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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	February 26, 1985
vs.	)	
MARK ALLAN BRANCHFIELD,	)	4-558 84-843
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Des Moines County - William S. Cahill, Judge.

Defendant appeals from his convictions of two counts of second-degree burglary, in violation of Iowa Code sections 713.1 and 713.5 (1983), and two counts of second-degree theft, in violation of Iowa Code sections 714.1(1) and 714.2(2) (1983). He asserts that there was not sufficient evidence of the intent element of each offense to support his convictions. AFFIRMED.

Charles L. Harrington, Appellate Defender, and Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Mickey W. Greene, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Snell, JJ.

Defendant appeals from his convictions of two counts of second-degree burglary in violation of Iowa Code sections 713.1 and 713.5, and two counts of second-degree theft in violation of Iowa Code sections 714.1(1) and 714.2(2). He asserts that there was not sufficient evidence of the intent element of each offense to support his convictions. We affirm.

On October 6, 1983, a police officer saw defendant Mark Allan Branchfield riding a silver Yamaha motorcycle. The officer did a radio check of the license number and learned that the motorcycle was registered to the Archer Motor Company. Later, the officer saw defendant walking in the alley near Archer Motors. He lost sight of defendant and then saw the "red glow" of taillights inside Archer Motors. As he moved to investigate, someone drove a silver Oldsmobile out of the alley. He shined his flashlight at the driver and saw that it was defendant. He asked defendant to stop. Defendant, however, refused; he drove the car past the officer and around the block, double-parking it in front of two taverns. He left the car and ran through one tavern into the other. The officer followed defendant and found him sitting at the bar with a glass of beer. His eyes were watery and bloodshot, his breath had a strong alcohol odor, and his speech was slightly slurred. Also, his clothes were torn and dirty, and he had scrapes on his face and stomach. The officer arrested him for public intoxication.

Subsequent investigation by police revealed that a window had been broken out of an overhead door at Archer Motors and that a motorcycle and a car matching the descriptions of those operated by defendant had been stolen. The motorcycle was found by a dumpster in the alley by Archer Motors; it was damaged on one side. The key to the motorcycle was found on the floor of the police car in which defendant had been transported. Defendant was charged with two counts of second-degree criminal mischief, two counts of second-degree theft, and two counts of second-degree burglary.

Defendant was tried to a jury. His defense was intoxication; he testified that he is an alcoholic, that he has "blackout spells" when he drinks, that the last event he clearly remembered from October 5-6, 1983, was ordering a beer and a shot of peppermint schnapps at one of the taverns, and that he had not intended to steal either the motorcycle or the car from Archer Motors.

The jury acquitted the defendant on the criminal mischief charges but convicted him on the theft and burglary charges. Defendant has appealed.

In reviewing the sufficiency of the evidence, we consider the evidence in a light most favorable to the State, drawing all reasonable inferences in favor or the verdict. State v. Blair, 347 N.W.2d 416, 421 (Iowa 1984). Direct and circumstantial evidence are equally probative; however, the evidence presented "must have a fair inference of guilt and do more than create speculation, suspicion, or conjecture." State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981).

In order to convict the defendant of burglary in the second degree, the State must show he entered Archer Motor Company with the intent "to commit a felony, assault or theft therein." Iowa Code § 713.1 (1983). In order to prove the defendant was guilty of theft, it is necessary to show he took possession or control of the vehicles "with the intent to deprive [Archer Motors] thereof." Iowa Code § 714.1 (1983).

We believe the evidence establishes the requisite intent for both burglary and theft. Circumstantial evidence would indicate that the defendant broke into Archer Motors. The building had been locked at the time of the alleged crime and a window had been broken in an overhead door. Defendant was seen in an alley near the building and was also seen driving both vehicles. The specific intent to steal can be inferred "from the actual breaking and entering of a building which contains things of value." State v. Clay, 213 N.W.2d 473, 480 (Iowa 1973).

The defendant argues that there was no intention to permanently deprive the owner of the vehicles since the defendant left the motorcycle and Oldsmobile a

short distance from Archer Motor Company. We are unpersuaded by this argument. The mere fact that the vehicles were found in close proximity to the business would not necessarily establish that defendant lacked the intent to permanently deprive. A reasonable conclusion from the evidence is that the defendant only abandoned the motorcycle temporarily. He retained the key to the motorcycle and arguably intended to return later after moving the automobile. There is also sufficient evidence for the jury to conclude that the defendant only stopped driving the automobile in an attempt to elude the police. Viewing the evidence in a light most favorable to the State, it is apparent that there was sufficient evidence to support the jury's conclusion.

AFFIRMED.