

FILED

OCT 27 1981

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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed October 27, 1981

vs.

)

STANLEY KEVIN GRAVES,

)

1-299

65757

Defendant-Appellant.

)

Appeal from Polk District Court - Joel D. Novak, Judge.

Defendant appeals his conviction of robbery in the second degree in violation of sections 711.1 and 711.3, The Code, resulting from a trial to the court. AFFIRMED.

Charles L. Harrington, State Appellate Defender's Office, Des Moines, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Teresa Baustian, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant appeals his conviction of robbery in the second degree in violation of sections 711.1 and 711.3, The Code, resulting from a trial to the court. He contends the trial court committed reversible error by overruling his motion for judgment of acquittal because there was insufficient evidence for the court to find beyond a reasonable doubt that the defendant intended to commit a theft. We affirm the trial court.

In section 711.1, The Code, robbery is defined as follows:

A person commits a robbery when, having the intent to commit a theft, the person does any of the following acts to assist or further the commission of the intended theft or the person's escape from the scene thereof with or without the stolen property:

1. Commits an assault upon another.
2. Threatens another with or purposely puts another in fear of immediate serious injury.
3. Threatens to commit immediately any forcible felony.

It is immaterial to the question of guilt or innocence of robbery that property was or was not actually stolen. (emphasis added).

And, in section 711.3, The Code: "All robbery which is not robbery in the first degree is robbery in the second degree. Robbery in the second degree is a class 'C' felony."

Section 714.1, in pertinent part, defines theft as follows:

A person commits theft when the person does any of the following:

1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.

In the early morning hours of February 28, 1980, defendant's car ran out of gas, and he attempted to acquire some gasoline on credit at a nearby convenience store where he often shopped. After some discussion, the attendant copied the defendant's name, license number, social security number, and phone number from his driver's license and allowed the defendant to have \$2.00 worth of gasoline with the understanding that defendant, once he got home, would return with the money. Approximately thirty minutes later, defendant returned, grabbed the attendant by the arm, demanded money from the cash register, and then took the attendant to the back room where the defendant told him to wait ten minutes before calling the police. Defendant was subsequently arrested near his home with the aid of the driver's license information in the attendant's possession.

At trial the attendant and the defendant told essentially similar versions of the events surrounding the robbery. Defendant contended on his motion for judgment of acquittal and here on appeal, however, that he took the money only because he was angry with the attendant for not having been more trusting about the gasoline for credit earlier, and because he hoped the taking of the money would cause the attendant to be fired. Furthermore, the defendant maintained that he threw the money away as soon as he left the store, and some change, at least, was found around the door. The defendant contends that this evidence negates the "intent to commit a theft" element of robbery, since his intent was to anger the attendant, not keep the money.

Defendant's argument rests upon an incorrect analysis of the applicable law. The element of intent which is significant under section 714.1 is the intent to deprive another of that person's property. This does not turn on whether defendant intended to keep the property. Defendant's testimony that he took the money of another and then threw the money away is sufficient to show violation of the statutory proscription against taking "possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof." We have considered all issues presented and find no ground for reversal.

AFFIRMED.