IN THE COURT OF APPEALS OF IOWA

No. 3-422 / 92-1503

FILED
OCT 05 1993
CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

000671

vs.

BRETT LITTLE,

Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge.

Little appeals from his conviction, following a bench trial, of burglary in the first degree, in violation of Iowa Code sections 713.1 and 713.3 (1991). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shari Barron, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Richard J. Bennett, Assistant Attorney General, John P. Sarcone, County Attorney, and James Ramey, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

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SACKETT, J.

Defendant-appellant Brett Little appeals from his conviction of first-degree burglary in violation of Iowa Code sections 713.1 and 713.3 (1991). The case was tried to the court who entered findings of fact consistent with the elements of first-degree burglary. We affirm.

The sole question on appeal is whether there is substantial evidence to prove beyond a reasonable doubt that defendant entered with the intent to commit a theft.

Iowa Code section 713.1 provides:

> Any person, having the intent to commit a felony, assault or theft therein, who, having no right, license or privilege to do so, enters an occupied structure, such occupied structure not being open to the public, or who remains therein after it is closed to the public or after the person's right, license or privilege to be there has expired, or any person having such intent who breaks an occupied structure, commits burglary.

Iowa Code section 713.1(1991).

Iowa Code section 713.3, in pertinent part, provides:

> A person commits burglary in the first degree if, while perpetrating a burglary, the person has in the person's possession an explosive or incendiary device or material, or a dangerous weapon, or intentionally or recklessly inflicts bodily injury on any person.

The trial court found:

> (A) On the 23rd day of March, 1992, the defendant entered the residence of Shirley Tolle.
> (B) That said residence was an occupied structure.
> (C) The defendant did not have permission or authority to enter said residence.
> (D) That said residence was not open to the public.
> (E) The defendant did so with the specific intent to commit a theft.

> (F) After the defendant entered, he intentionally and recklessly inflicted physical injury on Shirley Tolle. (Emphasis supplied).

Defendant was charged by trial information with first-degree burglary based on his alleged unlawful entry to the home of Shirley Ann Tolle. Defendant was a neighbor of Tolle and had been in her home to use the telephone.

Tolle testified that on the morning of the alleged burglary, she had come from her basement and was standing facing cupboards ready to make a sandwich when she felt something hit her on the back of her head and someone grabbed her from behind. The person tried to cover her mouth and told her to shut up. She fell backward and screamed.

Tolle also testified that she was laying on the floor and she saw defendant standing over her with a metal bar. Tolle said she grabbed the bar and screamed. She said defendant ran away and a neighbor helped Tolle and called the police. Tolle told police defendant was her assailant.

Defendant testified he went to Tolle's home and she gave him permission to use the phone. Defendant said Tolle startled him when she came out of the basement and he picked up the bar and hit her. Defendant denied he intended to commit a theft or to assault Tolle.

Defendant contends the State failed to present sufficient evidence he intended to commit a theft.

All legitimate inferences arising reasonably and fairly from the evidence may be indulged in to support a

finding of guilt. State v. Mulder, 313 N.W.2d 885, 888 (Iowa 1981). The element of intent is seldom susceptible to proof by direct evidence and often must be shown by circumstantial evidence and inferences drawn from that evidence. State v. Olson, 373 N.W.2d 135, 136 (Iowa 1985). An intent to steal may be inferred from an unlawful entry to a building which contains items of value. State v. Morelock, 164 N.W.2d 819, 822 (Iowa 1969).

Viewing the evidence in the light most favorable to the State, see State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980), a fact-finder could conclude defendant entered Tolle's home without permission with the intent to commit a theft.

We affirm.

AFFIRMED.