IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA)

Plaintiff-Appellee,)

vs.)

KIRK DOUGLAS,)

Defendant-Appellant.)

Filed November 30, 1987

7-389
86-1419

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Appeal from the Iowa District Court for Marion County (No. 8165) - M. C. Herrick, Judge.

Defendant appeals from his conviction and sentence for theft in the first degree. **AFFIRMED.**

Charles L. Harrington, Appellate Defendant and B. John Burns, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Mark J. Zbieroski, Assistant Attorney General; Martha L. Mertz, County Attorney; and Steve A. Cotton, Assistant County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, and Sackett, JJ.

SACKETT, J.

Defendant, Kirk Douglas, appeals from his conviction, after a jury trial, of first-degree theft. Defendant claims he took the property at issue, a grain drill, subject to a credit transaction agreement. Thus, defendant argues, he is liable for nonpayment in a civil action only. We affirm.

Defendant was a sales representative for Ken Babcock's Sales and Service. In that capacity, defendant had purchased several pieces of equipment from the Vermeer Manufacturing Company in the past. On September 3, 1985, defendant took a grain drill from Vermeer's lot. Two employees, who knew defendant through prior sales to Babcock, saw defendant hitch the grain drill to his truck and drive away with it. Each employee assumed defendant had spoken to someone else about taking the grain drill. Defendant, however, failed to follow the usual procedure of contacting a Vermeer employee, doing the paperwork, and getting the service manual before taking the drill. Defendant delivered the drill to a farmer in Kansas and accepted $8,400 in payment. He deposited the check in his personal bank account rather than in the business account opened by Babcock for defendant's use.

A person commits theft when the person "takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof." Iowa Code §714.1(1) (1985). Defendant argues there was insufficient evidence to convict him of theft because the drill was not the "property of another" when defendant took it. Defendant asserts he, or his employer, had an equitable interest in the drill because defendant took it pursuant to a credit transaction.

Defendant relies on three cases, none of which are similar to the facts of this case. In State v. Gipson, 656 S.W.2d 371, 373 (Tenn. 1983), Gipson ate food he ordered in a restaurant and then left without paying. The Tennessee court held no larceny occurred although a civil debt was created. In State v. Goff, 292 N.W.2d 311, 312 (S.D. 1980), Goff borrowed some money to make car payments. The person who loaned Goff the money took title to the car in her name to protect her security interest. Goff then took the car without her permission. The South Dakota court held the taking did not constitute theft although it was contrary to the intended credit agreement. Finally, in Elliott v. State, 254 S.E.2d 900, 902 (Ga. Ct. App. 1979), two merchants delivered furniture and appliances to Elliott based on his promise he would return with the payment. He never returned. The court held Elliott could not be charged with theft because there was a completed sale and Elliott had rightful possession of the property. In Gipson, Goff, and Elliott the courts found evidence of a completed sale, an intended security agreement or a credit transaction.

Defendant does not argue on appeal he intended to pay Babcock or Vermeer for the grain drill. He argues, however, that his only liability arises should Vermeer pursue civil remedies against him or Babcock.

We find the evidence is sufficient to support the jury's finding the relationship of thief-victim rather than debtor-creditor existed between defendant and Vermeer. In determining the sufficiency of evidence to support a guilty verdict we consider the evidence in the light most favorable to the State. State v. Blair, 347 N.W.2d 416, 418-19 (Iowa 1984). Defendant points to evidence of prior occasions upon which he picked up equipment from Vermeer. There was evidence defendant's actions were out of the ordinary, however, in that he took the drill without contacting a Vermeer employee. Unlike defendant's previous dealings with Vermeer, on this occasion defendant failed to get the operator's manual, warranty, or invoice. Defendant's explanation is he was in a hurry to deliver the drill before dark and could not find a Vermeer employee nearby, although two employees were close enough to see defendant on the lot. Vermeer employees also testified they contacted defendant after September 3, 1985. During those initial contacts, defendant denied he took the drill.

We refuse to find an implied credit transaction in this case merely because two Vermeer employees saw defendant take the property. Unlike the cases cited by defendant, this case presents no clear evidence of a security agreement or credit transaction. There was sufficient evidence for the jury to find defendant took the property of another.

AFFIRMED.