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DEC 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed December 30, 1981
vs.	)	
GARY D. MUMFORD,	)	1-350/63795
Defendant-Appellant.	)	

Appeal from Polk District Court - A. B. Crouch, Judge.

Defendant appeals from his conviction of burglary in the second degree pursuant to sections 713.1 and 713.3, The Code 1981. AFFIRMED.

Alfredo G. Parrish of Parrish & Del Gallo, Des Moines, for defendant-appellant.

Thomas G. Miller, Attorney General of Iowa, and Lona Hansen, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Defendant appeals from his conviction of burglary in the second degree pursuant to sections 713.1 and 713.3, The Code 1981. Defendant asserts that: (1) certain physical evidence was not properly identified before being admitted; (2) an expert opinion was irrelevant to the case and prejudicial to defendant; (3) there was not substantial evidence to support giving a jury instruction on permissible inferences from unexplained possession of stolen property; (4) there was not substantial evidence to support the verdict. Our review is limited to correction of errors at law. Iowa R. App. P. 4. We affirm.

I.

On May 31, 1978, Des Moines police officers Boggs and Flynn responded to an alarm call at My Apartment Lounge, 6224 Grand Avenue, Des Moines, Iowa. Upon their arrival, the officers inspected the premises and then saw a person run away from the building and dive into the brush along Walnut Creek. The area was searched with the aid of other police officers from both Des Moines and West Des Moines. The defendant, "wet from head to toe," was apprehended by West Des Moines officer Mahaffey.

A search of the area where defendant was found uncovered a number of items, some of which were later accepted as evidence by the trial court. The officers found a screwdriver, a knife, $183.00 in very wet bills with a receipt from the lounge, and a wet pair of leather gloves within three to four feet of the defendant. A bag of stolen articles was found twenty to twenty-five feet from where defendant had been seen diving into the brush.

At trial defendant unsuccessfully objected to the admission of certain items of evidence, to certain opinion testimony, and to jury instruction 12A. Defendant's motions for a directed verdict at the close of the state's case and at the close of all evidence were also without success. The jury returned a verdict of guilty and defendant was sentenced to confinement for up to ten years on October 31, 1978. Defendant filed a delayed appeal, with permission, on June 11, 1980.

II.

Defendant first asserts that the trial court erred in admitting certain items[1] into evidence over defendant's objection that a proper foundation had not been established

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1 The items include one pair of leather gloves, a phillips head screwdriver, and a stainless steel knife.

for their admission. Defendant argues that the chain of custody in this case was not sufficient, and thus the foundation for admission of these items was not proper. We disagree.

The decision to admit evidence is within the discretion of the trial court and an appellate court will only reverse for an abuse of that discretion. State v. DeBerg, 288 N.W.2d 348, 351 (Iowa 1980). The foundation required for admission of physical evidence varies depending upon the character of the evidence. State v. Grady, 201 N.W.2d 493, 495 (Iowa 1972). A continuous chain of custody need not be shown for the admission of solid objects such as tools and clothing because such evidence is less susceptible to tampering. Id. The items objected to here were not susceptible to tampering, so a complete chain of custody was not required. We find that it was not an abuse of discretion for the trial court to admit them as exhibits.

III.

Defendant's second assertion is that the trial court erred by admitting opinion testimony, to the effect that someone wearing gloves would leave no fingerprints, over his objection that a proper foundation had not been established. Expert opinion testimony is admissible if it will aid the jury on some factual issue in the case. State v. Galloway, 275 N.W.2d 736, 741 (Iowa 1979). In this case, such testimony would help to explain the absence of fingerprints. The admission of such evidence lies in the sound discretion of the trial court, State v. Brewer, 247 N.W.2d 205, 213 (Iowa 1976), and we find no such abuse in this case to justify reversal. The admission of opinion testimony is therefore affirmed.

IV.

Defendant's third assertion is that the trial court erred by giving jury instruction 12A on unexplained possession of stolen property. We disagree and affirm. The trial court has a duty to instruct juries on the law applicable to the facts as disclosed by the evidence, and must instruct if evidence is admitted which supports some involved issue. State v. Ritchison, 223 N.W.2d 207, 211 (Iowa 1974). The fact that some items of evidence, which were identified as stolen, were found within three to four feet of defendant's hiding place and others were found within twenty to twenty-five feet was sufficient to allow the trial court to give instruction 12A to the jury. It was then up to the jury to determine possession.

V.

Defendant's final assertion is that the trial court erred by refusing to direct a verdict in favor of the defendant. After review of all the evidence in the light most favorable to the state, State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981), we find that there is substantial evidence supporting the verdict to 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 defendant's conviction is therefore affirmed.

AFFIRMED.