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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed May 31, 1978
vs.	)	
RICKEY R. RITCHIE,	)	<u>494</u>
Appellant.	)	59556

Appeal from Polk District Court - A. B. Crouch, Judge.

Defendant claims there was no evidence establishing his possession of recently stolen property to support a jury instruction on unexplained possession of such property; and in relying upon circumstantial evidence that the State failed to exclude a rational hypothesis of his innocence. - Affirmed.

Michael Christensen, West Des Moines, for Appellant.

Richard C. Turner, Attorney General of Iowa, and Dan Johnston, Polk County Attorney, for Appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant Rickey R. Ritchie claims there was no evidence establishing his possession of recently stolen property to support a jury instruction on unexplained possession of such property. We affirm.

Proof of possession of recently stolen property "... when it is also shown that the larceny took place in connection with a burglary is sufficient to warrant a conviction of breaking and entering." *State v. Lewis*, 242 N.W.2d 711, 717 (Iowa 1976) quoting from *State v. Jensen*, 245 Iowa 1363, 1373, 66 N.W.2d 480, 485. Ritchie's appeal attacks only the finding of possession; his conviction must be upheld if the record discloses sufficient evidence of his possession to support submission of the issue to the jury.

Ritchie argues that since his "possession" was established by circumstantial evidence, the State had to prove not only that he had possession but that such possession was wholly inconsistent with any rational hypothesis of innocence. *State v. Blyth*, 226 N.W.2d 250, 268 (Iowa 1975). He urges that the money could well have been stuffed beneath the front seat when the first man returned to the car before Ritchie and his brother ever approached the apartment complex. An eyewitness watching the comings and goings of the group testified that one man left the car, walked toward the apartment ultimately burglarized, passed out of his view and then returned to the car four or five minutes later. He testified after a few minutes all four men approached the apartment. It was clearly established at trial that entry into the apartment was forcible with an unsuccessful attempt at the front door and with entry gained finally at the back entrance. The interior of the apartment was ransacked. The money found in the car was one of several rolls of bills hidden in the apartment until the occupants could bank their receipts.

We think the jury could reasonably reject the suggestion that all of this activity was accomplished by the first man in the span of his four or five minute absence from the car. The jury could conclude the first man left the car initially to "case" the apartment targeted for burglary. We think the jury could find beyond a reasonable doubt that Ritchie placed the bills beneath the car seat in front of him after fleeing to the car from the landing of the outside staircase where he had been

surprised by a resident of the apartment complex (an off-duty policeman) who pursued him to the car and demanded an explanation for his presence and conduct. The jury could find after the burglary only Ritchie returned to the car and only he was in a position to stuff the roll of bills under the car seat.

To constitute a possession of the stolen property by the accused, it is not necessary that the property be actually on his person; it is sufficient if it is . . . in a place where it must necessarily have been placed by him. 13 Am. Jur. 2d, Burglary, section 56, page 356.

The issue of whether Ritchie placed the bills under the seat and therefore remained in constructive possession of recently stolen goods was properly submitted to the jury.

AFFIRMED.