

IN THE COURT OF APPEALS OF IOWA

No. 6-537 / 05-1254
Filed August 9, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHAD MICHAEL GOTCH,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Duane E. Hoffmeyer, Judge.

Chad Michael Gotch appeals his six convictions for burglary in the third degree, and his conviction for criminal mischief in the second degree.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Stephan Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Patrick Jennings, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

MILLER, J.

Chad Michael Gotch appeals his six convictions for burglary in the third degree, in violation of Iowa Code sections 713.1 and 713.6A(1) (2005), and his conviction for criminal mischief in the second degree, in violation of sections 716.1, 716.2, and 716.4.¹ He contends his convictions are not supported by sufficient evidence. We affirm.

We review challenges to the sufficiency of the evidence supporting a guilty verdict for corrections of errors at law. We will uphold a verdict if substantial record evidence supports it. Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt.

We review the evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the evidence in the record. The court considers all the evidence in the record, not just the evidence that supports the verdict.

State v. Webb, 648 N.W.2d 72, 75-76 (Iowa 2002) (internal citations omitted).

To prove Gotch was guilty of burglary in the third degree the district court instructed the jury that, as to each of the business locations in question, the State had to prove: Gotch broke into the business on or about February 22, 2005; the business location was an occupied structure (a term defined in another instruction); he had no permission to enter the business; the business was not open to the public; and he entered the business with the specific intent to commit a theft. As to the criminal mischief charge the court instructed that the State had to prove Gotch damaged, altered, defaced, or destroyed property, with the specific intent to do so, and without the right to do so. The jury was also instructed as to the difference between direct and circumstantial evidence.

¹ Gotch was also convicted of two counts of attempted burglary in the third degree but those convictions are not at issue in this appeal.

Gotch claims the evidence is insufficient to prove he was the person who broke into the six businesses in question with the intent to commit theft or that he was the person who caused the property damage with which he was charged. The State does not contest that error was preserved, and we conclude error was in fact preserved by Gotch's motion for judgment of acquittal. Accordingly, we will address Gotch's sufficiency of the evidence claims on the merits and need not address his alternative claim that counsel rendered ineffective assistance by failing to preserve error.

After reviewing the record with the applicable standards in mind we conclude there was sufficient circumstantial evidence in the record to connect Gotch to each of the burglaries such that a reasonable jury could find he was the person who committed the burglaries and caused the property damage.

First, Gotch was wearing a pair of Lugz brand boots. One of the crime scene investigators testified he had never seen the Lugz logo before in his twenty-three years of investigation and thus opined that the brand was either unique or fairly new. The boots have the word "Lugz" on the bottom of the boot in several places. Officers found one or more boot prints in the fresh snow outside all three buildings where the crimes occurred with the same Lugz logo and pattern. The prints also appeared to be "exactly the same size" as the pair worn by Gotch. The same type of print appeared on and near the drywall that had been kicked through and damaged at the scene of some of the burglaries and the criminal mischief. A small piece of gypsum consistent with dry wall was found on the sole of Gotch's right boot. It appears undisputed that the damage to the building involved in the criminal mischief charge was well over \$1,000.

Second, the three buildings containing the business locations and involved in the crimes were close in geographic proximity, with two on the same street. Officers responded to a report of a suspicious person wearing a coat and stocking cap near a convenience store and found Gotch walking through the snow a block south of the store. The location at which the police found and detained Gotch was not far from where several of the burglaries had taken place. Although Gotch did not have a stocking cap on when the police arrived he had one on his person. Gotch first denied but then later admitted he had driven his step-father's car, which was parked at a nearby gas station. Tire tracks similar to those made by the car were found in fresh snow outside at least two of the buildings at which the burglaries occurred.

In addition, police found a pry bar in a wooded area approximately thirty feet from where they found Gotch. At each crime scene the perpetrator used the same type of instrument, such as a metal bar, to pry open locks, doors, drawers, or some combination thereof. Each of the buildings was damaged in one or more ways by the perpetrator's use of a metal pry bar. The marks left at each scene were consistent with the pry bar found near Gotch. The paint on that pry bar was similar to the paint on the door of one of the businesses that was burglarized.

Finally, the perpetrator in each incident was apparently only looking to steal cash. With the exception of one twenty-dollar bill taken from one of the businesses, all the cash found folded in different bundles in Gotch's front pockets was consistent with the denominations and amount of cash stolen from the other businesses. Gotch also lied about where he had been on the night in question

when the police first stopped and questioned him, and then later provided a different story that could not be verified. See *State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993) (“A false story told by a defendant to explain or deny a material fact against him is by itself an indication of guilt. . . .”). Thus, the jury was entitled to consider the fact Gotch initially lied to the police in determining his guilt or innocence. *State v. Leutfaimany*, 585 N.W.2d 200, 206 (Iowa 1998); see also *State v. Liggins*, 524 N.W.2d 181, 188 (Iowa 1994) (finding inconsistent stories may be viewed as evidence of guilt); *State v. Mayberry*, 411 N.W.2d 677, 682 (Iowa 1987) (same).

Based on all of the evidence set forth above we conclude substantial evidence supports both the identity and intent elements as to each of the challenged convictions. A reasonable jury could have found Gotch was the person responsible for the charged burglaries and criminal mischief, that he broke into each business location in question with the intent to commit a theft, and that he intentionally caused damage, exceeding \$1,000, to the building involved in the criminal mischief charge. Thus, there was sufficient evidence in the record for a reasonable jury to find Gotch guilty, beyond a reasonable doubt, of the six counts of burglary in the third degree and of criminal mischief in the second degree.

AFFIRMED.