IN THE COURT OF APPEALS OF IOWA

No. 6-407 / 95-1564

STATE OF IOWA,

Plaintiff-Appellee,

vs.

JOHN V. GERHARD,

Defendant-Appellant.

FILED
JUL 26 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Worth County, Gilbert K. Bovard, Judge.

Defendant appeals from judgment and sentence, following jury trial, entered upon his third-degree burglary conviction in violation of Iowa Code sections 713.1 and 713.6A (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Sarah E. Hennesy, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, and Douglas A. Krull, County Attorney, for appellee.

Considered by Sackett, C.J., and Habhab and Huitink, JJ.

HABHAB, J.

Defendant John Gerhard challenges the sufficiency of the evidence to support his conviction for third-degree burglary. We affirm.

When reviewing criminal convictions for sufficiency of the evidence, we review the evidence in a light most favorable to the State. *State v. McGrew*, 515 N.W.2d 36, 37 (Iowa 1994). A conviction is reversed only if there is no substantial evidence in the record supporting the verdict or the verdict is clearly against the weight of the evidence. *Id.* at 37-38. Substantial evidence is evidence which could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *Id.* at 38. A fair inference of guilt with respect to each element of the crime charged is sufficient to uphold a verdict. *Id.* We consider all of the evidence, not merely that supportive of the conviction, in determining the sufficiency of the evidence to support a guilty verdict. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980).

John and Esther Hale had died and their home in Worth County was unoccupied. The home and outbuildings still contained numerous items of property. On March 30, 1995, a few friends and family members were present on the Hale farm to scatter the ashes of Esther. Those individuals left the property between 5:30 and 6:00 p.m. At that time, the Hale property was undisturbed and the gate had been locked. Sometime before 10 p.m. that evening the residence was burglarized. The

gate had been broken down, a padlock had been cut, and the back door of the house had been broken. Numerous large items were taken, including a television set on a swivel base, television antenna, bookcase, welder, wheelbarrow, weed trimmer, air compressor, chain saw, and drill press stand.

Unaware of the earlier burglary, a deputy sheriff pulled over a pickup truck with a trailer at about 10:00 p.m. that evening for failing to have any tail lights illuminated. Four men were in the pickup, including defendant, who was a passenger. The pickup belonged to David Keough. The pickup truck and trailer both contained items the deputy thought to be an odd conglomeration and he made a list of the items he saw.

The next afternoon, the deputy learned the items he had observed in the pickup and trailer truck matched those reported as stolen from the Hale residence. Law enforcement authorities executed a search warrant at David Keough's residence and recovered most of the items missing from the Hale residence. About two to two-and-one-half hours after beginning their search, defendant was observed driving onto the Keough property and entering one of several buildings. Defendant was subsequently arrested and charged with third-degree burglary.

At trial, defendant testified that at about 8:30 or 9:00 p.m. on March 30 he was asked to help load and transport items from Roy Keough's property to David Keough's house. He testified he had no idea the items were stolen. He also testified

he saw law enforcement on Keough's property when the search warrant was being executed and he drove onto the property anyway. He testified he went into one of the buildings because he was driving without a license and hoped to avoid a further charge, and because he needed to look for a plug to use with some fuses in repairing his trailer.

A jury's finding of guilt is binding upon this court unless we conclude the record lacks substantial evidence to support such a finding. *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). Direct and circumstantial evidence are equally probative. *State v. Selestan*, 515 N.W.2d 356, 358 (Iowa App. 1994).

Within a short time after the Hale property had been stolen, defendant was a passenger in a pickup which was hauling the property. We recognize mere possession of recently stolen property will not permit, as a matter of law, a rational juror to conclude beyond a reasonable doubt that the possessor committed the burglary. *State v. Lewis*, 242 N.W.2d 711, 723 (Iowa 1976). However, an inference of burglary may arise from the possession of recently stolen property when surrounding circumstances are also considered. *State v. Hall*, 371 N.W.2d 187, 189 (Iowa App. 1985). The surrounding circumstances in this case support such an inference. When the deputy activated his lights and tried to stop the pickup, it did not immediately stop. Instead, it drove over one-half mile and pulled in at a residence of a relative of one of the

passengers. The deputy observed all of the men in the pickup were wearing winter coveralls and they had flashlights. Pry bars and a bolt cutter were in the pickup.

When defendant observed police officers at the Keough residence during the execution of the search warrant, he tried to avoid contact with the officers by going into one of the buildings on the property. When asked why he did this, defendant responded, "Well, to tell you the truth, the reason I went in there is because I didn't know if anybody seen me drive in there and more or less I just wanted to get out of sight for a moment." The jury could reasonably have concluded defendant's efforts to avoid the police did not have to do with his lack of a license but with his involvement in stealing the Hale property.

Sheriff Stoffreggen testified due to the size and weight of the property taken from the Hale residence, it would have taken several people to steal the property. Defendant testified he had been asked between 8:30 and 9:00 p.m. to help move the property from the Roy Keough residence to David Keough's residence and he was unaware it was stolen. The deputy stopped the pickup full of the stolen property at 10:00 p.m. The jury could have found implausible defendant's version of the events in which all of the large, heavy property was stolen from the Hale residence after 5:30 or 6:00 p.m., taken to the Roy Keough property and unloaded, and then moved again to the David Keough residence. *See State v. Phanhsouvanh*, 494 N.W.2d 219, 223 (Iowa 1992) (resolving conflicts in the evidence is for the jury and the jury could believe all, some, or none of the testimony).

Viewed in a light most favorable to the State, there was sufficient evidence from which a rational fact finder could find defendant guilty beyond a reasonable doubt of third-degree burglary. We affirm his conviction.

AFFIRMED.