FILED
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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, )

Plaintiff-Appellee, ) Filed October 21, 1980

vs. )

ROBERT RAY DASEKE, III, ) 0-287
63770

Defendant-Appellant. )

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Appeal from Linn District Court - John L. Hyland, Judge.

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

Robert C. Gross, Cedar Rapids, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Julie F. Pottorff, Assistant Attorney General; Eugene Kopecky, Linn County Attorney; and Lew Eells, Assistant Linn County Attorney; 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 claims there was insufficient evidence of his intent to commit theft, a necessary element of second-degree burglary. We affirm.

In the early morning hours of March 27, 1979, Cedar Rapids police were called to an apartment complex after a tenant heard an intruder in the basement. The police discovered a basement window broken out, broken glass on the basement floor and blood on the walls and appliances. Defendant was found asleep on the staircase landing. One officer detected an odor of alcohol and observed defendant had a cut finger and hand. Defendant testified he had many drinks the night before and does not recall anything about breaking into the building.

Defendant claims the evidence is insufficient to support a finding of his intent to commit theft. He argues his acts indicated a state of drunkenness and nothing else. In examining the sufficiency of the evidence to support a guilty verdict, we review all the evidence in the light most favorable to the prosecution. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

We think the evidence is sufficient to support defendant's conviction. Defendant's contention that no intent to commit theft was specifically proved is answered by State v. Fox, 159 N.W.2d 492, 494 (Iowa 1968): "[t]he general rule is that in the absence of explanation, the jury may infer from the fact of his breaking and entering that his intent was to commit larceny." Quoting State v. Woodruff, 208 Iowa 236, 243, 225 N.W. 254, 256 (1929). With respect to defendant's claim that he was intoxicated, the trial court properly instructed the jury that this would be a defense only if his condition was such as to prevent him from forming the requisite intent. On the evidence presented, we agree that this issue was for the jury and should not have been determined as a matter of law. We find no error and affirm the conviction.

AFFIRMED.