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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed April 20, 1988
vs.	)	
CHARLES H. PALEN III,	)	8-75 87-514
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Pottawattamie County (No. 20304), James R. Richardson, Judge.

Defendant appeals from his conviction, following a jury trial, for knowingly being in possession of stolen property. **AFFIRMED.**

Charles L. Harrington, Appellate Defender, and Michael J. Laughlin, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Julie Ann Halligan, Assistant Attorney General; and Drew H. Kouris, Assistant Pottawattamie County Attorney, for plaintiff-appellee.

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

HABHAB, J. 272

This is an appeal from defendant Charles Palen's conviction, following a jury trial, for theft in the first degree in violation of Iowa Code section 714.1(4) (1985)[1]. Specifically, the State charged that the defendant and codefendant, Orville Pruett, exercised control over six stolen fur coats having a value exceeding $5,000 and knowing that such property was stolen. The jury convicted the defendant and acquitted Mr. Pruett. On appeal, defendant (1) challenges the sufficiency of the evidence as to whether he knew or believed that the property in question was stolen and (2) he seeks reversal on the grounds of ineffective assistance of counsel. We find each of the defendant's contentions to be without merit.

When reviewing the sufficiency of 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. Bass, 349 N.W.2d 498, 500 (Iowa 1984). Even where the evidence is conflicting, we are bound by the trial court's findings of fact as long as they are supported by substantial evidence. State v. LaPlant, 244 N.W.2d 240, 244

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[1]Section 714.1(4) of the Code provides as follows:

A person commits theft when the person does any of the following:

* * *

4. Exercises control over stolen property, knowing such property to have been stolen, or having reasonable cause to believe that such property has been stolen, unless the person's purpose is to promptly restore it to the owner or to deliver it to an appropriate public officer. The fact that the person is found in possession of property which has been stolen from two or more persons on separate occasions, or that the person is a dealer or other person familiar with the value of such property and has acquired it for a consideration which is far below its reasonable value, shall be evidence from which the court or jury may infer that the person knew or believed that the property had been stolen.

(Iowa 1976). Substantial evidence meansevidence which would convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. State v. Weaver, 405 N.W.2d 852, 853 (Iowa 1987). "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. Wheeler, 403 N.W.2d 58, 60 (Iowa App. 1987) (citing State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981)).

Turning to the record, a rational finder of fact could find that fourteen fur coats were stolen from "The Avenue," a women's clothing store located at the "Crossroads" in Omaha, Nebraska. The owner of the store from which the furs were stolen identified the furs found in the defendant's possession as merchandise stolen from "The Avenue."

A former employee of "The Avenue" was arrested on November 21, 1986, for the theft of the furs in question. Before he was arrested, however, he brought one of the stolen furs to the defendant's girlfriend's home. At trial the defendant's girlfriend admitted that when she asked Henderson, the former employee charged with stealing the furs, if the furs were stolen or "hot," he replied they "could be warm." She claimed, however, that her boyfriend, the defendant, did not hear the exchange. The defendant testified he agreed to purchase the fur for his girlfriend. He gave Henderson $100, a $600 set of stereo speakers, and agreed to pay an additional $400.

The defendant and his girlfriend went to the home of his mother, Nadine Palen Howartine, and showed her the defendant's girlfriend's fur coat. After the defendant told his mother that a truck driver had a truckload of these furs, he offered to sell her one. Later that day the defendant did in fact sell a brown-dyed muskrat jacket to his mother for $200. The price tag on the fur indicated

its value was $2,450. Defendant told his mother she would receive a receipt for the coat, but she never did.

At trial, the defendant claimed that later on that week he and Henderson went to a truck stop to meet a "William Jeffries." Jeffries allegedly sold the defendant eight furs for $1,035. The defendant then took the coats to the residence of the codefendant, Orville Pruett, where he allegedly showed Pruett an invoice for the coats. There was no corroboration of the claim that the defendant had an invoice for those coats.

The defendant's defense is that Jeffries was a truck driver who had several fur coats as "stock overload." Defendant explained, "[A]pparently anything that is left on the truck after unloading is theirs or dumpster material. They throw it out or keep it or whatever they want to do with it." The owner of the store from which the furs were stolen testified that their furs have never been delivered in a truck and that he knew of no local furriers that had their furs delivered in that manner.

At trial the defendant claimed that he tried to locate William Jeffries, but was unsuccessful. There was testimony from defendant's girlfriend that Jeffries was not the driver, but in fact Henderson, the man charged with stealing the furs, was the truck driver.

The defendant and the codefendant took a number of stolen furs which were delivered by a man named Harriman to a bar called "McGees." The furs were shown to various bar patrons and a mink coat was purchased by Alfred Coyle for $350. The price tag on the mink coat indicated its value was $7,900. Coyle testified that the mink had an "Avenue" label on the inner lining. The defendant admitted seeing the label, but claimed he thought it was a brand name. Coyle requested but did not receive a receipt or an invoice copy.

After leaving the bar, the defendant and codefendant were picked up by the police. The trial record reveals that during questioning by the police, there were many inconsistencies in the defendant's answers and that he demonstrated evasive behavior.

A defendant's inconsistent statements are probative circumstantial evidence from which a fact finder may infer guilt. State v. Schrier, 300 N.W.2d 305, 309 (Iowa 1981). As stated earlier, 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. Wheeler, 403 N.W.2d at 60.

We find that the jury could have reasonably determined that the facts and circumstances known to the defendant were sufficient to cause him to actually believe that the furs were stolen and reasonably inferred that the defendant had actual knowledge of this fact. Viewing the evidence in the light most favorable to the State, it is clear that the jury was presented with sufficient evidence from which it could have determined that defendant exercised control over stolen property and that he knew or believed that the fur coats were stolen property. Accordingly, we affirm the trial court on this issue.

The defendant contends that his constitutional right to effective assistance of counsel was denied when his trial counsel failed to object to erroneous jury instructions relating to the "knowledge" element of the crime. The State responds that the evidence was overwhelming in demonstrating the defendant's actual knowledge that he was in possession of stolen property, and that even if the jury instructions were erroneous, there is no reasonable probability that instructions worded in accordance with the defendant's preferences would have brought about a different result. We agree with the State.

In order to prove a claim of ineffective assistance of counsel, the defendant must demonstrate (1) that counsel's performance was deficient in that he failed to perform an essential duty and (2) that prejudice resulted, to the extent that, but for counsel's unprofessional errors, the result of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 2969, 80 L. Ed. 2d 674, 699 (1984); Taylor v. State, 352 N.W.2d 683, 685 (Iowa 1984). The burden is on the defendant to show that there is a reasonable probability that but for the counsel's error the result would have been different. Strickland v. Washington, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. "Perfect or errorless counsel is not required as a prerequisite to a fair trial consonant with due process." Cardarella v. United States, 375 F. 2d 222, 232 (8th Cir. 1967).

As previously discussed, the record reveals that the defendant was found in possession of recently-stolen property and such property was positively identified as having been stolen from "The Avenue." Defendant and an employee of "The Avenue," who was later charged with the theft of the furs, were involved in the buying and selling of the stolen merchandise. The defendant admitted to seeing an "Avenue" label on the inside of one of the stolen furs and was selling the furs for a mere fraction of their actual value. His initial statement to the police and his later trial testimony were inconsistent. His explanation that he had received the furs from a trucker who had a "fur overload" and that he had an invoice which proved legitimate ownership was totally uncorroborated. The receipts or invoices which he claimed to prove proper ownership were never produced.

Against this background, we find that the defendant has failed to carry his burden of showing a reasonable probability that the outcome of the trial would be different had the jury instructions left out the "reasonable cause to

believe" language. Under these circumstances, the jury had overwhelming evidence from which to conclude that the defendant knew or believed that the furs were stolen. Having determined that the defendant failed the second prong of the Strickland test to prove ineffective assistance of counsel, we decline to reverse on that ground.

AFFIRMED.