IN THE COURT OF APPEALS OF IOWA

No. 1-350 / 10-1166
Filed June 15, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEFFREY WAYNE BOWEN,
Defendant-Appellant.

Appeal from the Iowa District Court for Mahaska County, James Q. Blomgren, Judge.

A defendant appeals his judgment and sentence, challenging the sufficiency of the evidence to convict him of one of the charged counts of third-degree burglary and contending the court did not adequately state its reasons for imposing consecutive sentences. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David A. Adams, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, and Rose Anne Mefford, County Attorney, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Huitink, S.J.* Tabor, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VAITHESWARAN, J.

Oskaloosa experienced a string of burglaries between late 2009 and early 2010. The State charged Jeffrey Bowen with seven counts of third-degree burglary and a jury found him guilty of four. On appeal, Bowen (1) challenges the sufficiency of the evidence supporting the finding of guilt on one of those counts and (2) contends the district court did not state reasons to support the imposition of consecutive sentences.

I. Sufficiency of the Evidence

Bowen contends the evidence was insufficient to support the finding of guilt on the fourth burglary count. As a preliminary matter, we question whether Bowen's motion for judgment of acquittal was specific enough to preserve error on this challenge, as counsel made no mention of the elements he was contesting. *See State v. Truesdell*, 679 N.W.2d 611, 615 (Iowa 2004) ("To preserve error on a claim of insufficient evidence for appellate review in a criminal case, the defendant must make a motion for judgment of acquittal at trial that identifies the specific grounds raised on appeal."); *Top of Iowa Co-op v. Sime Farms, Inc.*, 608 N.W.2d 454, 470 (Iowa 2000) ("In view of the range of interests protected by our error preservation rules, this court will consider on appeal whether error was preserved despite the opposing party's omission in not raising this issue at trial or on appeal."). We elect to bypass this error preservation concern and proceed to the merits. *See State v. Taylor*, 596 N.W.2d 55, 56 (Iowa 1999) (bypassing error preservation problem and proceeding to the merits of the appeal).

The fourth burglary count required the State to prove that Bowen "entered the business of Jeff Smith Law Office on or about January 2, 2010." Additionally, the State had to prove "[t]he business was an occupied structure," Bowen "did not have permission or authority to enter the business," "[t]he business was not open to the public," and Bowen entered the business "with the specific intent to commit a theft."

Bowen does not dispute that a burglary occurred at this location. He simply argues there was insufficient evidence to prove that he was the person who committed the burglary.

A reasonable juror could have found the following facts. A glass door to the Smith Law Office was shattered and various items were stolen, including a large jug of change, a guitar, and an amplifier. According to Smith, the amplifier was "unusual." It was programmed to automatically jump to a specific program, and Smith stated he would have been able to identify it as his in about "[t]wo seconds." The items stolen from Smith's office were later discovered in Bowen's apartment.

Bowen maintains his mere possession of the stolen items is not sufficient to support the finding of guilt. He relies on *State v. Lewis*, 242 N.W.2d 711, 723 (Iowa 1976), in which the majority wrote:

> In our opinion bare proof of possession of property recently stolen does not permit, as a matter of law, the rational juror to conclude beyond a reasonable doubt the possessor committed the break-in since possession alone could well support an inference of guilt for other crimes besides burglary.

The court stated that more would be required than a showing of possession:

> [T]here must be evidence in the record relating to the surrounding circumstances for the jury to consider in determining whether the evidence warrants a finding beyond a reasonable doubt of the presumed fact defendant committed the breaking and entering from the proved fact he possessed recently stolen property.

Lewis, 242 N.W.2d at 723.

More is present in this record. The Smith Law Office shared a common entryway with the office of an investment firm which was also burglarized on the same day. The glass in the locked doors to both offices was shattered and drawers in both offices were upended. Bowen does not challenge his conviction on the burglary count relating to the investment firm break-in.

While this additional evidence is admittedly circumstantial, a reasonable juror could have surmised that the timing and similar modus operandi of both break-ins together with the discovery of the stolen items in Bowen's apartment amounted to substantial evidence to support the finding of guilt on the fourth count. *See State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984) (setting forth standard of review); *State v. Hall*, 371 N.W.2d 187, 190 (Iowa Ct. App. 1985) (finding evidence of circumstances surrounding crime sufficient to infer break-in).

II. Reasons for Consecutive Sentences

The district court sentenced Bowen to fifteen years on each of the four burglary counts, with counts 3 and 4 to run concurrently to one another and counts 5 and 6 to run concurrently to one another but consecutive to the first two sentences. Bowen contends the district court did not state reasons for running the two sets of sentences consecutively. *See* Iowa R. Crim. P. 2.23(3)(*d*) (requiring the court to state its reasons for selecting a particular sentence); *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000). To the contrary, the court stated:

> Mr. Bowen, it's my responsibility to let you know the reasons for this particular sentence. I considered the information contained in the county attorney's pre—the Presentence Investigation Report.
>
> I have considered your age, the—particularly considered the extent of your criminal history, what appears to be an inability to comply with the terms and provisions of probation or supervised release, which you have had in prior cases.
>
> I have also considered the number of felony convictions contained in your criminal history; and I recognize that, as Mr. Stream has indicated, the newest is about 12 years old, but nonetheless, the nature of these offenses as well as the—your age and criminal history are the factors I considered to support a penalty of incarceration with the mandatory minimums.

The court gave these reasons after articulating the entire sentencing plan, including the imposition of consecutive sentences. *See State v. Johnson*, 445 N.W.2d 337, 343–44 (Iowa 1989). We conclude the court adequately stated its reasons for imposing consecutive sentences.

We affirm Bowen's judgment and sentences.

AFFIRMED.