

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Plaintiff-Appellee,

vs.

CHARLES L. SMITH,

Defendant-Appellant.

Filed April 21, 1981

1-003
63594**FILED**

APR 21 1981

CLERK SUPREME COURT

Appeal from Scott District Court. L. D. Carstensen, Judge.

Defendant appeals from his conviction for burglary in the second degree in violation of section 713.3, The Code 1979. **AFFIRMED.**

J. E. Tobey, III, of Tucker & Associates, Bettendorf, Ia., for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa and Jeanine Freeman, Assistant Attorney General, for plaintiff-appellee.

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

PER CURIAM

Defendant, Charles Smith, appeals from his conviction for burglary in the second degree in violation of section 713.3, The Code 1979. We affirm. Our review is on error assigned. Iowa R. App. P. 4.

Smith argues certain testimony should not have been admitted as it constituted hearsay. The testimony was offered by a security guard at the burgled store and concerned persons authorized to be in the store after hours. Smith argues that without the hearsay evidence the other evidence was insufficient to establish that he had no right, license or privilege to be upon the premises.

Assuming without deciding the evidence of authorized persons was hearsay, we find no merit in Smith's request for reversal. Smith, by his own sworn testimony, claimed to be too intoxicated to know whether he had permission to be in the store, but admitted he had never been employed at the business and assumed he had no permission to be there. This evidence was sufficient to carry the burden of proof on this element of offense.

We affirm the conviction.

AFFIRMED.