

IN THE COURT OF APPEALS OF IOWA

No 5-728 / 95-470

001215

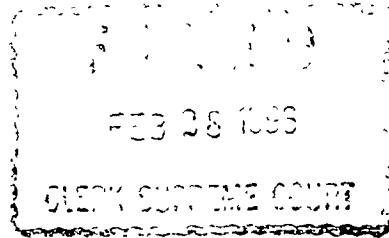
STATE OF IOWA,

Plaintiff-Appellee,

vs.

NOEL ERIC SMALL,

Defendant-Appellant.



Appeal from the Iowa District Court for Lee County, R. David Fahey, Judge.

Defendant appeals the judgment and sentence entered upon his conviction, following a jury trial, of second-degree theft in violation of Iowa Code section 714.1(4) (1993). **AFFIRMED.**

John W. Wright of Napier, Wright & Wolf, Fort Madison, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Michael Short, County Attorney, and Gordon M. Eiles, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Habhab and Cady, JJ.

SACKETT, P.J.

Defendant Noel Small appeals from his conviction of theft in the second degree for exercising control over property he knew to be stolen under Iowa Code section 714.1(4) (1993) after he was stopped driving a stolen Saturn automobile. He contends there was insufficient evidence to support the conviction and the jury was not properly instructed on all elements of the offense. We affirm.

Defendant was stopped by an Iowa state trooper on October 21, 1994, while driving the Saturn. The car had been stolen in Missouri. Defendant told the trooper his name was Steven Pyse and the car had recently been purchased by his girlfriend, Mary Bates. The trooper confiscated invalid Iowa license plates on the vehicle. The trooper did not learn the vehicle was stolen. Defendant was given a ticket for speeding and was allowed to leave.

On November 17, 1994, another trooper stopped defendant for speeding. Defendant was still driving the stolen Saturn, this time with Missouri license plates. Defendant again gave his name as Steven Pyse and claimed the car belonged to his girlfriend, Mary Bates; Initially, defendant denied he had a driver's license or other form of identification with him. He later gave the trooper an altered Illinois driver's license which bore the name Steven D. Pyse. Passengers in defendant's vehicle told the trooper defendant's true name was Noel Small.

During the second stop, a recording device in the trooper's car taped defendant telling one of his passengers, "You guys didn't know it was stolen, I didn't know it was stolen. . . . I should have drilled you guys and told you what to tell 'em, man."

Defendant first contends the State failed to prove he knew the property was stolen. A jury's finding of guilt is binding upon this court unless we conclude the record lacks substantial evidence to support such a finding. *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). In making this determination, we review the record in the light most favorable to the State. *Id.* Evidence is substantial in a criminal case if it could convince a rational fact finder the defendant is guilty beyond a reasonable doubt. *Id.* Direct and circumstantial evidence are equally probative. *State v. Selestian*, 515 N.W.2d 356, 358 (Iowa App. 1994).

Section 714.1(4) requires proof a defendant actually believed the property was stolen. *See State v. McVey*, 376 N.W.2d 585, 586 (Iowa 1985); *State v. Hutt*, 330 N.W.2d 788, 790 (Iowa 1983). A conviction under section 714.1(4) requires "only a showing that facts and circumstances known to defendant were sufficient to satisfy him or cause him to believe the goods were stolen." *See Selestian*, 515 N.W.2d at 358. Knowledge that an item was stolen can be inferred from a defendant's unexplained possession of recently stolen property. *See id.*

Defendant had been stopped by an Iowa state trooper on October 21, 1994. He was driving a white Saturn which had recently been stolen in Missouri. Defendant gave the trooper a false name, Steven Pyse, and he told the trooper the car had

recently been purchased by his girlfriend, Mary Bates. The trooper confiscated the invalid Iowa license plates which were on the vehicle. The transmission of an erroneous vehicle identification number prevented the trooper from learning the car was stolen. Defendant was then allowed to leave after being ticketed for speeding.

A review of the entire record reveals there was sufficient evidence to support the conviction. Defendant gave false names and identification to the troopers. *See State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993) (false story told by defendant is indication of consciousness of guilt). Defendant had the stolen vehicle for almost a month. While in his control, the vehicle bore two different sets of invalid license plates, one set which was stolen.

Defendant's recorded statements are evidence supporting a finding he knew the vehicle was stolen. There was sufficient evidence from which the jury could infer defendant's guilty knowledge.

Defendant claims a jury instruction was erroneous because it omitted one of the elements of the offense. The issue he raises on appeal was not preserved. We consider on appeal only objections to instructions raised in the trial court. *State v. Hepperle*, 530 N.W.2d 735, 738 (Iowa 1995). The failure to properly object to an instruction waives the right to assert error on appeal. *Id.* at 740.

Defendant concedes his trial counsel did not object to the instruction, but he argues this court may review the alleged error and remand for retrial. Defendant fails

to set forth any basis or authority in support of this contention. Defendant has waived error on this issue.

AFFIRMED.