IN THE COURT OF APPEALS OF IOWA

No. 1-455 / 00-1470
Filed July 31, 2001

FILED
JUL 31 2001
CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TROY ALLEN PATRICK,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis, District Associate Judge.

Troy Patrick appeals from his conviction and sentence for theft in the third degree in violation of Iowa Code sections 714.1, 714.2(3), and 703.1 (1999). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, J. Patrick White, County Attorney, Michael Brennan and Linda M. Paulson, Assistant County Attorneys, and Jennifer Clinton, Student Legal Intern, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

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SACKETT, C.J.

Defendant Troy Allen Patrick appeals after a jury found him guilty of theft in the third degree, in violation of Iowa Code sections 714.1(1), 714.2(3) and 703.1 and he was sentenced to forty days[1] in the county jail, placed on a two-year probation and fined $500. Defendant, who was charged after merchandise was taken without payment from a Younkers store in the Coralville Mall, contends there was not substantial evidence to prove him guilty beyond a reasonable doubt. We affirm.

Our review is for correction of errors at law. *State v. Thomas,* 561 N.W.2d 37, 39 (Iowa 1997). We must determine whether there is substantial evidence supporting the verdict. Iowa R. App. P. 14(5)(1); *State v. LeGear,* 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence is that evidence from which a rational trier of fact could conceivably find defendant guilty beyond a reasonable doubt. *Thomas*, 561 N.W.2d at 39. We review the evidence in the light most favorable to the verdict, including all legitimate inferences that reasonably may be deduced from the record. *Id.* Direct and circumstantial evidence are equally probative. *State v. Hamilton,* 309 N.W.2d 471 479 (Iowa 1981).

To convict defendant of theft in the third degree the State was required to prove:

> 1. On or about the 11th day of December, 1999, the defendant took possession or control of merchandise from Younkers.
> 2. The defendant did so with the intent to deprive Younkers of the merchandise.
> 3. The property, at the time of the taking belonged to Younkers.

See Iowa Code Section 714.1(1).

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[1] All but two of the days were suspended.

The State introduced evidence by way of the testimony of the loss prevention manager for the Younkers store who testified he saw defendant take a stack of merchandise that was hidden between the arms of a clothing rack and give it to one of his two female companions. The manager also testified defendant and the second female companion kept watch while the first companion put the merchandise in a bag. The manager further said the woman left the store with the bags of merchandise without paying for the merchandise. The manager testified defendant stayed behind watching to see if anyone was following him and then left the store carrying a bag of merchandise. The bags defendant's female companions took out of the store contained about $834 worth of merchandise. The bag the defendant carried out of the store was never found.

There is substantial evidence to show defendant aided and abetted the theft of merchandise by his female companions. Aiding and abetting by statute is defined as follows:

> All persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense or aid and abet its commission, shall be charged, tried and punished as principals. The guilt of a person who aids and abets the commission of a crime must be determined upon the facts which show the part the person had in it, and does not depend upon the degree of another person's guilt.

Iowa Code Section 703.1.

Conviction based on aiding and abetting requires substantial evidence the defendant assented to or lent approval to the criminal act by his participation in the act or in some manner encouraging the act prior to or at the time of its commission. *See State v. Travis,* 497 N.W.2d 905, 908 (Iowa Ct. App. 1993); accord *State v. Satern,* 516 N.W.2d 839, 843 (Iowa 1994). The mere presence

of defendant at the time is not sufficient to prove aiding and abetting. *See Travis,* 4977 N.W.2d at 908. Yet the requisite participation can be inferred from circumstantial evidence including presence, companionship and conduct before and after the offense is committed. *Id.* If intent is an element of the crime a person may be convicted as an aider and abettor by participating either with the requisite intent or with the knowledge that the principal possesses the required intent. *See State v. Tangie*, 616 N.W.2d 564, 573 (Iowa 2000).

There is evidence to prove defendant took hidden merchandise and handed it to a female companion who put it in a bag and left the store without paying for it. While we recognize the defendant argues there was contrary evidence, the jury was responsible for assessing the credibility of the different accounts and for weighing the testimony of the witnesses. *See In re Property Seized from Chiodo,* 555 N.W.2d 412, 415 (Iowa 1996). The fact there is contrary evidence does not precluding us from upholding a verdict supported by substantial evidence. *See State v. Frake*, 450 N.W.2d 817, 818-819 (Iowa 1990). We affirm the defendant's conviction.

AFFIRMED.