

IN THE COURT OF APPEALS OF IOWA

FILED

JAN 27 1988

CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed January 27, 1988

vs.

)

241

DAVID CHRISTOPHER McCURN,

)

7-506
87-398

Defendant-Appellant.

)

Appeal from the Iowa District Court for Polk County (33506), Harry Perkins,
Judge.

Defendant appeals his conviction of theft in the second degree asserting
the evidence at trial was insufficient to establish he knowingly exercised control
over stolen property. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and Linda Del Gallo,
Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Roxann M. Ryan, Assistant
Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ. Schlegel, J.,
takes no part.

HAYDEN, J.

Defendant, David Christopher McCurn, appeals his conviction of theft in the second degree. He asserts the evidence at trial was insufficient to establish he knowingly exercised control over stolen property.

As we stated in State v. Wheeler, 403 N.W.2d 58, 60 (Iowa App. 1987), the legal principles applicable to cases of this nature are as follows:

Our scope of review is on assigned error only. Iowa R. App. P. 4. The standard of review in challenging the sufficiency of the evidence is well established. State v. Lampman, 342 N.W.2d 77, 81 (Iowa App. 1982). We will uphold a verdict where there is substantial evidence in the record tending to support the charge. State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981).

When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the state, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. State v. Hall, 371 N.W.2d 187, 188 (Iowa App. 1985); State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). Direct and circumstantial evidence are equally probative so long as the evidence raises "a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture." State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981). It is necessary to consider all the evidence in the record and not just the evidence supporting the verdict to determine whether there is substantial evidence to support the charge. Hall, 371 N.W.2d at 188; Bass, 349 N.W.2d at 500. Substantial evidence means evidence which would convince a rational factfinder that the defendant is guilty beyond a reasonable doubt. Hall, 371 N.W.2d at 188; State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984).

Id.

In this case, the evidence reflects McCurn and three other men entered the Do Right Cleaning Company, site of a police undercover operation, carrying computer equipment. This equipment had recently been reported as stolen. While two of the other men negotiated a price for the equipment with two undercover officers, McCurn sat down and drank a beer. When a price was agreed upon, one of the officers asked McCurn if it was acceptable. McCurn nodded his head. Thereafter, McCurn and the three other men left the store. As they

were leaving, McCurn asked the officer if he would be interested in purchasing a reel-to-reel recorder.

McCurn asserts this evidence merely supported speculation he was engaged in criminal activity and was insufficient to support his conviction. We disagree. McCurn helped carry the stolen equipment, he actively listened to the negotiations over price, he acknowledged the acceptability to him of the price agreed upon, and he exhibited an interest in performing similar transactions in the future. We find this is evidence which would convince a rational factfinder that McCurn was guilty beyond a reasonable doubt. We conclude, therefore, there was substantial evidence to support McCurn's conviction.

AFFIRMED.