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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, )

Plaintiff-Appellee, ) Filed October 27, 1981

vs. )

JAMES LEE MORFORD, ) 1-309
66113

Defendant-Appellant. )

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Appeal from Marshall District Court - Carl D. Baker, Magistrate.

Defendant appeals from his conviction for criminal mischief in the third degree in violation of sections 716.1 and 716.5, The Code. REVERSED.

Beth H. Trout, Marshalltown, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Michael Jordan, Assistant Attorney General; and Phillip L. Krejci, Assistant Marshall County Attorney; for plaintiff-appellee.

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

PER CURIAM

Defendant appeals from his conviction for criminal mischief in the third degree in violation of sections 716.1 and 716.5, The Code. He argues that the evidence was insufficient to either support a guilty verdict or permit submission of instructions on aiding and abetting to the jury. We reverse the trial court.

In reaching this decision, we are mindful of several legal principles. The evidence and verdict are viewed in a light most favorable to the State without regard to contradictions or inconsistencies; all reasonable inferences are allowed. State v. Robinson, 288 N.W.2d 337, 338 (Iowa 1980). Mere suspicion, speculation, or conjecture of guilt is not sufficient to uphold a verdict of guilty. State v. Lewis, 242 N.W.2d 711, 724 (Iowa 1976). There is substantial evidence to support a verdict when a reasonable mind would accept it as adequate to reach a conclusion. State v. Galvan, 297 N.W.2d 344, 348 (Iowa 1980).

Looking at the evidence adduced at trial in the light most favorable to the state, we find that the jury could have found that Roger Jay, a young man who worked part-time at a gas station, was sitting inside his car across the street from his home May 19, 1980. While sitting in his car listening to his radio, he noticed a green pickup truck drive by his car on the one-way street where he was parked. A few minutes later he heard a loud noise to the rear of his car, turned around to find that his rear window had been shattered, turned back to his left, and saw the same green pickup passing by. Jay went across the street into his house and called the police. Returning to his front yard he saw the same pickup going by again, heard a loud cracking noise, and saw that the driver's side window had just been broken. A policeman arrived and Jay was standing with the officer on the corner under a street light when the pickup passed by yet a fourth time. At all times Jay testified he saw only one occupant in the truck and, on one of the passes, he was able to state fairly certainly that that driver was a man named Ron Harris (co-defendant in this trial), who Jay knew slightly from seeing him at the gas station. The green pickup bore the words "James L. Morford Concrete Construction" on the side. Jay also testified that he knew Morford slightly and that he often saw Harris and Morford together, although it was not unusual to see Harris driving the pickup alone. The officer with Jay when the pickup passed by them the fourth time testified he was unable to recognize the driver or tell how many occupants were in the truck, although he was also familiar with both defendants. The officer radioed to have the Morford pickup stopped. Approximately twenty minutes after the call and twenty-

seven minutes after the last window had been broken, the police stopped the Morford pickup. After this time defendant was in the vehicle with Harris. Both were subsequently arrested and charged with criminal mischief.

Even drawing all reasonable inferences therefrom, we do not think this evidence, taken as a whole, rises to a level beyond mere suspicion. The truck was Morford's, but Harris often drove it. No one could connect Morford to the scene of the crime or to Harris on the night in question until the truck was stopped sometime after the vandalism. No one testified that there was more than one occupant of the truck when it was driven in the area where the crime was committed. This is not the kind of substantial evidence upon which a reasonable mind could find guilt beyond a reasonable doubt. Morford's motion for a directed verdict or verdict of acquittal should have been granted.

Defendant also challenges submission to the jury of an aiding and abetting theory by two jury instructions. For a jury to be able to find a person guilty of aiding and abetting in a criminal act there must be some kind of active participation in or approval of the act. State v. Jones, 271 N.W.2d 761, 763 (Iowa 1978). Even mere knowledge of an act is not sufficient. See State v. Galvan, 297 N.W.2d 344 (Iowa 1980). It is clear that the record before us does not support even a finding that Morford knew what Harris was doing, let alone that he approved or encouraged the acts or actively participated in them.

For these reasons we reverse the finding of guilty and remand this case to the trial court with directions to enter a verdict of acquittal.

REVERSED WITH DIRECTIONS.