IN THE COURT OF APPEALS OF IOWA

No. 3-133 / 12-0962
Filed March 13, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

GASTON KEAHNA III,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Richard Blane, Judge.

Gaston Keahna III appeals his conviction of second-degree burglary. **AFFIRMED.**

Mark C. Smith, Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, John Sarcone, County Attorney, Jaki Livingston, Assistant County Attorney, and Mark Cano, Prosecuting Intern, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

DANILSON, J.

Gaston Keahna III appeals his conviction of second-degree burglary, contending there is insufficient evidence of intent to commit a theft to sustain the burglary conviction. He also contends the trial court abused its discretion in allowing a defense witness to be impeached by a prior conviction. The jury could reasonably infer the defendant intended to commit theft upon entering the residence based upon his unauthorized entry, the police finding him hiding in a basement bathroom, and the defendant being found with underwear in his pockets belonging to the young woman of the residence. Even assuming for the sake of argument that the witness's operating without the owner's consent conviction was not an impeachable offense, the witness was properly impeached by other offenses and the defendant cannot establish he was prejudiced by the trial court's ruling. We affirm the conviction.

I. Background Facts and Proceedings.

A few minutes before 8:00 a.m. on December 5, 2011, Heidi Woodard drove her fifteen-year-old daughter to school. Upon returning to her Des Moines home to get her ten-year-old daughter ready for school, Woodard came upon a man in the middle of the street walking toward her car. She veered around him and drove the rest of the way home.

Woodard arrived home and woke her younger daughter. She heard a knock at the front door, but she did not answer it because she thought the man she had seen in the street had followed her home. Woodard heard another knock, hurried her daughter to dress, grabbed the house phone, and went to the

kitchen. Woodard heard another knock and picking or scratching at the door. She saw the front door opening and she and her daughter left out the back door. Woodard called her father-in-law (who also lived in the house) and went to a neighbor's where she called 9-1-1.

Woodard's father-in-law, James Sater Sr., owned the house in which Woodard and her family lived. He lived there as well. Sater arrived at the residence and waited in his truck in the driveway for police to arrive believing the intruder was still inside.

When the police arrived, they searched the residence. They found Keahna in the basement, in a bathroom, attempting to hold the door closed with his legs. Keahna was ordered out of the bathroom and told to lie on the floor. Underwear items belonging to the fifteen-year-old home resident were found in Keahna's pockets.

Keahna was charged with second-degree burglary. He asserted an intoxication defense.[1] Following a jury trial, Keahna was found guilty as charged and he now appeals. He contends there is insufficient evidence of intent to commit a theft to sustain the conviction. He also argues the trial court abused its discretion in allowing a defense witness—his sister, who had two prior felony convictions—to be impeached by a prior conviction of operating without the owner's consent.

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[1] The defense was grounded upon the police finding an empty packet in the defendant's pocket that at trial the defense suggested was "K2," synthetic marijuana, and the defendant's sister's testimony that he was acting strangely the day before the incident. However, law enforcement interacting with the defendant on the day of the offense noted no signs of intoxication.

II. Scope and Standard of Review.

We review challenges to the sufficiency of evidence for errors at law. *State v*. *Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). We consider all the record evidence, viewing it "in the light most favorable to the State, including all reasonable inferences that may be fairly draw form the evidence." *Id.* (internal quotation marks and citation omitted). We uphold a verdict if supported by substantial evidence. *Id*. "Evidence is considered substantial if, when viewed in the light most favorable to the State, it can convince a rational jury that the defendant is guilty beyond a reasonable doubt." *Id.*

We review evidentiary rulings for an abuse of discretion. *State v. Parker*, 747 N.W.2d 196, 203 (Iowa 2008). "An abuse of discretion occurs when the trial court exercises its discretion 'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *State v. Redmond*, 803 N.W.2d 112, 117 (Iowa 2011) (citiation omitted).

III. Discussion.

A. Sufficiency of the evidence of intent to commit a theft.

To commit burglary in Iowa, a person unlawfully entering premises must have the intent to commit a felony, assault, or theft therein. Iowa Code § 713.1 (2011); *see State v. Oetken*, 613 N.W.2d 679, 686 (Iowa 2000). "An intent to commit theft may be inferred from an actual breaking and entering of a building which contains things of value." *Oetken*, 613 N.W.2d at 686.

Keahna argues there is insufficient evidence of his having the intent to commit a theft to sustain the burglary conviction. "The element of intent in burglary is seldom susceptible to proof by direct evidence." *State v. Finnel*, 515 N.W.2d 41, 42 (Iowa 1994) (quotation marks, alterations, and citation omitted). "Intent is 'seldom capable of direct proof' . . . and 'a trier or fact may infer intent from the normal consequences of one's actions.'" *State v. Evans,* 671 N.W.2d 720, 724–25 (Iowa 2003) (citation omitted). "[A defendant] will generally not admit later to having the intention which the crime requires . . . . [H]is thoughts must be gathered from his words (if any) and actions in light of surrounding circumstances." *State v. Radeke,* 444 N.W.2d 476, 478–79 (Iowa 1989) (quoting W. LaFave & A. Scott, *Handbook on Criminal Law,* § 3.5(f), at 226 (2d ed. 1986)).

The jury could infer that Keahna had the intent to commit a theft by the circumstances surrounding his unauthorized entry into the residence, his blocking himself in the basement bathroom, and the discovery of items in his pockets belonging to the residents of the house.

B. Witness's prior operating without owner's consent conviction.

The defendant's sister, Thomasine Keahna, testified that Keahna was acting strangely the day before the incident. She was asked about her prior convictions, including two prior felonies and an aggravated misdemeanor of operating without the owner's consent. Keahna objected to admissibility of the operating without the owner's consent conviction, which the court overruled on grounds it was a crime of dishonesty.

Even if we were to assume that the trial court erred in allowing the defendant's sister to be questioned about her prior conviction for operating without owner's consent, *see State v. Harrington*, 800 N.W.2d 46, 51 (Iowa 2011),[2] we conclude any error was harmless. *Cf. Parker*, 747 N.W.2d at 210 (refusing to set aside conviction where error in allowing *the defendant's* prior-conviction evidence because it was harmless in light of overwhelming evidence of guilt). The witness's credibility was already subject to impeachment by two prior felonies. Moreover, the witness's testimony, that the defendant was acting strangely *the day before* the offense, offered little, if any, support for the defendant's claim of intoxication on the day of the offense.

Moreover, the evidence of guilty was strong in that Keahnu was found barricading himself in a bathroom in the basement of a home where he had no right to be and with items belonging to those living in the residence stuffed in his pockets. Under these circumstances, any error was harmless. We affirm.

AFFIRMED.

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[2] The State argued that because the offense was included in the code chapter related to "theft, fraud, and related offenses," *see* Iowa Code § 714.7 (2011), it was admissible. "[Iowa] Rule [of Evidence] 5.609(a)(2) reflects the judgment that prior convictions involving dishonesty or false statement are always sufficiently relevant to the truthfulness of the witness's testimony that protections against jury misuse of the prior-conviction evidence is not necessary." *Harrington*, 800 N.W.2d at 50. However, the *Harrington* court questioned whether theft and burglary crimes should fall within the scope of rule 5.609(a)(2), despite the "settled law in this state that convictions for theft and burglary with intent to commit theft are crimes of dishonesty." *See id.* at 51. It is not for this court to interfere with settled law. *See State v. Hastings*, 466 N.W.2d 697, 700 (Iowa Ct. App. 1990) ("We are not at liberty to overturn Iowa Supreme Court precedent."); *State v. Hughes*, 457 N.W.2d 25, 28 (Iowa Ct. App. 1990) (citing *State v. Eichler*, 83 N.W.2d 576, 578 (1957) ("If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves.")).