FILED
JUN 26 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

567

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed June 26, 1984
vs.	)	
FRED ALLEN SMITH,	)	4-204 83-1048
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Hancock County - Ray E. Clough, Judge.

Defendant appeals from his conviction for second-degree robbery, asserting that there was not sufficient evidence to support his conviction. AFFIRMED.

Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Rebecca L. Claypool, Assistant Attorney General, for plaintiff-appellee.

Considered by Snell, P.J., and Hayden and Sackett, JJ.

Defendant Fred Allen Smith appeals from his conviction of robbery in the second degree, a violation of Iowa Code sections 711.1 and 711.3 (1981). He asserts that there was not sufficient evidence to support his conviction. We affirm.

On the night of December 16, 1982, Ethel Oakes was watching television in her living room. At about 11:00, she saw someone come to her front door, but there was no knock or ring of the doorbell. She opened the inner door and asked the man what he wanted, to which he replied he was looking for his cat. He said he thought it might have gotten into her building and asked if she would open the door so he could look for it. She told him she would not let him in, but he pushed his way past her into the house. Oakes later could not describe the man because he was wearing a ski mask. She remembered the man was wearing a smooth dark single-colored coat and gloves or mittens. However, Oakes recalled an incident which occurred a few weeks before, when a man had been looking around her back yard and had asked her whether he could be allowed to look in her building for his lost cat. She could not identify the man at that time, nor could she tell if the man who forced his way into her house was the same man. Testimony of defendant's wife showed that this earlier incident had occurred and that defendant had been the man looking for his cat in Oakes' back yard, though she denied that defendant spoke to Oakes.

The man pointed what Oakes thought was a gun barrel at her, but when she tried to push it away she could feel that it was made of wood. He told her he wanted money; there was a struggle and he choked her until she passed out. When she revived, she summoned the police. Her purse, which had been in the house, was found in her car with about $46 missing. The police found footprints in the snow leading from defendant's apartment to Oakes' front door, to Oakes' car and then back to defendant's apartment. The police later found a pair of shoes in defendant's apartment that matched the footprints in size and in tread pattern.

The shoes were wet when the police examined them at 2:00 a.m. on the morning after Oakes' house was burglarized. The police also found in defendant's apartment, near the door by the wet shoes, a wooden billy club. A ski cap but no ski mask was found in defendant's apartment. Defendant's jacket was a red, white, and blue ski jacket, not a dark single-colored jacket as Oakes had described her assailant's clothing.

Upon questioning, defendant claimed he was at his girlfriend's apartment at 7:00 p.m., went home to eat supper, then went to a tavern for a few beers and some pool. He said he arrived home at about 11:00 and had stayed home alone since that time. A witness testified that defendant had been at the tavern until 10:30 or 11:00. In his wallet, defendant had three twenty-dollar bills, one ten, three fives, and seven singles. He had received a paycheck for $210 the day before. From that amount he had purchased a money order for about $121 as a truck payment and had spent some money on cigarettes, beer and pool. Defendant admitted to walking part of the route on which the suspected footprints were found but denied walking that night on the street on which Oakes lived.

The police questioned defendant's girlfriend, Lou Ann Hansen, after the incident. At that time she said she heard defendant's car start up and leave his apartment and return a few minutes later, but she did not hear defendant enter his apartment. She also told the police that she stopped at defendant's apartment at 11:00 p.m.; he was not there but his car was. Between the incident and trial, defendant and his girlfriend were married. At trial, Lou Ann Hansen Smith testified that she stopped at defendant's apartment at 11:00 or 11:05, defendant was there but asleep on the couch, so she did not awaken him and instead left. She testified she did not remember making the statements set forth above to the police.

The standard of review in challenging the sufficiency of the evidence is well established. See State v. Welton, 300 N.W.2d 157, 159-60 (Iowa 1981); State v.

Robinson, 288 N.W.2d 337, 339 (Iowa 1980). We will uphold a verdict if there is substantial evidence in the record tending to support the charge. State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981); State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981).

The evidence connecting the accused with the alleged crime is all circumstantial.

> Circumstantial evidence may be equal in value to and sometimes more reliable than direct evidence. However, where circumstantial evidence alone is relied on as to any one or more of the essential elements the circumstance or circumstances must be entirely consistent with defendant's guilt and wholly inconsistent with any rational hypothesis of defendant's innocence and so convincing as to exclude a reasonable doubt that defendant was guilty of the offense charged.

State v. Jellema, 206 N.W.2d 679, 681 (Iowa 1973).

It has been held that "[t]estimony that a single set of footprints leading to the point of entry into [the burgled premises] from defendant's home, and back toward the home, does not constitute substantial evidence reasonably tending to support the charge filed against defendant here." Id. at 682. In the instant case, however, the footprints had a distinctive tread which a wet pair of defendant's shoes also had. A billy club was found similar to the wooden object described by Oakes. The man who broke into Oakes' house used an excuse very similar to a phrase used by defendant only a few weeks before. Keeping in mind the principle that the credibility of witnesses and the weight to be given their testimony is a function of the factfinder, Robinson at 341, we find "such evidence as could convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt." Id. at 339.

AFFIRMED.