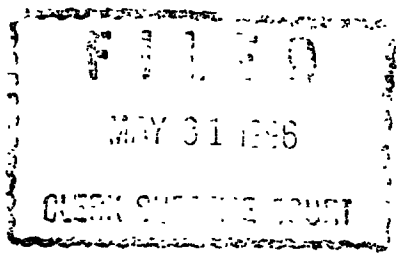
IN THE COURT OF APPEALS OF IOWA

No. 6-173 / 95-742



STATE OF IOWA,

Appellee,

vs.

TONY BERNARD DAVIS,

Appellant.

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell, Judge.

Tony Davis appeals from his conviction, following a bench trial, for third-degree burglary in violation of Iowa Code sections 713.1 and 713.6A (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Sarah E. Hennesy, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Thomas S. Mullin, County Attorney, and James J. Katcher, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Cady and Streit, JJ. Vogel, J., takes no part.

CADY, J.

The single issue presented in this appeal is whether substantial evidence supports a conviction for burglary in the third-degree. We find substantial evidence to support the verdict and affirm.

Tony Davis was charged with entering Gwendolyn Walker's home without permission and stealing a wood burning stove. Walker was not living in her house at the time because it had been rendered uninhabitable by a recent fire.

At a bench trial, Davis admitted to entering the home and removing the stove, but believed he had permission from Walker's son-in-law, Rickie Graham, to do so for the purpose of selling it on behalf of Walker. Graham testified Walker authorized him to sell the stove to Graham's former employee. This sale fell through, however, and Graham gave Davis permission to sell the stove. Davis testified he made arrangements to sell the stove to Lonnie Ellington. Ellington testified Davis gave him the stove in repayment of a debt and no money was exchanged. Walker and Davis did not have a good relationship and Walker was not welcome in the Davis home.

Davis was found guilty of third-degree burglary. He was sentenced, as an habitual offender, to a fifteen-year prison term.

Davis appeals. He claims there was insufficient evidence to support his conviction for burglary.

I. Substantial Evidence

A finding of guilt is binding on appeal unless no substantial evidence in the record exists to support it or the finding is clearly against the weight of the evidence. *State v. LaPointe*, 418 N.W.2d 49, 51 (Iowa 1988). Substantial evidence means evidence which would convince a rational trier of fact of the defendant guilt beyond a reasonable doubt. *State v. Cox*, 500 N.W.2d 23, 24 (Iowa 1993). Although all evidence is considered in applying the substantial evidence standard, not just evidence which supports the verdict, we draw all fair and reasonable inferences from the evidence which supports the verdict. *State v. Constable*, 505 N.W.2d 473, 478 (Iowa 1993). The credibility of witnesses and the weight to be given their testimony are reserved for the fact finder, not appellate courts. *State v. Watts*, 441 N.W.2d 395, 399 (Iowa App. 1989).

Davis first contends no substantial evidence exists to support a finding he entered the home without permission or authority. This claim is based on the evidence a third person, Graham, gave Davis permission to sell the stove.

The lack of right, license or privilege to enter a structure is an element of burglary which must be proven by the State. *State v. Franklin*, 368 N.W.2d 716, 718 (Iowa 1985). Constrained by our reviewing standards, however, we find substantial evidence to support a finding Davis did not have permission or authority to enter the home. The owner of the home gave no permission for Davis to enter the home and a fact finder could find the explanation offered by Davis, in light of all the evidence,

was not believable or was unreasonable. Davis was an unlikely agent for Walker. Furthermore, Davis and Walker were not friends, and she testified she did not give him permission to enter her home or sell the stove. Moreover, Ellington did not give Davis money in exchange for the stove. It is reasonable to infer Davis had no right, license or privilege to enter the home.

Davis also challenges the sufficiency of the evidence to support a finding he entered the home with the intent to commit a theft. In reviewing the sufficiency of evidence, direct and circumstantial evidence are equally prohibitive. *State v. Howard*, 404 N.W.2d 196, 197 (Iowa App. 1987). The circumstantial evidence presented in this case supports a finding Davis possessed an intent to commit theft. It is reasonable to infer Davis never intended to sell the stove on behalf of Walker, but intended to give it to Ellington in repayment of a debt.

We find substantial evidence to support the conviction for third-degree burglary. We affirm the trial court.

AFFIRMED.