

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 28 1985

391 CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed May 28, 1985

vs.

)

ROYCE TARUELLA ARNOLD,

)

5-153

84-936

Defendant-Appellant.

)

Appeal from the Iowa District Court for Black Hawk County - Dennis D. Damsgaard, Judge.

Defendant appeals from his conviction of second-degree burglary, as an habitual offender, in violation of Iowa Code sections 713.5, 902.8, and 902.9(2).
AFFIRMED.

Charles L. Harrington, Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Marcia Mason, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

DONIELSON, J.

Defendant appeals from his conviction of second-degree burglary, as a habitual offender, in violation of Iowa Code sections 713.5, 902.8, and 902.9(2). He asserts that his conviction is not supported by substantial evidence. We affirm.

On October 27, 1983, the owner of Don's T.V. in Waterloo discovered that someone had broken into his place of business and taken approximately fifteen Curtis Mathes television sets. The only unsecured entry point found after the burglary was a broken window five feet above the ground which measured twenty-one inches by thirty-three inches. Scratch marks and dents were found outside of a rear door. The crime could have been committed anytime between 9:00 p.m., when the owner left his store, and 5:30 a.m., when he returned.

That same morning at approximately 5:00 a.m., a police officer attempted to stop a car in which the defendant, Royce Arnold, was a passenger. A chase ensued and Arnold jumped from the car. Law enforcement officers eventually stopped the vehicle and found five of the stolen television sets.

The defendant was charged by trial information with second-degree burglary and with being an habitual offender; he was tried before the court. Testimony revealed that a pry bar found in the car did not match the marks found on the rear door of the burglarized store. No fingerprints of the defendant were found inside the store.

Defendant's shoes and a photograph depicting a shoe print on one of the stolen television sets found in the back portion of the car were introduced into evidence. The court had an opportunity to observe the similarities between the shoe print and the soles of defendant's shoes.

Frank Irby, the driver of the stopped car, testified that he gave defendant a ride after observing him hitchhiking at approximately 4:00 a.m. This witness stated that defendant was not carrying anything at the time he was picked up.

The witness further testified that he did not see a television in the front seat of his car or in defendant's lap.

Defendant moved for entry of judgment of acquittal at the close of State's evidence and at the close of all evidence. The court overruled defendant's motion.

Arnold appealed from the resulting conviction on the ground of insufficiency of the evidence.

In considering the defendant's claim, we view the evidence in a light most favorable to the State, including all legitimate inferences and presumptions which may fairly and reasonably be deducted from the record. A verdict of guilty is binding unless there is no substantial evidence in the record to support it. Substantial evidence is that which could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. State v. Nunn, 356 N.W.2d 601, 603 (Iowa Ct. App. 1984). Circumstantial evidence is considered to be as probative as direct evidence. Iowa R. App. P. 14(f)(16). In light of these principles, we conclude that there was sufficient evidence to support the conviction.

Contrary to defendant's assertion, we believe evidence would support a finding that Arnold was in possession of the stolen property. Five of the stolen television sets were found in the car in which the defendant was a passenger. One was located in the front seat where the defendant had been sitting. Irby testified that he had not seen a television set in the front seat. However, the trial court is certainly at liberty to accept or reject this testimony.

The defendant further argues that possession of stolen property is not enough to support a conviction and the State has shown no other circumstances connecting Arnold to the burglary. We recognize the principle that bare proof of possession, although raising an inference of guilt, is not in itself sufficient to support a conviction. State v. Lewis, 242 N.W.2d 711, 723 (Iowa 1976). However, contrary to defendant's assertion, we believe there is adequate evidence of

surrounding circumstances to support the conclusion that Arnold committed the breaking and entering.

As the trial court indicated, the fact that the defendant jumped out of the car in a wooded area is evidence of flight to avoid apprehension; this would support an inference of guilt. State v. Brokaw, 342 N.W.2d 864, 865 (Iowa 1984). Additionally, the defendant's shoe print was found on one of the stolen television sets located in the back portion of Irby's car, which would indicate that he had assisted in stealing the sets. Other evidence reflects that it would have required at least two people to remove the television sets from the store. Thus, it would be reasonable to infer that both parties found in possession of the stolen property had been involved in the crime.

Viewing this evidence in a light most favorable to the State, it is apparent that a rational trier of fact could conclude that Arnold was guilty of burglary. Accordingly, the conviction is affirmed.

AFFIRMED.