IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed November 30, 1983
vs.	)	
LEROY SNYDER,	)	3-268 68996
Defendant-Appellant.	)	

Appeal from Winneshiek District Court - Frank D. Elwood, Judge.

Defendant appeals his conviction and sentence of theft in the fourth degree. REVERSED.

Thomas J. Miller, Attorney General and Teresa Baustian, Assistant Attorney General, for plaintiff-appellee.

Patrick R. Grady, Assistant Appellate Defender, for defendant-appellant.

Heard by Donielson, P.J., Schlegel and Sackett, JJ.

SACKETT, J.

Defendant, Leroy Snyder, appeals his conviction and sentence of the crime of possession of stolen property, a violation of Iowa Code sections 714.1(4) and 714.2(4).

Defendant claims there was insufficient evidence for a jury to find him guilty as charged, beyond a reasonable doubt. We agree that there was insufficient evidence and reverse.

The evidence presented by the state shows that Tom Hageman manufactured a bracket. The bracket was stamped with a number 13. Hageman had taken the bracket to Schmitt Implement in the summer or fall of 1979 for Schmitt to sell on consignment. During the summer of 1981 Hageman identifed a bracket at Linderbaum's Shop as being the bracket he had left at Schmitt's. The defendant and his father had brought the bracket to the Linderbaum Shop in July of 1981 for repairs. After Hageman identifed his bracket at the Linderbaum Shop he contacted Schmitt. Schmitt did not even know the bracket was missing from his shop. Schmitt testified that Hageman had left a bracket on consignment at his shop. He identified the bracket in question as being similar to one left at his shop and indicated it could, in fact, have been the bracket. The last time he saw the bracket was in the summer or fall of 1979. The bracket at that time was on a cement block in front of his place of business. Shortly afterward he had told his employees that the bracket should be put away. He didn't know when the bracket was removed except that sometime between the summer or fall of 1979 and July or August of 1981 it turned up missing. He kept no written records on consigned items.

Schmitt testified he did not sell the bracket or give it away. Schmitt had employed other persons in his shop during the two-year period. One of the persons then employed is now deceased. Schmitt was asked if he checked with his

employees to see if anyone had sold or given the bracket away. Schmitt indicated he checked with his employees, except the deceased one, but there was no testimony elicited from him as to their answers.

The state's evidence, also, showed that Winneshiek County Deputy Sheriff, David Junko, went to the Leroy Snyder farm south of Frankville in June of 1981 with an invalid search warrant and picked up some property that had been reported stolen.

Melvin Larson, testifying for the defendant, indicated he had been on the Snyder farm to buy scrap in May of 1981. He found the weight in question in some tall grass away from the road. The area was fenced but had a cheap gate. It appeared to have been there for six or eight months. It was hauled to the defendant's yard. Defendant testified he got the weight from the junk yard (apparently the same area referred to by Larson). The area is on a gravel road and has trees around it.

At the close of the state's evidence and again at the close of defendant's evidence, defendant made a motion for acquittal claiming there was insufficient evidence to support the conviction.

Our review is on errors assigned. We must view the evidence in the light most favorable to the state, and all legitimate inferences arising reasonably and fairly from the evidence may be indulged in to support the verdict. State v. Schrier, 300 N.W. 2d 305, 306 (Iowa 1981).

If there is any substantial evidence tending to support the charge, the case should be submitted to the jury. State v. Jones, 289 N.W. 2d 597, 600 (Iowa 1980).

The supreme court has held:

> In making a determination as to the propriety of the court's ruling on a motion for directed verdict in a criminal case this court views the evidence in the light most favorable to the state regardless of whether it is contradicted and every legitimate inference that may be fairly and reasonable deducted therefrom must be carried to the aid of the evidence.

State v. Veverka, 271 N.W. 2d 744, 746-47 (Iowa 1978) (quoting State v. Overstreet 243 N.W. 2d 880, 883 (Iowa 1976)).

A person commits theft under Iowa Code section 714.1(4) (1981) when he: "Exercises control over stolen property, knowing such property to have been stolen, or having reasonable cause to believe such property has been stolen . . ." To warrant the inference of guilt from the possession of stolen property, there must be proof that the property described in the indictment was stolen. State v. Brightman, 252 Iowa 1278, 1281, 110 N.W. 2d 315, 316 (1961). Before the usual presumption of guilt arising from the possession will obtain, the larceny, the corpus delicti, must first be established. State v. Taylor, 25 Iowa 273, 275 (1868).

The record is void of any evidence that the item was stolen. "Stolen" is defined in Black's Law Dictionary at 1272 (rev. 5th ed. 1979) as "[a]cquired, or possessed, as a result of some wrongful or dishonest act or taking . . ."

The facts, taken in the light most favorable to the state, do not present sufficient evidence to support a finding that the property was stolen. There is no evidence in this record of a wrongful or dishonest act or taking. Schmitt's testimony at most indicates the bracket disappeared from his shop.

Even if the property was shown to have been stolen, there is no evidence here that defendant knew or had reasonable cause to believe the property was stolen.

It is not sufficient under Iowa Code section 714.1(4) that the accused has exercised control over stolen property in the face of facts which should reasonably lead him to believe that the property has been stolen. To convict, the state must show that the accused, in fact, believed that the property was stolen. State v. Hutt, 330 N.W. 2d 788, 790 (Iowa 1983). There is no direct evidence on the element of defendant's knowledge.

The state argues that knowledge that the goods in the defendant's possession are stolen may be inferred from other acts of a similar nature. We recognize that

the trier of fact can under Iowa law make that inference. State v. Leto, 305 N.W. 2d 482, 490 (Iowa 1981). However, the ultimate fact inferred must more likely than not flow from the basic fact. State v. Schomaker, __N.W. 2d__(Iowa 1983)(Sup. Ct. #67854 filed Oct. 19, 1983).

The state further argues that because Snyder's farm yard was used as a place to store stolen property, that is evidence of his knowledge that a particular item is stolen. They cite as authority State v. Bullis, 196 Iowa 480, 192 N.W. 793 (1923).

The basic facts are not sufficient to support either of the inferences the state is asking us to make. The evidence shows that a Winneshiek County Deputy Sheriff, David Junko, went to the Leroy Snyder farm south of Frankville in June of 1981 with an invalid search warrant and picked up some property reported as stolen. The record is devoid of any evidence showing that the premises were under the dominion or control of defendant. The evidence does not serve to connect this defendant to the farm, nor does it show any evidence of any relationship or control or knowledge of the defendant with reference to the farm or the allegedly stolen property.

In Bullis an inference was allowed because the state introduced evidence showing that the premises were under the dominion and control of defendant. Bullis, 196 Iowa at 484. There is no evidence in this case showing any dominion or control over the premises in question by defendant.

Because there is insufficient evidence for a trier of fact to find defendant guilty beyond a reasonable doubt, we reverse.

The issue of the improper sentence is moot.

REVERSED.