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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed January 26, 1982
vs.	)	1-368/65923
JODY HAROLD SHAFER,	)	
Defendant-Appellant,	)	

Appeal from Polk District Court, Joel D. Novak, Judge.

The defendant appeals from his conviction of theft in the second degree in violation of sections 714.1(1) and (2), The Code. REVERSED.

Francis C. Hoyt, Jr., State Appellate Defender's Office, for defendant-appellant.

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

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

The defendant appeals from his conviction of theft in the second degree in violation of sections 714.1(1) and (2), The Code. We reverse.

On April 22, 1980, a Des Moines police officer observed two unidentified men, neither of whom was proven to be the defendant, run from a parked car. The officer found several items inside the car, including a stolen moped. Two fingerprints on the moped matched the known prints of the defendant. However, there was no evidence connecting the defendant with the car in any way. The defendant's fingerprints were not found on the car itself nor on any other item in the car. The owner testified he had not given the defendant permission to use the moped. At the close of the State's evidence, defense counsel moved for a directed verdict of not guilty, which was overruled. A jury found the defendant guilty, and he appealed.

The defendant asserts that the evidence was insufficient for a rational factfinder to conclude the defendant was guilty beyond a reasonable doubt. We agree.

There was no evidence presented which connected the defendant with the crime other than the two fingerprints found on the stolen moped. The evidence did not show where on the moped the fingerprints were found. Nothing showed that the fingerprints were in such a position that taking possession of the moped could be inferred. One of the elements the State must prove is possession or control of the property with intent to deprive the owner of it. Possession means more than being around the stolen vehicle. Fitzpatrick v. U.S., 410 F.2d 513 (5th Cir. 1969)("fingerprints on the interior of the automobile, standing alone, are not sufficient to show possession.") The evidence of two fingerprints on the moped, without anything more, was insufficient to show possession by the defendant.

Although both circumstantial and direct evidence may be used to prove the State's case, for it to be sufficient, it must convince the factfinder of the defendant's guilt beyond a reasonable doubt. State v. O'Connell, 275 N.W.2d 197, 205 (Iowa 1979). Such is not the case here. A moped is a movable object, which is customarily used around the community and left out in the open. The defendant could easily have touched the moped casually with no intent to permanently deprive the owner of it. Such an occurrence would explain the defendant's fingerprints being on the moped equally as well as the State's theory.

The evidence was insufficient to support the verdict of gulity. We therefore reverse the trial court's verdict.

Since we have reversed on the sufficiency of the evidence, we do not need to consider the second ground for reversal urged by the defendant.

REVERSED.