

IN THE COURT OF APPEALS OF IOWA

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JAN 30 1981

CLERK SUPREME COURT

Filed January 30, 1981

STATE OF IOWA,

)

Plaintiff-Appellee,

)

vs.

)

ROBERT ALLEN PROCTOR,

)

a/k/a BOB FOXX,

a/k/a BOB RANDOLF,

)

0-389

64459

Defendant-Appellant.

)

Appeal from Polk District Court - Dale S. Missildine, Judge.

Defendant appeals his conviction for second-degree theft in violation of sections 714.1(4) and 714.2(2), The Code. AFFIRMED.

Jim Piazza and Martha Shepard, Polk County Offender Advocate Office, Des Moines, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Richard L. Cleland, Assistant Attorney General; and Dan Johnston, Polk County Attorney; for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant appeals his conviction for second-degree theft in violation of sections 714.1(4) and 714.2(2), The Code. He was charged by information with exercising control over stolen property, i.e. a 1976 jeep. At trial evidence was offered to show that he had six other vehicles on his property which were stolen from six different people at six different times. He claims that the trial court erred in admitting evidence regarding these other vehicles being in his possession. We affirm.

I. The state first claims that defendant failed to preserve error on his claim. Defendant made a motion in limine before the trial began to prohibit the state from introducing evidence of the other stolen vehicles in his possession. The motion was overruled and the evidence was admitted without further objection. Without more, defendant would have indeed failed to preserve error. See State v. Langley, 265 N.W.2d 718, 720 (Iowa 1978). However, in this case, after the motion was overruled, defendant's counsel indicated to the court that he would make the same objections when the evidence was introduced at trial. The trial court responded "I just wonder if you haven't preserved your record by your motion in limine." The court later said "I would think you have preserved your record anyway." Since the court apparently led defendant's counsel to believe in good faith that further objections at trial were unnecessary to preserve his record, we deem defendant's alleged error adequately preserved. Compare, State v. Gilmore, 259 N.W.2d 846, 852 (Iowa 1977).

II. On the merits of defendant's argument he contends that the trial court erred in admitting evidence of the other stolen vehicles because it does not come within any of the exceptions to the general rule prohibiting evidence of other crimes. We disagree.

The purpose of the rule excluding evidence of other crimes by the same defendant applies only to evidence which has no relevance other than to depict defendant as an evil person. State v. Cott, 283 N.W.2d 324, 326 (Iowa 1979). Evidence which is relevant to prove some material fact in issue is not subject to this exclusionary rule even if it does tend to show that defendant is guilty of other crimes. Id.

We conclude that the evidence which is complained of in the present case is relevant and material on the issue of whether defendant had knowledge that the motor vehicle which was the subject of the criminal charge against him was in fact stolen. In this regard, section 714.1(4), The Code, provides in part as follows:

The fact that the person [defendant] is found in possession of property which has been stolen from two or more persons on separate occasions . . . shall be evidence from which the court or jury may infer that the person knew or believed that the property had been stolen.

We have considered defendant's claims and find no ground for reversal.

AFFIRMED.