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CLERK SUPREME COURT

IN THE IOWA COURT OF APPEALS

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
STEVEN J. KRAMER,)
Defendant-Appellant.)

Filed January 28, 1987

178

6-494
86-415

Appeal from Iowa District Court for Dubuque County (No. 16026) - R. J. Curnan, Judge.

The defendant appeals from his convictions, following a jury trial, of two counts of attempted burglary in the first degree, possession of burglar tools, carrying weapons, and being an habitual offender. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and B. John Burns, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Bradley V. Black, Assistant Attorney General, and Timothy J. Gallagher, Assistant Dubuque County Attorney, for plaintiff-appellee.

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

PER CURIAM

Following a jury trial, defendant Steven J. Kramer was convicted of two counts of attempted burglary in the first degree in violation of Iowa Code sections 713.1, 713.2 and 713.4, possession of burglar's tools in violation of sections 713.1 and 713.7, carrying weapons in violation of section 724.4, and of violating the habitual offender statute, Iowa Code section 902.8. The defendant appeals from his conviction, asserting that the trial court erred in overruling his motion to dismiss in which he alleged that the State failed to present sufficient evidence establishing that he harbored the intent to commit a theft or the intent to use the burglar's tools in perpetration of a burglary. We affirm.

The principles governing our review of an attack levied against the sufficiency of evidence are well established. We view the evidence in the light most favorable to the State. State v. Mulder, 313 N.W. 2d 885, 888 (Iowa 1981). We must consider all of the evidence, and we may indulge all legitimate influences arising reasonably and fairly therefrom in support of the jury's verdict. Id. The verdict is binding if it is supported by substantial evidence. State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980).

In State v. Erving, 346 N.W.2d 833, 836 (Iowa 1984), the supreme court set forth the following rule governing the sufficiency of evidence concerning the element of intent:

> Intent is a state of mind difficult of proof by direct evidence. It may, however, be established by circumstantial evidence and by inferences reasonably to be drawn from the conduct of the defendant and from all the attendant circumstances in the light of human behavior and experience.

(quoting State v. Allnut, 261 Iowa 897, 905-06, 156 N.W.2d 266, 271 (1968)). Applying this rationale, the court in Erving held that the intent to steal may be inferred from an attempted breaking and entering of a building. State v. Erving, 346 N.W.2d at 836 ("The reason for this rule is that experience teaches

that, in the majority of cases of unlawful breaking and entering, the act is done with the intent to steal."); see also State v. Morelock, 164 N.W.2d 819, 822 (Iowa 1969).

Similarly, we think that the record in the instant case contains credible evidence from which the jury could infer both the defendant's intent to steal and his intent to use the burglar's tools in perpetration of a burglary. The record discloses that at approximately 8:00 p.m. on the evening of September 25, 1985, the defendant was observed by the State's witness, Brian Munson, walking on the grass between a duplex located at 490 West Locust Street in Dubuque and a residence located at 508 West Locust. Munson then observed the defendant pushing against the doors and windows of the duplex. The defendant then disappeared and went to the rear of the building. Shortly thereafter, he reappeared and again tried to open the doors and windows. When Munson approached the defendant and asked him what he was doing, the defendant stated that he was looking for a man named Michael McDonald. Munson then observed that the defendant was carrying a "cheater bar", or a small crowbar. In addition, Munson noticed that the defendant had in his possession a knife which was approximately eight to ten inches long. Munson notified the police and the defendant was arrested later that night. The arresting officers noticed that the defendant's shoes were soaked through and that the pattern on the bottom of his shoes matched an unusual pattern left in a footprint at the scene. Munson positively identified the defendant as the man he had seen earlier that evening. The defendant initially denied having been at the scene.

At trial, although the defendant admitted that he was the man Munson had observed, he argued that he was simply looking for McDonald and had become lost. The record discloses that McDonald in fact lived at 409 West Locust. The decision of whether or not to believe the defendant's version

of the facts was a matter resting squarely within the province of the jury. See State v Sheffey, 234 N W 2d 92, 96 (Iowa 1975), see also State v. Erving, 346 N W 2d at 835 We think that the record contains substantial evidence supporting the jury's conclusion that the defendant was in the area for the purpose of committing a burglary Moreover, we think that the evidence is sufficient to establish the element of intent, and we conclude that the trial court committed no error in overruling the defendant's motion to dismiss.

AFFIRMED.