a crime when your only intent was to find a job.

The State is required to prove the defendant guilty beyond a reasonable doubt. We hold that there was insufficient evidence to prove the defendant guilty of second-degree burglary beyond a reasonable doubt.

REVERSED.