IN THE COURT OF APPEALS OF IOWA

No. 1999-134 (9-350) / 98-1584
Filed July 23, 1999

STATE OF IOWA,

Plaintiff-Appellee,

FILED
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vs.

DANIEL ROBERT HUNTER,

Defendant-Appellant.

Appeal from the Iowa District Court for Lee County, John C. Miller, Judge.

Defendant appeals following his conviction for third-degree burglary in violation of Iowa Code sections 713.1 and 713.6A (1997), and possession of burglar tools in violation of section 713.7 (1997). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Michael Short, County Attorney, and Bruce C. McDonald, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Mahan, and Zimmer, JJ.

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ZIMMER, J.

Defendant Daniel Hunter appeals from a judgment convicting him of third-degree burglary in violation of Iowa Code sections 713.1 and 713.6A (1997) and possession of burglar tools in violation of Iowa Code section 713.7 (1997). He contends the district court erred in failing to grant his motion for judgment of acquittal based on insufficiency of the evidence. We affirm both convictions.

I. Background Facts and Proceedings. During the early morning hours of May 17, 1998, Hunter was drinking at Jeanne's Lounge in Keokuk. After the bar closed, he asked a bartender to give him a ride to his truck where he intended to spend the night. His vehicle was located in a motel parking lot. Next door to the motel was a Texaco station and an attached car wash.

Some time later, Lois Geltz, who lives adjacent to the Texaco station, heard loud intermittent banging coming from the car wash. Because the noise was unusual, she called the police. Officer Tim Watson responded to the call.

As Officer Watson pulled into the parking lot of the Texaco station, he could hear sounds he described as someone beating on a metal object. He also heard what sounded like an iron bar dropping to the concrete. As he walked in the direction of the noise, he was able to observe a man inside the car wash through a large glass door to the building. That door opened to a soap mixing room located between two bays of the car wash. A change machine which was built into the wall was located next to the door of the room. The face of the change machine protruded through the wall

to the outside of the building. The rear of the machine was inside the soap mixing room.

Officer Watson checked two doors to the building and found both were locked. He then waited until other officers arrived. After the station manager arrived to let police inside, officers found Hunter hiding inside the building. When discovered, Hunter had to be forced to the ground because he refused to follow police commands. Hunter was arrested.

Upon further investigation, the police found the change machine marked by obvious signs of tampering. The police seized as evidence a pair of pliers that were still wedged into the machine as well as two screwdrivers and a crowbar. All tools were found inside the confines of the soap mixing room.

When in custody at the police station, Hunter admitted ownership of the pliers but denied ownership of the screwdrivers and crowbar. It was later determined the screwdrivers and crowbar were, in fact, owned by the Texaco station. While filling out documents at the police station, officers asked Hunter if he felt ill. He responded he did because he got caught holding a crowbar. Hunter claims this statement was made in jest.

At his trial, Hunter denied possessing or using pliers or other tools while inside the station. He claimed he entered the building because he needed to find a bathroom. The station manager was unsure how Hunter gained entry. He acknowledged the possibility an employee inadvertently left the front door unlocked. The manager also stated he had not met Hunter prior to May 17, 1998. Evidence produced during trial

also showed Hunter did not have permission to enter the station and that unlike the car wash bays, the room entered by defendant was not open to the public.

As a result of the events that evening, Hunter was charged with third-degree burglary and possession of burglar tools. Guilty verdicts were returned on both charges on July 22, 1998, following a jury trial. Hunter was sentenced on both counts on August 24, 1998. This appeal followed.

II. Sufficiency of the Evidence. Hunter preserved his challenge to the sufficiency of the evidence to support his convictions by motion for judgment of acquittal. The scope of our appellate review from the denial of such a motion is well established:

> [R]eview of a substantial evidence claim is on error. [An appellate court is] bound by the jury verdict unless the verdict is not supported by substantial evidence. In making this determination, [the court will] consider all the evidence in the light most favorable to the State. We accept all legitimate inferences that may fairly and reasonably be deducted from the evidence. Evidence is substantial if it could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. Direct and circumstantial evidence are equally probative. Evidence, whether direct or circumstantial, must however do more than create speculation, suspicion or conjecture.

State v. Martin, 587 N.W.2d 606, 607 (Iowa App. 1998) (quoting *State v. Sanborn*, 564 N.W.2d 813, 815 (Iowa 1997))

Hunter contends the evidence regarding whether he committed third-degree burglary and possessed burglar tools is insufficient to raise a fair inference of guilt. He argues the evidence does nothing more than create speculation, suspicion, or conjecture. We disagree.

The State charged Hunter with burglary in the third degree and possession of burglar tools. To convict Hunter of burglary in the third degree, the State had to establish the following elements by proof beyond a reasonable doubt: (1) the defendant entered the Texaco station; (2) the station was an occupied structure; (3) the defendant did not have permission or authority to enter into the structure; (4) the structure was not open to the public; and (5) the defendant entered the Texaco station with the specific intent to commit a theft. *See* Iowa Code §§ 713.1, .6A.

To convict Hunter of possession of burglar tools, the State had to prove the following elements by proof beyond a reasonable doubt: (1) the defendant had in his possession certain tools; and (2) he intended to use those tools to commit a burglary. *See* Iowa Code § 713.7.

We conclude the elements of both offenses are established by the record. Hunter was found in a private room in a business which he had no permission to enter. Entry was made in the early morning hours when Hunter had no legitimate business in the building. He was hiding inside the business when police officers arrived and had to be forcibly subdued. The station manager testified the portion of the premises where Hunter was found was not open to the public. A coin machine inside the building had been damaged and showed obvious signs of tampering. Pliers were found wedged in the machine. Both Lois Geltz and Officer Watson testified they heard the noise of someone banging on an object. Officer Watson believed the sound to be similar to a heavy metal object striking metal. He also testified he heard the distinctive sound of a metal bar striking cement just as he saw Hunter move away

from a door. At the police station, Hunter admitted possessing pliers and holding a crowbar.

The surrounding circumstances strongly support the inference Hunter was in the middle of a burglary when apprehended by police officers. The evidence could convince a rational fact finder Hunter is guilty beyond a reasonable doubt of burglary in the third degree and possession of burglar tools.

AFFIRMED.