



IN THE IOWA COURT OF APPEALS

STATE OF IOWA

)

Plaintiff-Appellee

)

vs.

)

KEVIN JOHN HAYS,

)

Defendant-Appellant.

)

Filed May 26, 1981

Appeal from Muscatine District Court. Nathan Grant, Judge.

Defendant appeals his conviction of second-degree burglary in violation of sections 713.1 and 713.3, The Code. AFFIRMED.

Douglas E. Johnston, Muscatine, Ia., for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Merle Wilna Fleming, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals his conviction of second-degree burglary in violation of sections 713.1 and 713.3, The Code. He asserts that the evidence was insufficient to support trial court's judgment of guilty. We affirm.

Defendant was charged by information on July 26, 1979 with second-degree burglary. After trial to the court on October 16, 1979, the court found him guilty of the crime charged. He was sentenced to ten years in prison, but the sentence was suspended and he was placed on probation. This appeal followed.

The trial court's finding that defendant was guilty is binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). "Substantial evidence" is defined as "such evidence as could convince a rational trier of fact that defendant is guilty beyond a reasonable doubt." State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). In determining the sufficiency of the evidence to support a finding of guilty, we consider all of the evidence in the light most favorable to the prosecution. Id. at 340. For these purposes, direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16).

Applying these principles, we conclude that the evidence is sufficient to support the judgment. Herman Baker is a veterinarian in Wilton, Iowa; his clinic is adjacent to his residence. During the evening of July 9, 1979, Edward Peeters, Baker's neighbor, saw a light-colored 1973-74 Hornet automobile with a loud muffler drive slowly past, stop momentarily in front of the clinic and move on. The clinic burglar alarm, connected to go off in Baker's bedroom but not in the clinic itself, sounded. Baker woke up, looked out his window and saw two people standing by the front door of the clinic; they then left in a "fast walk or slow run." Both Baker and Peeters heard the neighbors' dog begin to bark in an excited manner; Peeters then saw two men running from the clinic and behind some nearby houses. He then heard a car with a loud muffler start up which sounded like the car he had observed before.

Within minutes the 1973-74 Hornet came into view, and Peeters decided to follow it. He eventually followed the car to a parking lot near the clinic and the Bakers' residence where defendant and Lesley Kruse, the driver, got out of the car. He noticed that defendant was barefoot and was limping. During this same period, Baker and a Deputy Whiteacre noticed that the door to the clinic had been kicked in and saw a partial footprint on the door apparently made by a well-worn tennis shoe. After

obtaining Kruse's permission, Whiteacre searched the car and found a pair of well-worn tennis shoes under the passenger's seat. The right shoe appeared to match the footprint on the door.

We conclude that this evidence is sufficient to convince a rational finder of fact that defendant was guilty beyond a reasonable doubt of breaking into the clinic. It is not disputed that the clinic was "an occupied structure or other place where anything of value is kept." See section 713.1, The Code. The circumstantial evidence connecting defendant with the kicking in of the clinic door is enough to justify the conclusion that he did the breaking.

Defendant also claims that there was no evidence showing that he had the requisite specific intent; i.e. "to commit a felony, assault or theft therein." Section 713.1. "Intent is seldom susceptible of direct proof, and necessarily it may be shown by circumstantial evidence," State v. Morelock, 164 N.W.2d 819, 822 (Iowa 1969); intent may also be inferred from the facts and circumstances. State v. Beer, 193 N.W.2d 530, 532 (Iowa 1972); State v. Schmidt, 239 Iowa 440, 445, 30 N.W.2d 473, 475 (1948). We think a reasonable inference of defendant's intent to commit theft may be made in this case. The trial court could have concluded that defendant and Kruse first looked over the clinic and surrounding area, tried to break in by kicking in the door and were thwarted in their further plans only by the sound of barking dogs. We find the evidence was sufficient to support defendant's conviction. We therefore affirm the judgment.

AFFIRMED.