

IN THE COURT OF APPEALS OF IOWA

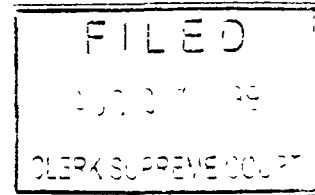
No. 1999-211 (9-435) / 98-2040

Filed August 27, 1999

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FREDDIE O'DELL,
Defendant-Appellant.



Appeal from the Iowa District Court for Cerro Gordo County, Bryan H. McKinley, Judge.

Freddie O'Dell appeals from his conviction for attempted burglary in the second degree. **AFFIRMED.**

F. David Eastman of Eastman Law Office, L.L.C., Clear Lake, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, and Paul L. Martin, County Attorney, for appellee.

Considered by Streit, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Freddie O'Dell appeals from his conviction for attempted burglary in the second degree. O'Dell challenges the sufficiency of the evidence to support his conviction and claims his right to due process was violated by the district court's use of the uniform jury instruction on reasonable doubt. We affirm.

Nancy Hennigar was teaching an evening class in the basement of LaJames College on December 3, 1997. She and her students heard a loud noise coming from the first floor level. The noise, which could be heard over a radio and the buzz of a small drill, sounded like "boards breaking." Hennigar went upstairs to investigate and could hear voices inside the school. She called the police immediately. Mason City police lieutenant Richard Jensen responded. He approached the building and saw a male suspect run from the alley. O'Dell's co-defendant, Chad Hutzell, was subsequently apprehended. Jensen returned and observed O'Dell exit the building. O'Dell was taken into custody and the police seized a white backpack outside the door which contained two hammers and a torch. Fresh pry marks were observed on the door and wood chips were lying on the ground.

O'Dell was charged with burglary in the second degree and possession of burglar's tools. He testified at trial he was trying to find his girlfriend, Brenda Blong, and had knocked loudly on the door. He further testified he was familiar with the beauty school since his girlfriend had been a student there. The jury returned a verdict

of guilty to the lesser offense of attempted burglary in the second degree. He was acquitted of the charge of possession of burglar's tools. O'Dell appeals.

I. SUFFICIENCY OF THE EVIDENCE. The standard of review is for errors at law. *State v. Phams*, 342 N.W.2d 792, 795 (Iowa 1983). A jury's guilty verdict is binding upon us unless we conclude the record lacks substantial evidence to support such a finding. *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993). Substantial evidence does not, however, denote some elevated quantity of proof. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994). Rather, the relevant question in our review of the case "is whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of facts could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). Circumstantial evidence is just as probative as direct evidence. *State v. Parrish*, 502 N.W.2d 1, 3 (Iowa 1993); *State v. Garr*, 461 N.W.2d 171, 173 (Iowa 1990). We consider all the evidence at trial, not just the evidence that supports the verdict. *State v. Liggins*, 524 N.W.2d 181, 186 (Iowa 1994). A verdict is binding unless the findings are clearly

against the weight of the evidence. *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981).

O'Dell contends his acquittal on the charge of possession of burglar's tools indicates there was insufficient evidence on the element of intent. We disagree. O'Dell admits he was attempting to enter the building at the time of the police report. He claims, however, he was knocking on the door trying to find his girlfriend. The evidence is clear Brenda Blong had been a student at LaJames but had completed her course work some six months earlier. The jury apparently did not believe his testimony he thought she was there getting a haircut. In addition, O'Dell admitted he had been previously convicted of burglary and he was familiar with the layout of the building and the routine of the business. We have carefully reviewed the record and conclude the jury's verdict was based on sufficient evidence. We therefore affirm on this issue.

II. JURY INSTRUCTION. O'Dell alleges Iowa Criminal Jury Instruction No. 100.10 violates his right to due process by failing to adequately explain the State's burden of proof. We find no merit to this claim. *Victor v. Nebraska*, 511 U.S. 1, 22, 114 S. Ct. 1239, 1251, 127 L. Ed. 2d 583, 595 (1994); *State v. McFarland*, 287 N.W.2d 162, 163 (Iowa 1980); *State v. McGranahan*, 206 N.W.2d 88, 91-92 (Iowa 1973). We therefore affirm on this issue.

AFFIRMED.