

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA

Plaintiff-Appellee,

vs.

MICHAEL LARRY OLSON,

Defendant-Appellant.

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Appeal from the Iowa District Court for Jasper County (No. CRS-602)

- Thomas W. Mott, District Associate Judge.

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

Charles L. Harrington, Appellate Defender, and Raymond E. Rogers, Assistant Appellate Defender, for the defendant-appellant.

Thomas J. Miller, Attorney General; and Christie J. Scase, Assistant Attorney General; John E. Billingsley, County Attorney; and James R. Wilson, Assistant County Attorney, for the plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, and Sackett, JJ. Snell, J., takes no part.

SACKETT, J.**289**

Defendant appeals from his conviction, following a jury trial, for theft in the third degree. Iowa Code §§714.1(4), .2(3) (1985) (exercising control over stolen property). He argues (1) the evidence was insufficient to support the conviction, and (2) the trial court erred by allowing the State to impeach his credibility with evidence of a prior felony theft conviction.

The victim of a burglary reported to the police several tool boxes and tools had been stolen from his garage. Four days later, police executed a search warrant at defendant's residence and seized several tool boxes and miscellaneous tools. Defendant stated he had owned the tools for a long time, he had purchased some of the tools and that others were gifts.

I.

Defendant argues the evidence against him was not sufficient to support the jury's finding the property in question was stolen and defendant knew or had reasonable cause to believe it was stolen. Defendant also argues section 714.1(4) requires the State to prove he possessed property that had been stolen from more than one person.

Consideration of the entire record reveals ample evidence was presented to support the jury's finding the tools seized from defendant were those stolen from the victim. The victim testified he was called to defendant's house the day the police executed the search warrant. Before he saw what was inside one tool box, the victim told the police it would contain gray-colored film canisters in which the victim kept small nuts and bolts.

At trial, the victim specifically identified as his the film canisters, a steak knife, a "breaker bar," a box of old tools, a piece of plastic that came off a car the victim had worked on, and a two-drawer tool box that fit on top

of a matching bottom box with wheels on it. Despite the fact the victim could not positively identify each tool and specific item of hardware as his own, we find the victim's identification of other items found in defendant's possession sufficient evidence from which the jury could find the property seized from defendant was the property stolen from the victim. See State v. Lewis, 242 N.W.2d 711, 724-25 (Iowa 1976); State v. Davis, 229 N.W.2d 249, 251-52 (Iowa 1975).

Defendant claims the State failed to establish he knew or believed the property was stolen. See Iowa Code §714.1(4). The trial court overruled defendant's motion for judgment of acquittal made on this ground. See Iowa R. Crim. P. 18(8).

If there is evidence sufficient to raise a fair inference of guilt, then the court should not direct a verdict but should allow the case to go to the jury. State v. Winders, 366 N.W.2d 193, 196 (Iowa App. 1985). When considering a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and we consider all evidence and inferences that may be drawn from it. State v. Freeman, 404 N.W.2d 188, 191 (Iowa App. 1987).

After reviewing the record, we conclude the evidence was sufficient to support an inference defendant knew or had reasonable cause to believe the property he possessed was stolen. The State is not required to show how defendant came into possession of the stolen property. See State v. Jones, 289 N.W.2d 597, 600 (Iowa 1980); State v. Bakker, 262 N.W.2d 538, 542 (Iowa 1978). Iowa law is clear that guilty knowledge can be properly inferred from unexplained possession of recently stolen property. See Jones, 289 N.W.2d at 600; Bakker, 262 N.W.2d at 542; State v. Sheffey, 234 N.W.2d 92, 96 (Iowa 1975).

The victim's tools were stolen on January 17-18 and were seized at defendant's home on January 22. Contrary to the victim's testimony, defendant testi-

fied that he recognized all the exhibits as tools that belonged to him and that he had had them "for a long time." This testimony presented a credibility question peculiarly within the province of the trier of fact to resolve. See Sheffey, 234 N.W.2d at 96.

Viewed in this manner, the record discloses sufficient evidence to raise a fair inference of guilt. The trial court correctly overruled defendant's motion for judgment of acquittal.

We reject defendant's assertion section 714.1(4) requires the State to prove defendant possessed property that had been stolen from more than one person. Nonetheless, defendant did not raise this issue before the trial court and we need not address it here. See State v. Martin, 385 N.W.2d 549, 551 (Iowa 1986); Miller, 229 N.W.2d at 765.

II.

Defendant contends the trial court erred by allowing the State to impeach his credibility with evidence of a prior felony theft conviction. Defendant was convicted of theft in the second degree, a felony, in 1980.

Iowa Rule of Evidence 609(a) provides as follows:

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime involving dishonesty or false statement shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime constituted a felony, aggravated misdemeanor, or other crime punishable by imprisonment in excess of one year pursuant to the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect.

Defendant argues theft is not a crime involving dishonesty or false statement.

In reviewing the history of Iowa Rule of Evidence 609, the supreme court said,

[b]efore July 1, 1983, the effective date of Iowa Rule of Evidence 609, impeachment of a witness by evidence of a prior conviction

was governed by Iowa Code section 622.17 (1983). That section provided: "A witness may be interrogated as to his previous conviction for a felony. No other proof is competent, except the record thereof."

In State v. Martin, 217 N.W.2d 536, 542 (Iowa 1974), we limited impeachment under section 622.17 to those felony convictions involving dishonesty or false statement.

State v. Hackney, 397 N.W.2d 723, 726 (Iowa 1986).

Iowa Rule of Evidence 609(a) limits impeachment to evidence of convictions of crimes involving dishonesty or false statement. In this respect, Iowa rule 609(a) mirrors the standard enunciated in Martin rather than adopting the approach of Federal Rule of Evidence 609(a), which permits impeachment by any conviction involving dishonesty or false statement, or by any felony conviction regardless of its bearing on truthfulness.

Defendant relies on federal court interpretations of federal rule 609(a), some of which hold theft is generally not a crime involving dishonesty. See, e.g., United States v. Yeo, 739 F.2d 385, 387 (8th Cir. 1984). Considering the similarity between the Martin standard and Iowa rule 609(a), we will not disregard case law under Martin that clearly holds, for impeachment purposes, "theft involves dishonesty." State v. Harlow, 325 N.W.2d 90, 92 (Iowa 1982); see also State v. Willard, 351 N.W.2d 516, 518 (Iowa 1984); State v. Connor, 241 N.W.2d 447, 455 (Iowa 1976); State v. Miller, 229 N.W.2d 762, 769 (Iowa 1975).

The trial court properly exercised its discretion in its implicit finding the probative value of the conviction outweighs its prejudicial effect. We hold the trial court did not err in determining defendant's prior theft conviction involved dishonesty. Accordingly, we find no abuse of discretion on the part of the trial court in allowing impeachment evidence of defendant's conviction.

AFFIRMED.