IN THE COURT OF APPEALS OF IOWA

No. 8-199 / 97-0783

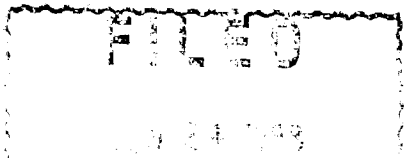
STATE OF IOWA,

Plaintiff-Appellee,

vs.

CARL DICKERSON LINEBERGER II,

Defendant-Appellant.



Appeal from the Iowa District Court for Mahaska County, Annette J. Scieszinski, Judge.

Defendant appeals his conviction and sentence, following a bench trial, for second-degree theft. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, and Charles A. Stream, County Attorney, for appellee.

Considered by Cady, C.J., and Vogel and Mahan, JJ.

MAHAN, J.

This is an appeal by Carl Lineberger II challenging his conviction for theft in the second degree in violation of Iowa Code sections 714.1(4) and 714.2(2). We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

This case is a companion case to *State v. Tolbert,* No. 97-0725 (Iowa App. Apr. 24, 1998). In the early morning hours of November 22, 1996, Lineberger, Shannon Tolbert, and Tiffany Stanford came to A.J.'s Laser Wash in Oskaloosa. The owner of the car wash observed them collecting a large quantity of quarters from a change machine. They used a doctored $5 bill, which they were able to pull back out of the machine, to obtain the quarters. Police officers found more than $1866 in quarters in their vehicle.

Lineberger was charged with theft in the second degree based on possession of stolen property under the theory the large quantity of quarters in the vehicle were stolen. He was also charged with theft in the fourth degree for taking quarters from the car wash. Lineberger pled guilty to theft in the fourth degree. After a bench trial, the district court found Lineberger guilty of theft in the second degree. Lineberger appealed.

I. Lineberger contends he received ineffective assistance because his trial counsel failed to timely file a motion to suppress certain statements. Lineberger

asserts his statements should have been suppressed because an officer improperly approached him after he had invoked his right to speak to an attorney.

Our review of an allegation of ineffective assistance of counsel is de novo. *Cox v. State*, 554 N.W.2d 712, 714 (Iowa App. 1996). To establish a claim of ineffective assistance of counsel, defendant must show (1) the attorney failed to perform an essential duty, and (2) prejudice resulted to the extent it denied defendant a fair trial. *Bettis v. State*, 547 N.W.2d 635, 637 (Iowa App. 1996).

Here, the district court addressed defendant's motion to suppress on the merits and found Lineberger's statements were voluntary. We find Lineberger did not receive ineffective assistance because his trial counsel filed an untimely motion to suppress.

II. Lineberger claims the State did not present sufficient evidence to support his conviction for second-degree theft. He believes there was not sufficient evidence to show the quarters found in the vehicle were stolen. He states there was no evidence to show where or when the quarters might have been stolen. Lineberger asserts he acquired the quarters when he sold some jewelry in North Carolina.

Our review on this issue is for errors of law. *State v. Freeman*, 404 N.W.2d 188, 190 (Iowa App. 1987). The offense of exercising control over stolen property is composed of two elements: (1) the accused must exercise control over stolen property; and (2) the accused must do so with the knowledge the property is stolen. *State v. Winders*, 366 N.W.2d 193, 196 (Iowa App. 1985).

Lineberger admitted that before he left North Carolina to travel to Iowa he had purchased for $500 the instructions for obtaining money from change machines. In his written statement, Lineberger admitted he had used this method to obtain quarters from one change machine in Indiana and one in Illinois. Furthermore, as the district court pointed out, there is no logical or believable reason for defendant to embark on a long-distance road trip toting heavy and voluminous quarters instead of more portable paper money. We find there is substantial evidence to show the quarters were stolen.

We affirm defendant's conviction. Costs of this appeal are assessed to Lineberger.

AFFIRMED.