

IN THE COURT OF APPEALS OF IOWA

No. 3-642 / 12-1763
Filed October 2, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LATRICIA MARIE STEVENS,
Defendant-Appellant.

Appeal from the Iowa District Court for Wapello County, Kirk A. Daily,
District Associate Judge.

Defendant appeals her conviction for third-degree burglary as a habitual
offender. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney
General, Lisa Holl, County Attorney, and Andrew Ritland, Assistant County
Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

Latricia Marie Stevens challenges her conviction for third-degree burglary as a habitual offender.¹ See Iowa Code §§ 713.1, 713.6A, 902.8, 902.9 (2011). She contends (1) there is insufficient evidence of her intent to commit a theft and (2) the court erred by allowing the admission of irrelevant evidence. We affirm.

I. Background Facts and Proceedings

In late June or early July 2011, Chris and Sharon McKeag first noticed money was missing from their bedroom. Initially, Chris discovered \$200 was missing from his sock drawer. A few weeks later, \$400 in a banker's envelope Chris had put on their bed was gone. In late July or early August 2011, Chris returned from work and placed his wallet containing \$1800 underneath his socks in his dresser. Chris and Sharon hosted a pool party for Chris's employees that evening, and Latricia Stevens attended the party. The next morning, Chris discovered the \$1800 was missing. Also, Sharon noticed her bedroom dresser drawers had been disturbed.

In addition to being hired by Chris in May or June 2011, Latricia Stevens is the ex-wife of Shawn Stevens, Sharon's son. Sharon considered both of Latricia's children, Michaela Stevens and Christopher Pori, to be her grandchildren. After Shawn and Latricia's 2007 divorce, Latricia would

¹ Stevens was also charged with extortion, and the counts were severed for trial. Following the jury's guilty verdict for third-degree burglary herein, Stevens and the State entered into a plea agreement. Stevens agreed to admit her habitual offender status on the burglary charge and to enter a guilty plea on the extortion charge, habitual offender. In exchange, the State agreed to recommend concurrent sentences. During the plea hearing, the trial information was amended to include the language of aiding and abetting the extortion of Chris McKeag. Stevens pleaded guilty, and she was sentenced to fifteen years on each count, to be served concurrently.

occasionally bring the children over to the McKeags for visits. Chris testified Latricia only came to the house by invitation, and she was there four to six times from June to August 2011.

In August 2011 Chris purchased a motion-activated hidden camera designed to look like a clock. He pointed the camera at his dresser drawers. Before Chris and Sharon left town, Chris told his employees he would be gone for five days. Chris did not tell his employees he planned to return home for a short while during the trip. Chris and Sharon left their side door unlocked when they left.² When Chris returned unannounced on Friday, he found the side door was now locked and someone had failed to turn off the master bedroom lights. He also observed the hidden camera/clock was not displaying the time due to a dead battery. Chris left and completed the trip.

On Sunday the couple returned. Sharon observed one of her dresser drawers had been disturbed and a full glass coin jar had coins missing. Chris took the camera to his store and downloaded the video to his computer. Chris watched one of the videos and saw Stevens and her son getting into his bed. Chris testified he found that unusual as he had not authorized them to be in the house. Immediately, Chris called Stevens and tried to find out why she had been in the house. Stevens replied: "Well, how did you know I was there?" Chris told her about the hidden camera/clock. Stevens explained Michaela had called Sharon and obtained Sharon's permission to stay there. Stevens told Chris she

² Additionally, they left other doors unlocked.

had been fighting with her boyfriend “and she had no place to go and it was late at night.” Chris testified:

Q. Now, has this ever happened before where Michaela and/or [Stevens] have stayed in your house overnight? A. No.

Q. Would it be fair to say this is the first occurrence that you know of? A. Yeah.

The next day, Chris asked Sharon to confirm Stevens’s explanation; however, Sharon had not talked to Stevens or Michaela during the trip. Sharon’s cell phone did show a missed phone call from Michaela. Later, Sharon discovered her iPod and camera, kept in the bedroom, were missing. Sharon testified: “Q. Did you ever authorize [Stevens] to be present in your home without your presence? A. No.”

At the store a few days later, Chris watched the additional video clips from the camera/clock. He saw Stevens going through his sock drawer and going through Sharon’s undergarments drawer. Chris, unaware employee Martin Cruz was Stevens’s boyfriend, showed Cruz the video before leaving the store to make a delivery. At this time Stevens was working at the store’s counter. When Chris returned from the delivery, the camera’s battery, battery cover, and memory card were gone. Chris explained the memory card stored the video of Stevens going through the drawers. Chris reported the burglary to the police.

A few days after the memory card was taken, Sharon received a call from Stevens, who was upset. Sharon described the conversation:

Q. And in that conversation [Stevens] stated Chris was about to do something, is that correct? A. Right.

Q. And what did [Stevens] tell you Chris was going to do?
A. Was going to turn her into the police

Q. Now, did [Stevens] admit to you that she was in your home? A. Yes, she did that.

Q. And did [Stevens] tell you anything, if the police officers were to talk to you? A. Yes, she did. She told me if [the police] call me . . . to please tell them that I gave her permission to be in my house.

.. . .

Q. Did you ever give that permission? A. No, I never.

Q. Did you tell the police she was authorized? A. No.

Sharon acknowledged she had written a letter to the dissolution court during her son's divorce requesting the court keep Michaela and Christopher together. The letter stated Stevens "continues to have a place in our . . . lives she is welcome in my home with her children."

Christopher, Stevens's son, testified his family would often go to the McKeags' house for cookouts and pool parties and sometimes they would stay the night. Christopher stated they went to the McKeags' house in August because Stevens needed a place to stay after fighting with her boyfriend. Further, Michaela had obtained permission for them to be in the house. They left the next morning, and Christopher did not see his mom take anything. He testified they entertained themselves during the afternoon by watching TV and looking at wedding pictures. Also:

Q. Okay. And did mom ever at all look through any drawers? A. Once, because we were trying to find like pictures of when my uncle was getting married.

Q. So your mom was opening the drawers looking for pictures? A. Yes.

Defense counsel moved for a judgment of acquittal, arguing the evidence only provides suspicion and speculation on the issue of intent to steal. The court denied the motion, ruling a rational juror could conclude the following: "Stevens

was in the house. She did not have permission. She looked into places where things had come up missing before. Things came up missing after [Stevens] was there. She tried to get one of the victims [Sharon] to falsify information to the police about her being there.”

Stevens now appeals the jury verdict finding her guilty of third-degree burglary.

II. Substantial Evidence—Intent to Commit Theft

In order to convict Latricia Stevens of burglary, the State was required to prove she acted with the specific intent to commit a theft. See Iowa Code § 713.1. Stevens admits her entry into the home, but contends she entered with the intent to obtain safe shelter after fighting with her boyfriend. She asserts the State’s *circumstantial* evidence of intent to commit theft “does no more than raise suspicion and speculation” and is not sufficient to support her conviction.

The jury was faced with conflicting evidence on the issue of specific intent—either intent to commit a theft or intent to leave a fight with a boyfriend. Initially, we note circumstantial and direct evidence are equally probative and either is sufficient to support a conviction. *State v. Boley*, 456 N.W.2d 674, 679 (Iowa 1990). Second, burglary’s intent element “is seldom susceptible to proof by direct evidence.” *State v. Finnel*, 515 N.W.2d 41, 42 (Iowa 1994). Intent may be inferred by the surrounding circumstances. *State v. Taylor*, 689 N.W.2d 116, 132 (Iowa 2004). “[A]n actor will ordinarily be viewed as intending the natural and probable consequences that usually follow from his or her voluntary act.” *Id.*

“The requirement of proof beyond a reasonable doubt is satisfied if it is more likely than not that the inference of intent is true.” *Finnel*, 515 N.W.2d at 42.

We review sufficiency of the evidence issues for correction of errors at law. *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005). We will “uphold a finding of guilt if ‘substantial evidence’ supports the verdict.” *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). “‘Substantial evidence’ is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt.” *Id.* “We review the facts in the light most favorable to the State.” *Id.* The jury is “free to reject certain evidence and credit other evidence.” *State v. Nitchee*, 720 N.W.2d 547, 556 (Iowa 2006). Also, the “credibility of witnesses is for the factfinder to decide except those rare circumstances where the testimony is absurd, impossible, or self-contradictory.” *State v. Neitzel*, 801 N.W.2d 612, 624 (Iowa Ct. App. 2011). None of those circumstances are present here. When we view the evidence in the light most favorable to the State, we conclude a reasonable juror could find Stevens entered the home and rummaged through the bedroom dresser drawers with the specific intent to commit a theft. Therefore, substantial evidence supports her burglary conviction.

III. Admission of Irrelevant Evidence

Defense counsel made a relevancy objection when the prosecutor asked Chris if he had a purpose for the missing \$1800. The district court overruled the objection, and Chris testified he planned to give the money to Sharon so she could visit her son in California and remodel the kitchen. Sharon testified she would have used the money to remodel the kitchen.

Stevens argues the McKeags purpose for the \$1800 was not relevant to the State's allegation Stevens committed a later burglary. Stevens contends the "only purpose [for the challenged evidence] was to get the jurors to be sympathetic to the McKeags and feel sorry for them [for losing] \$1800." Further, Stevens argues the evidence against her was not strong; therefore, this "inadmissible evidence easily could have swayed the jurors." The State admits the evidence "does not appear to be relevant," but asserts the admission of this evidence constitutes harmless error.

We review "standard claims of error in admission of evidence for an abuse of discretion." *State v. Stone*, 764 N.W.2d 545, 548 (Iowa 2009). Here, we assume the evidence was erroneously admitted, assume error was preserved, and turn to the separate question of "whether the erroneous evidence prejudiced the rights of [Stevens] to a fair trial." See *State v. Parker*, 747 N.W.2d 196, 209 (Iowa 2008). Guiding our analysis is Iowa Rule of Evidence 5.103(a): "Error may not be predicated upon a ruling which admits . . . evidence unless a substantial right of the party is affected." Therefore, "error in an evidentiary ruling that is harmless may not be a basis for relief on appeal." *Id.* "[W]e consider a variety of circumstances in determining the existence of harmless error, including the existence of overwhelming evidence of guilt." *Id.*

The record shows Stevens's burglary conviction was based on overwhelming evidence of guilt. The contested issue at trial was whether there was evidence of Stevens's intent to commit a theft. Because the camera itself was not stolen when Chris left the store, a reasonable jury could infer the person

taking the memory card was more interested in the actual recording than in the camera's value. Both Stevens and her boyfriend had an opportunity to take the memory card and destroy evidence showing Stevens going through the drawers while the McKeags were out of town. Further, Stevens is the *only* person on the video *opening drawers* in the couple's bedroom, and on two recent prior occasions, money had been stolen *out of the same bedroom drawers*. Finally, Stevens's emotional request that Sharon tell the police Stevens had Sharon's permission to enter the house also indicates a guilty intent. Under the circumstances, we conclude the admission of the challenged evidence—the purpose for the \$1800—did not prejudice Stevens's right to a fair trial.

AFFIRMED.