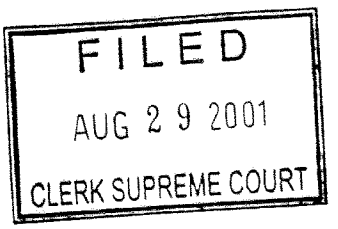
IN THE COURT OF APPEALS OF IOWA

No. 1-423 / 00-0577
Filed August 29, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

GEORGE DAVID KIMBLE, JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Cynthia H. Danielson, Judge.

The defendant challenges the sufficiency of the evidence to support his conviction for second-degree theft. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Michael L. Bennett, Assistant County Attorney, for appellee.

Considered by Hayden, Habhab and C. Peterson, Senior Judges.*

*Senior Judges assigned by order pursuant to Iowa Code section 602.9206 (2001).

C. PETERSON, S.J.

George Kimble was convicted of second-degree theft after a trial to a jury. Motions for judgment of acquittal filed by Kimble at the close of the evidence in chief and the close of all the evidence were overruled by the court. He appeals the decision contending the evidence was insufficient to sustain the verdict. We affirm the trial court.

The jury could find these facts from the evidence supported: On December 19, 1999, at about 4:30 p.m. George Kimble and a woman entered Mac's Sporting Goods in Burlington where Cindy Fox was working as a salesclerk. They requested to have logos printed on some jerseys. Shortly thereafter the woman left the store to retrieve her purse. She returned and started taking jerseys off the rack near the front of the store. George Kimble then left to get a list of numbers for the jerseys from his vehicle, but returned stating he had left the list at home. George Kimble and the woman advised they wanted the jerseys done that day and would return with the numbers. They left the store. Later that day it was determined that boxes of merchandise near the front of the store were missing. Other boxes of merchandise could not be located the following day. The value of the missing merchandise was in excess of one thousand dollars. The following day the clerk of the store saw the van she thought was driven by the couple in the store and later identified George Kimble as the individual driving the van. The police searched the van and the apartment in which George Kimble, and others, resided. Three of the missing boxes were located in the van, and several of the missing items of clothing were found in the

apartment. George Kimble denied being involved in the actual removal of the merchandise from the store, but acknowledged to police that he became aware that the boxes contained stolen merchandise from Mac's Sporting Goods approximately two days after the removal. He admitted that he had worn some of the clothing, but contended that he did not exercise control over the items.

George Kimble contends that the evidence is insufficient for the jury to find him guilty of the actual theft and that there is insufficient evidence to show that he exercised control of stolen property with a value in excess of one thousand dollars.

Appellate review of sufficiency challenges is for correction of errors of law. *State v. Hildreth*, 582 N.W.2d 167, 170 (Iowa 1998). The reviewing court considers all the facts, not just those which support the verdict, and will uphold the jury's decision if supported by substantial evidence. *State v. Kostman*, 585 N.W.2d 209, 211 (Iowa 1998). "Substantial evidence" has been defined as being "such evidence as could convince a rational trier of fact that defendant is guilty beyond a reasonable doubt." *State v. Robinson*, 288 N.W.2d 337, 339 (Iowa 1980). In making that determination whether that standard is met, the evidence is reviewed in the light most favorable to the State and assisted by all reasonable inferences. *State v. Geier*, 484 N.W.2d 167, 170-71 (Iowa 1992). Although this court reviews all of the evidence in determining its legal sufficiency to support the verdict, we do not ourselves determine whether the evidence established guilt beyond a reasonable doubt. Instead, the relevant question is whether, after viewing all the evidence in the light most favorable to the prosecution, any

rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994).

Evidence supports a conclusion that Mac's Sporting Goods owned the merchandise and that the value was in excess of one thousand dollars. Evidence supports a conclusion that George Kimble was present at the scene of the theft and that the merchandise was determined to be missing shortly after his presence. He has been placed in control of the vehicle in which merchandise that was stolen from Mac's Sporting Goods was found. He has been placed as one of the residents of the apartment in which some of the stolen merchandise was found. He wore some of the stolen merchandise, and the evidence supports a conclusion that George Kimble knew that all the merchandise was stolen.

The evidence from which the jury reached its conclusion meets the test of "substantial evidence to support the verdict."

AFFIRMED.