FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-324 / 89-1334

STATE OF IOWA,

Plaintiff-Appellee,

vs.

MICHAEL D. BRINKERHOFF,

Defendant-Appellant.

671

Appeal from the Iowa District Court for Woodbury County, Phillip S. Dandos, Judge.

Defendant appeals his conviction, following a jury trial, for theft in the third degree. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Julie A. Halligan, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Michael D. Andrew, Assistant County Attorney, for appellee.

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

SACKETT, J.

Defendant Michael Brinkerhoff appeals his conviction, following a jury trial, for theft in the third degree. He challenges the sufficiency of the evidence to support his conviction. We affirm.

Viewing the evidence in the light most favorable to the state we find the following facts to be supported by the record. See State v. Miles, 346 N.W.2d 517, 520 (Iowa 1984). Defendant's girlfriend, Kathy Jo Perry, shoplifted two items from a Younkers store. Brinkerhoff was not present when she picked up the items.

While still inside the store Perry was confronted by two of the store's security employees. At that time she dropped the stolen items and fled into the parking lot, pursued by two store employees. The employees caught up with Perry in the parking lot and began to struggle near the parked car in which defendant was sitting. During the struggle Perry bit the agent who was holding her and entered the passenger side of the car after the defendant opened the door for her from inside the car. A store employee leaned into the car and asked the defendant not to drive away. However, Brinkerhoff did drive away; he took off quickly and left skid marks.

As a result of these events, Brinkerhoff was charged with third-degree theft. At his jury trial, he testified that he was unaware of any thefts by Perry and was unaware

that she had entered the store with an intent to steal. He also testified that when Perry entered the car in the parking lot, he was vaguely aware that other people were nearby, but was unaware that they had spoken to him or that they were even paying attention to him or Perry. Perry, who had previously plead guilty to a theft charge, testified Brinkerhoff was unaware of her thefts and was not involved in any plans to steal merchandise. She testified that she herself had no intent to steal when she entered the store and only formed such an intent upon seeing certain desirable items.

The defendant was charged with, and found guilty of, theft in third degree. However, the state proceeded on the theory that the defendant was an aider and abettor in the theft. Iowa Code section 703.1 states:

> 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 principles. 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.

The record must contain substantial evidence to show that the accused assented to or lent countenance and approval to the criminal act either by active participation in it or in some manner encouraging it prior to or at the time of its commission. State v. Miles, 346 N.W.2d 517, 520 (Iowa 1984). The requisite participation can be inferred

from circumstantial evidence including presence, companionship and conduct before and after the offense is committed. Id.

There is substantial evidence to support the jury's verdict. There was evidence that a prolonged scuffle took place outside the car door, which the defendant had opened for Perry. The agents for Younkers testified that they asked the defendant not to drive away and one of them had a grip on the car door when the defendant drove away. There was also evidence that one of agents for Younkers stuck her head inside the car and saw the defendant look directly at her face. Finally, defendant squealed his tires when driving away. From this evidence the jury could certainly find that the defendant knew of the intended crime prior to its commission or chose to participate in it as it was occurring. A rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). We affirm the conviction.

AFFIRMED.