FILED
AUG 2 6 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed August 26, 1982 405
vs.	)	2-211 / 66939
BONNIE MAE SCOVEL,	)	
Defendant-Appellant.	)	

Appeal from Warren District Court, M. C. Herrick, Judge.

Defendant appeals her conviction of burglary in the second degree in violation of sections 713.1 and 713.3, The Code, and the sentence imposed upon her following her conviction. Defendant claims that the trial court erred in denying her request for a continuance after her co-defendant was granted a severance and continuance the afternoon prior to defendant's trial, that there was insufficient evidence to support a guilty verdict, and that the trial court abused its discretion in sentencing defendant to the maximum term. AFFIRMED.

Tim Pearson of Hyland, Laden & Pearson, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General, and M. J. Blink, Assistant Attorney General, for plaintiff-appellee.

Heard en banc.

OXBERGER, C.J.

Defendant appeals her conviction of burglary in the second degree in violation of sections 713.1 and 713.3, The Code, and the sentence imposed upon her following her conviction. Defendant claims that the trial court erred in denying her request for a continuance after her co-defendant was granted a severance and continuance the afternoon prior to defendant's trial, that there was insufficient evidence to support a guilty verdict, and that the trial court abused its discretion in sentencing defendant to the maximum term. We affirm.

Defendant and Rebecca Sweeney, along with defendant's children, drove a borrowed truck to a rural Warren county home on October 15, 1979. After looking through the garage window, defendant instructed her minor son, Tim, to climb through a window and open the garage door. When Tim was unable to open it, defendant instructed him to obtain something with which she could pry the door open. Once the door was forced open and a window pane removed, the truck was loaded with contents of the garage, including tools and welding equipment. After unloading the truck at defendant's home, a second trip was made, this time to pick up various household items. Still another trip was made later that evening by defendant and Ms. Sweeney, and by the time the evening's labors were completed, the house was virtually emptied of its contents.

Defendant claims that she and Rebecca had received permission from one Jerry Bainter to remove the items after Rebecca had paid him $70. She claims also that she did not know the items were stolen until some time in October 1980, when her ex-husband threatened to turn her in to the police authorities. Two months later, she consented to a search of her residence by a representative of the sheriff's office, at which time some of the property removed from the house was identified and seized.

Because of a schedule conflict, the trial court severed the cases and continued Ms. Sweeney's trial. Defendant's motion for a continuance on the ground that severance of the cases resulted in her counsel's being inadequately prepared to trial was denied.

After she was found guilty of burglary in the second degree by a jury, the trial court noted that she had enlisted the aid of three of her children in the activities that led to her conviction, observed that she "showed no remorse," concluded that her story was totally unbelievable, and sentenced her to the maximum term.

1. The Trial Court's Denial of a Continuance.

Under 183(A), Iowa R. Civ. P., the granting or refusal of a motion for continuance rests largely in the sound discretion of the trial court, and such discretion is very broad. State v. Kyle, 271 N.W.2d 689, 691 (Iowa 1978), citing State v. Henderson, 268 N.W.2d 173, 180 (Iowa 1978); State v. McGinnis, 243 N.W.2d 583, 586 (Iowa 1976). The action of a trial court in passing on a motion for continuance will be interfered with only where there has been a clear abuse of judicial discretion and injustice is thereby done to the defendant. State v. Kyle, supra, at 691, citing State v. Hines, 225 N.W.2d 156, 160 (Iowa 1975); In re Tomin's Estate, 260 Iowa 1129, 1132, 152 N.W.2d 286, 291 (Iowa 1967). Generally, continuances will not be granted for want of defense preparation in the absence of a showing of good excuse. State v. Kyle, supra, at 691, citing State v. Youngbear, 229 N.W.2d 728, 734 (Iowa 1975). In Youngbear, it was held that a motion for continuance filed shortly before trial was properly overruled where additional preparation of the defense for trial could have been accomplished earlier by the exercise of adequate diligence.

Defense counsel had more than two months prior to trial in which to prepare defense's strategy. Since the co-defendant had planned to testify as a witness for the defense, it is reasonable to assume that the defendant's counsel was familiar with the testimony she planned to present. The defendant suffered no substantial injustice from the trial court's denial of her request for a continuance. Hence, the trial court did not abuse its broad discretion.

II. Sufficiency of the Evidence.

In determining the sufficiency of evidence to support a guilty verdict, Iowa courts must consider all of the evidence in the light most favorable to the prosecution. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560, 573 (1979). A conviction must be supported by substantial evidence, that is, "such evidence as could convince a rational trier of fact that the Defendant is guilty beyond a reasonable doubt." State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980).

The standard of review where the sufficiency of the evidence is challenged on appeal was recently set forth by the supreme court:

> In reviewing a motion for a directed verdict based upon insufficiency of the evidence in a criminal case, we view the evidence in a light most favorable to the State. All of the evidence must be considered, State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980), and all legitimate inferences that may be deducted therefrom will be accepted. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981). A trial court's refusal to direct a verdict for a defendant will withstand challenge if there is any substantial evidence in the record tending to support the charge. State v. York, 256 N.W.2d 922, 927 (Iowa 1977). Substantial evidence means such evidence as could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. State v. Robinson, 288 N.W.2d at 339.

State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981).

Defendant contends that the evidence was not sufficient to sustain a finding that defendant intended to commit a felony, assault or theft, as required by sections 713.1 and 713.3, The Code 1979.

Intent can be inferred from the circumstances since it is seldom susceptible to direct proof. State v. Beer, 193 N.W.2d 530, 532 (Iowa 1972); State v. Hyde, 158 N.W.2d 134, 138 (Iowa 1968).

Applying these tests to all of the evidence in this case, we conclude that a rational trier of fact could have concluded beyond a reasonable doubt that the defendant had the requisite intent to commit the crime charged.

III. The Trial Court's Discretion to Impose the Maximum Sentence upon the Defendant.

If a sentence is within the statutory limit, it will not be interferred with unless the record discloses an abuse of discretion. State v. Noonan, 246 N.W.2d 236 (Iowa 1976) citing State v. Dittmar, 239 N.W.2d 545 (Iowa 1976); State v. Harvey, 236 N.W.2d 47 (Iowa 1975); State v. Summers, 219 N.W.2d 26 (Iowa 1975).

Section 901.5, The Code 1981, empowers the court to determine which of several options is authorized by law for the offense, and "of the authorized sentences, which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others." In each of the options that follow, the word "may" is employed, clearly indicating once again that the matter is within the discretion of the court. The granting of probation is a matter of grace, favor, or forebearance. It is not a matter of right. State v. Peckenschneider, 236 N.W.2d 344, 347 (1975).

> The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations. In order to have an "abuse" in reaching such determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias. . . [citing authority]. Wendel v. Swanberg, 384 Mich. 468, 185 N.W.2d 348, 351.

State v. Noonan, supra, at 237, citing State v. Warner, 229 N.W.2d 776, 783 (Iowa 1975).

The basis articulated by the court for the exercise of its discretion to sentence the defendant to the maximum term cannot be characterized as grossly violative of fact and logic, perversity of will, defiance of judgment, or the exercise of passion or bias. The trial court did not abuse its discretion. Its judgment is therefore affirmed.

AFFIRMED.