IN THE COURT OF APPEALS OF IOWA

No. 8-700 / 97-1926
Filed January 27, 1999

FILED
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CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

GEORGE WASHINGTON SYKES, JR.,
Appellant.

Appeal from the Iowa District Court for Linn County, David M. Remley and Patrick R. Grady, Judges.

George Sykes, Jr. appeals from judgment and sentence entered for failing to appear and being a habitual offender. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, Denver D. Dillard, County Attorney, and Harold L. Denton, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Streit and Vogel, JJ.

STREIT, J.

George Sykes, Jr., appeals his conviction for failure to appear and for being a habitual offender. He contends there was insufficient evidence his failure to appear was wilful because he did not receive notice of the trial date. Because we find the evidence supporting Sykes' conviction substantial, we affirm.

Sykes was charged with forgery in August 1996. His trial was scheduled for October 21, 1996. The scheduling order setting the trial date was sent to Sykes' counsel. Sykes failed to appear for trial, and the court issued a warrant for his arrest. He was arrested on February 4, 1997. Sykes was charged with failure to appear and being an habitual offender. *See* Iowa Code §§ 811.2, 902.8 (1995).

A jury found Sykes guilty of the failure-to-appear charge. The court later adjudged him a habitual offender. Sykes was sentenced to an indeterminate fifteen-year prison term. Sykes appeals. He argues there was insufficient evidence he knew about the trial and, therefore, it can not be found he wilfully failed to appear.

Our standard of review for claims of insufficient evidence is well established. We review such claims for errors at law. Iowa R. App. P. 4.; *State v. Nichols,* 572 N.W.2d 163, 163 (Iowa App. 1997). A verdict of guilty is binding on appeal unless no substantial evidence in the record exists to support it, or it is clearly against the weight of the evidence. *State v. Forsyth*, 547 N.W.2d 833, 834 (Iowa App. 1996). Substantial evidence means evidence that could convince a rational trier of fact the

defendant is guilty beyond a reasonable doubt. *State v. Maghee,* 573 N.W.2d 1, 10 (Iowa 1997).

In determining the sufficiency of the evidence, we view the record in a light most favorable to the State. *State v. Milner,* 571 N.W.2d 7, 10 (Iowa 1997). All evidence is considered, not merely the evidence supporting the verdict. *State v. Walker*, 538 N.W.2d 316, 319 (Iowa App. 1995). Direct and circumstantial evidence is equally probative. Iowa R. App. P. 14(f)(16). Although a jury verdict can rest on circumstantial evidence, the evidence must raise a fair inference of guilt as to each element of the crime. *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992). Additionally, discrepancies in testimony do not, in and of themselves, preclude proof beyond a reasonable doubt. *See generally State v. Phanhsouvanh*, 494 N.W.2d 219, 223 (Iowa 1992) (jury could adopt evidence it found credible); *Forsyth*, 547 N.W.2d at 836 (jury's function to determine credibility and resolve conflicts in evidence).

Sykes claims the evidence was insufficient to show his attorney sent him notice of his sentencing hearing and, therefore, that his failure to appear was not wilful. Review of the record reveals substantial evidence, direct and circumstantial, from which a reasonable jury could conclude Sykes wilfully failed to appear at trial.

It is not disputed that trial counsel sent Sykes a letter informing him of the trial date. Sykes argues he did not receive the letter. Proof of mailing creates a presumption notice was received. *See State v. Williams*, 445 N.W.2d 408, 411 (Iowa App. 1989). Sykes challenges the court's use of this presumption in *State v. Williams,*

arguing the court relied on a civil case with a lower burden of proof, and the same presumption could not be used in a criminal case. However, the court in *Williams* relied not only upon the presumption of receipt upon proof of mailing, but also upon the circumstantial evidence indicating notice was received. We do the same here. The circumstantial evidence creates a reasonable inference Sykes received notice and was wilfully absent from his trial. Sykes failed to appear for his forgery trial on a prior occasion when he admittedly had received notice of the trial date. Prior disobedience of a court order is probative evidence of a defendant's intent to wilfully fail to appear at a later hearing regarding the same matter. *See State v. Williams*, 445 N.W.2d 408, 410 (1989). When Sykes was arrested, he had fled Iowa, stayed out of the State for a considerable length of time, and had not contacted his attorney in regard to the forgery charge.

Because we find the jury's verdict supported by substantial evidence, we affirm.

AFFIRMED.