

**IN THE COURT OF APPEALS OF IOWA**

No. 3-040 / 10-2009  
Filed March 13, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**RONALD RAY CURRY,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire,  
Judge.

Defendant appeals his conviction for burglary in the third degree as a  
habitual offender. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson,  
Assistant Appellate Defender, for appellant.

Ronald R. Curry, Mount Pleasant, appellant pro se.

Thomas J. Miller, Attorney General, Michael L. Bennett, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Gerald Feuerbach, Assistant  
County Attorney, for appellee.

Considered by Eisenhauer, C.J., Tabor, J., and Huitink, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

**HUITINK, S.J.****I. Background Facts & Proceedings.**

At about 3:00 a.m. on July 14, 2010, the silent alarm at Simonez Car Wash in Davenport, Iowa, went off. Police officers responded to the scene and found the glass in the front door of the carwash building had been broken. Inside the door, on top of the broken glass, was a car polisher and a CD case. Inside the manager's office and the detail manager's office, the drawers and cabinets had been opened up, and it looked like someone had been rifling through them. The officers found Ronald Curry under a grate in a trench that ran through the building to collect water and soap.

Curry was charged with burglary in the third degree, in violation of Iowa Code section 713.6A(1) (2009). The State also alleged Curry was a habitual offender. The State claimed he broke into the car wash with the specific intent to commit theft.

Curry filed a pro se motion to determine his ability to participate in the proceedings. He asserted he had been injured while at the Scott County Jail and it would be too painful for him to properly participate in the proceedings. After a hearing on September 15, 2010, at which Curry appeared by video conference, the district court entered a ruling that Curry would provide his defense counsel with a release for medical records in order to allow his attorney to assess whether a further hearing was needed.

On October 6, 2010, Curry filed a document stating he would not agree to allow defense counsel to examine the Scott County Jail medical records to

determine the extent of his injuries. A hearing was held on October 13, 2010, which Curry did not attend. The district court ruled:

Defendant refused to participate in the hearing and chose to remain in the Scott County Jail. . . . The Court finds that based on a lack of evidence the Court will rule against the defendant's motion to have outside medical care and opinion in that regard concerning his participation since there is no evidence of his medical condition at this time.

Curry's jury trial commenced on October 25, 2010. That morning the court and counsel had a conference with Curry by telephone. Defense counsel told him, "I really, really want you being here." Curry stated it would be too painful for him to attend the trial. When asked if he was waiving his right to be present for the trial he responded, "I'm waiving. I'm waiving." Curry was advised of his right to testify at the trial, and he waived that right as well. Special accommodations were offered to Curry, such as the use of a wheelchair or crutches, but Curry declined and said, "Just go ahead and do it without me." The trial proceeded with Curry participating by telephone.

The jury found Curry guilty of third-degree burglary, and that he was a habitual offender. Curry participated in the sentencing hearing by telephone. The court sentenced him to a term of imprisonment not to exceed fifteen years. He now appeals his conviction.

## **II. Sufficiency of the Evidence.**

Curry contends there is insufficient evidence in the record to show he committed third-degree burglary. In particular, he claims there is no evidence he had the intent to commit theft. He points out that nothing was taken from the carwash, and none of the business's property was found on his person.

We review claims challenging the sufficiency of evidence in a criminal case for the correction of errors at law. *State v. Dalton*, 674 N.W.2d 111, 116 (Iowa 2004). We will uphold the jury's verdict when it is supported by substantial evidence. *State v. Hagedorn*, 679 N.W.2d 666, 668 (Iowa 2004). "Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." *State v. Quinn*, 691 N.W.2d 403, 407 (Iowa 2005). We view the evidence in the light most favorable to the State, "including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence." *State v. Carter*, 696 N.W.2d 31, 36 (Iowa 2005).

The element of intent is seldom shown by direct proof. *State v. Hennings*, 791 N.W.2d 828, 837 (Iowa 2010). A jury may infer intent from the normal consequences of a party's actions. *State v. Evans*, 671 N.W.2d 720, 724-25 (Iowa 2003). "Intent may be shown by circumstantial evidence and the reasonable inferences drawn from the evidence." *State v. Acevedo*, 705 N.W.2d 1, 5 (Iowa 2005).

From the evidence presented at the trial, the jury could reasonably infer Curry broke into the carwash with the intent to commit theft. The evidence showed the glass doors of the building had been broken and Curry had entered the building and opened cabinets and drawers in two offices. See *State v. Sangster*, 299 N.W.2d 661, 663 (Iowa 1980) (noting intent to commit theft may be inferred by surreptitious entry and other circumstances). Also, Curry had placed a car polisher and CD case beside the door. See *State v. Montes*, 445 N.W.2d 407, 407-08 (Iowa Ct. App. 1989) (finding sufficient evidence for a jury to

infer intent to commit theft when items from home were found stacked on a kitchen table). Curry did not have permission to be in the building and was found hiding under a grate in a floor trench. See *State v. Bone*, 429 N.W.2d 123, 126 (Iowa 1988) (noting evidence of concealment from officers may be considered by a jury as a factor to show consciousness of guilt). We conclude there was sufficient evidence in the record to support Curry's conviction for third-degree burglary.

### **III. Presence at Trial.**

In a pro se brief, Curry contends he was denied his constitutional right to be present during the trial. He contends that while the court offered him alternatives to relieve his symptoms of pain, these alternatives were not sufficient to permit him to participate. He claims because he was not offered an alternative that would have permitted him to participate, he was essentially denied his constitutional right to be present for the trial.

A defendant has a constitutional and statutory right to be present in every stage of trial. U.S. Const. amend. VI; Iowa R. Crim. P. 2.27(1); *State v. Smith*, 573 N.W.2d 14, 19 (Iowa 1997). A defendant, however, may voluntarily waive that constitutional right. See *State v. Mensah*, 424 N.W.2d 453, 455 (Iowa 1988) (noting defendant could voluntarily waive his right to be present for plea proceedings). Our review on this constitutional issue is de novo. *Smith*, 573 N.W.2d at 19.

Our review of the record shows Curry clearly waived his right to be present during the jury trial. Before the trial, defense counsel questioned Curry on the record about whether he wanted to seek a continuance to allow his

medical condition to improve, although this alternative would have required Curry to waive his right to a speedy trial. Curry declined to seek a continuance. Curry also made the decision not to permit his defense counsel to see his medical records from the Scott County Jail, and therefore there was no medical evidence to support his claim he could not attend the trial. The court noted, "The report that we have received from both the jail nurse and the jail doctor indicates that there is nothing physically wrong with you that would prevent you from coming to court."

On the morning of the trial, defense counsel informed Curry on the record that steps could be taken to arrange for his attendance at the trial:

DEFENSE COUNSEL: We can make accommodations. That's what I've been trying to tell you for over a month now. They've offered a wheelchair. They've offered to try to talk you into using a cushion. You're going to be allowed to stand or sit if you need to for your pain situation.

. . . .  
They're willing—they've been ready, willing, and able to make accommodations for you since the September 15 hearing . . . but we needed to know what accommodations you needed or what accommodations you wanted, and you haven't been able to provide that for us that I know of.

DEFENDANT: Well, I can stand or I can sit, but I can't lay down in a trial.

DEFENSE COUNSEL: Well, it's real simple, Mr. Curry. You can come on over here and we can try to figure out what you need. If you need a break every hour, I'm sure that is something we can make arrangements. If you want to ask permission to stand as you need to, I'm sure those arrangements can be made. I want you here at the trial. If you're choosing not to be here without us being able to figure out what alternative accommodations, I just want to make sure that you understand that's your choice. No one is forcing you not show up today.

DEFENDANT: I can't stand and I can't sit. Just go ahead and do it without me.

Multiple accommodations were offered to Curry. In addition, Curry was questioned about what accommodations he needed to be able to attend the trial, and he did not request any specific accommodations. Moreover, it was due to Curry's own actions that there was no medical evidence to support his claim that he was physically unable to attend the trial. When specifically asked, "[A]re you waiving your right to be present at the jury trial today or are you coming over? It's one of those two," Curry responded, "Go ahead. I'm waiving. I'm waiving." We conclude the evidence shows Curry waived his right to attend the trial.

We affirm Curry's conviction for third-degree burglary as a habitual offender.

**AFFIRMED.**