IN THE COURT OF APPEALS OF IOWA

No. 0-080 / 98-2225
Filed April 28, 2000

FILED
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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LAVERN ALLEN DEARBORN,
Defendant-Appellant.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge.

Lavern Dearborn appeals his judgment and sentence entered upon his convictions of first-degree burglary, possession of a firearm as a felon, and fourth-degree criminal mischief in violation of Iowa Code sections 713.1, 713.3, 702.7, 724.26, and 716.6 (1997). **AFFIRMED.**

Kevin M. O'Hare of Johnson, Sudenga, Latham, Peglow & O'Hare, P.L.C., Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney General, James Detaeye, County Attorney, and Paul G. Crawford, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

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MAHAN, J.

Lavern Dearborn appeals his judgment and sentence entered upon his convictions of first-degree burglary, possession of a firearm as a felon, and fourth-degree criminal mischief in violation of Iowa Code sections 713.1, 713.3, 702.7, 724.26, and 716.6 (1997). He claims the court erred in not granting his motion for judgment of acquittal at the close of the State's case and the close of all of the evidence. Dearborn also contends he received ineffective assistance of counsel because (1) counsel failed to sever other charges from the charge of possession of a firearm as a felon or to stipulate as to the prior felony outside the presence of a jury, and (2) counsel failed to object to the introduction of three guns, ammunition, the photo line-up of him, and the photo identification of him in his jailhouse clothing. We affirm.

The State charged Lavern Dearborn with the following offenses: (1) burglary in the first degree in violation of Iowa Code sections 713.1, 713.3, and 702.7, (2) possession of a firearm as a convicted felon in violation of Iowa Code section 724.26, and (3) criminal mischief in the fourth degree in violation of Iowa Code section 716.1 and 716.6 (1997). A trial was held on all three charges and the jury returned guilty verdicts for each charge.

Dearborn was sentenced to a term of not more than twenty-five years for burglary in the first degree, fifteen years for possession of a firearm as a felon (an enhanced sentence for this charge resulting from being a habitual offender), and a fine of $250 for criminal mischief in the fourth degree. Dearborn was also

ordered to pay a surcharge, attorney fees, and court costs. The court ordered concurrent sentences. Dearborn appeals.

I. **Judgment of Acquittal.** Our review of sufficiency of evidence challenges is for correction of errors at law. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997). We will uphold the trial court's denial of a motion for judgment of acquittal if there is substantial evidence in the record to support the defendant's conviction. *State v. McPhillips*, 580 N.W.2d 748, 752 (Iowa 1998). The jury's findings of guilt are binding on appeal if supported by substantial evidence. *State v. Hopkins*, 576 N.W.2d 374, 377 (Iowa 1998); *State v. Allen*, 348 N.W.2d 243, 247 (Iowa 1984). Substantial evidence is such evidence as could convince a rational fact finder the defendant is guilty beyond a reasonable doubt. *Allen*, 348 N.W.2d at 247.

In deciding whether there is substantial evidence, we view the record evidence in the light most favorable to the State. *State v. Torres,* 495 N.W.2d 678, 681 (Iowa 1993). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). A verdict can rest on circumstantial evidence alone. *State v. Torres,* 506 N.W.2d 470, 472 (Iowa App. 1993). However, "[t]he evidence must at least raise a fair inference of guilt as to each essential element of the crime. Evidence which merely raises suspicion, speculation, or conjecture is insufficient." *State v. Casady,* 491 N.W.2d 782, 787 (Iowa 1992) (citations omitted).

Dearborn makes only one claim of error by the district court. He contends the court erred when it denied his motion for judgment of acquittal because there

was insufficient evidence to convict him on any of the three charges against him. We agree with the district court and find the evidence was sufficient.

Dearborn argues there was not enough evidence to prove certain elements of the burglary charge. He claims the evidence was insufficient to show (1) he kicked in Struve's door, (2) he had the specific intent to commit an assault, and (3) he possessed a dangerous weapon. The State contends there was sufficient evidence to prove the above. The State points to the following evidence: Struve's neighbor identifying Dearborn as being one of the two men she saw pounding on Struve's door and it was her impression the men were taking turns at the door; Struve's testimony there were two people outside his door when it was being pounded and kicked; there were two types of footprint marks on Struve's door; Struve identified Dearborn as being the person who pointed a gun at him after the door was kicked in; and two guns were found at Dearborn's residence along with another one in the truck in which Dearborn rode to Struve's apartment. There was substantial evidence to support a jury's finding of guilt on the burglary charge.

Dearborn argues the State failed to prove he knowingly possessed a firearm. We disagree. Specifically, the State points to evidence Dearborn was identified as the person holding the gun; there were two guns in his residence and one in the truck in which he rode to Struve's apartment; and Dearborn himself told a deputy sheriff he was not worried about the firearms' charge because his rights had been restored. There was substantial evidence to support the jury's finding of guilt on this charge.

With regards to the criminal mischief charge, Dearborn contends the State did not produce sufficient evidence for a conviction beyond a reasonable doubt. There was evidence Dearborn was one of the two people outside Struve's apartment door when it was being damaged and when Struve stepped out Dearborn was down the hall and had a gun pointed at him. We agree with the State the evidence was sufficient to allow the jury to infer Dearborn intended to and did cause damage to Struve's door. There was substantial evidence to support the jury's finding of guilt on this charge.

For the reasons above, the district court did not err in refusing to grant Dearborn's motion for judgment of acquittal.

II. Ineffective Assistance of Counsel. We review claims of ineffective assistance of counsel de novo. *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996).

Ordinarily we reserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct. *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997). "Even a lawyer is entitled to his day in court, especially when professional reputation is impugned." *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978). We will resolve ineffective assistance of counsel claims on direct appeal when the record is adequate to decide the issue. *State v. Arne*, 579 N.W.2d 326, 329 (Iowa 1998). However, only in "rare circumstances will the trial record alone be sufficient to resolve the claim." *State v. Rawlings*, 402 N.W.2d 406, 408 (Iowa 1987).

The crux of Dearborn's appeal is his claim of ineffective assistance of counsel. He claims he was deprived his right to effective of assistance of counsel when his trial attorney failed to (1) sever other charges from the charge of possession of a firearm as a felon or to stipulate as to the prior felony outside the presence of a jury, and (2) counsel failed to object to the introduction of three guns, ammunition, the photo line-up of him, and the photo identification of him in his jailhouse clothing.[1] We conclude the record in this case is insufficient for us to address Dearborn's claim in this direct appeal. We therefore affirm his convictions and preserve the ineffective assistance of counsel claim for possible postconviction relief action. See *State v. Bass*, 385 N.W.2d 243, 245 (Iowa 1986).

AFFIRMED.

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[1] The pictures of Dearborn are the same in both Exhibits 12 and 25, and were entered as two separate exhibits.