

IN THE COURT OF APPEALS OF IOWA

No. 7-005 / 95-1565

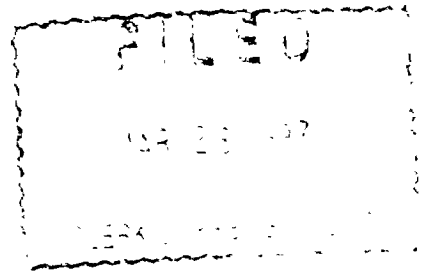
**STATE OF IOWA,**

Appellee,

vs.

**CHARLES H. PALEN, III,**

Appellant.



---

Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith, Judge.

Defendant appeals from judgment and sentences entered following a bench trial, for first-degree theft, in violation of Iowa Code sections 714.4(4) and 714.2(1) (1993), and third-degree burglary, in violation of Iowa Code section 716.3A.

**AFFIRMED.**

Forest E. Ebersold of Ebersold Law Office, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Richard Crowl, County Attorney, and Daniel J. McGinn, Assistant County Attorney, for appellee.

Heard by Sackett, P.J., Cady, and Streit, JJ.

**CADY, J.**

Charles Palen appeals from judgment and sentences entered, following a bench trial, for first-degree burglary, in violation of Iowa Code section 714.4(4) and 714.2(1) (1993), and third-degree burglary, in violation of Iowa Code section 716.3A. We affirm.

On November 10, 1994, the State charged Charles Palen and Dudie Rose with first-degree theft for allegedly exercising control over a pickup truck stolen from Craig Maline, and third-degree burglary for allegedly burglarizing a vehicle owned by Norine Strausser. Rose is Strausser's cousin.

Palen filed a notice of an intoxication defense, and waived jury trial. Prior to trial, Rose pled guilty to both charges. At Palen's bench trial, Maline testified he saw two men steal his black pickup truck from his home on October 16, 1994, in Omaha, Nebraska. He could not identify the men.

Strausser's trailer home is located in Council Bluffs. Rachel Strausser, Norine's daughter, and Shelly Logemann testified they saw two men on October 31, 1994 in a black truck in the driveway of the trailer shortly after midnight. The men were wearing dark clothing and had flashlights. They identified the men as Palen and Rose, and believed Palen was in the driver's seat and Rose was in the passenger's seat. Shelly saw Rose in Strausser's pickup truck and saw Palen near the camper. Rachel heard the camper door open, and saw it rocking back and forth. The inside of the camper had been ransacked, but nothing was taken.

Police officers testified they apprehended Palen and Rose on the deck of Strausser's trailer home. They determined the black truck was Maline's. Someone had rigged the steering column so it could be started with a knife or a screwdriver.

Palen testified he did not remember the incident because he was "blasted," and denied stealing the truck. Rose testified Palen was drinking heavily that night. He explained another person had given them a ride in the truck and the other person fled when the police arrived.

The court found Palen guilty of both charges, and sentenced him to indeterminate, consecutive ten and five-year terms of imprisonment.

Palen appeals. He argues the trial court lacked subject matter jurisdiction because there was no evidence Palen stole the vehicle in Iowa. Palen further contends there was insufficient evidence to prove he had entered the occupied structure with the requisite intent to sustain a conviction for third-degree burglary. Finally, Palen asserts there was insufficient evidence to prove he knew the vehicle was stolen as required to sustain a conviction for first-degree theft.

### **I. Subject Matter Jurisdiction**

Palen was tried in Pottawattamie County. Palen contends the trial court lacked subject matter jurisdiction because there was no evidence Palen stole the vehicle in Iowa. The State argues the court had jurisdiction under Iowa Code section 803.1(1)(a) and (2) because three of the four elements of the crime occurred in Pottawattamie County. We reject Palen's argument.

A criminal action “shall be tried in the county in which the crime is committed except as otherwise provided by law.” Iowa Code § 803.2(1). Additionally,

1. A person is subject to prosecution in this state for an offense which the person commits within or outside this state, by the person’s own conduct or that of another for which the person is legally accountable, if
  - a. The offense is committed either wholly or partly within this state.
2. An offense may be committed partly within this state if conduct which is an element of the offense, or a result which constitutes an element of the offense, occur within this state.

Iowa Code § 803.1(1), (1)(a), (2).

The State charged Palen with theft by exercising control over stolen property under Iowa Code section 714.1(4). The elements of this offense are:

1. The property was stolen.
2. The defendant exercised control over the property.
3. At the time, the defendant knew the property had been stolen.
4. The defendant did not intend to promptly return the property to the owner or to deliver it to an appropriate public officer.

Iowa Crim. Jury Instr. 1400.13.

In the present case, the truck was stolen in Nebraska. However, the State alleged and proved the other elements of the offense occurred in Council Bluffs, Pottawattamie County, Iowa. Under Iowa Code section 803.1(1)(a) and 803.1(2) the Iowa District Court for Pottawattamie County had jurisdiction to try Palen for the theft offense. *See Newlon v. Bennett*, 253 Iowa 555, 557, 112 N.W.2d 884, 885 (1962).

## **II. Insufficient Evidence**

A verdict of guilty will be reversed only when it is not supported by substantial evidence or is clearly against the weight of the evidence. *State v. McGrew*, 515 N.W.2d 36, 37-38 (Iowa 1994). Substantial evidence means evidence that could convince a rational trier of fact the defendant is guilty of the crime beyond a reasonable doubt. *State v. LeGrear*, 346 N.W.2d 21, 23 (Iowa 1989). We view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Boss*, 349 N.W.2d 498, 500 (Iowa 1984). We apply the same substantial evidence rule as to the findings of fact whether the case was tried to a jury or to the court. *State v. Frake*, 450 N.W.2d 817, 818 (Iowa 1990).

Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). A guilty verdict can rest on circumstantial evidence alone. *State v. Torres*, 506 N.W.2d 470, 472 (Iowa App. 1993).

#### **A. Entry With Intent to Commit Burglary**

Palen argues there was insufficient evidence to prove he entered an occupied structure with the intent to commit a felony, assault or theft as required under Iowa Code section 713.1 which defines burglary. We disagree.

“Intent is seldom capable of direct proof and may be ascertained by ‘such reasonable inferences and deductions as may be drawn from the facts proved by the evidence in accordance with common experience and observation.’” *State v. Luter*, 346 N.W.2d 802, 809 (Iowa 1984)(quoting *State v. Serr*, 322 N.W.2d 96, 101 (Iowa

App. 1982)). We find there was sufficient evidence in the record to support a finding Palen had the requisite intent under Iowa Code section 713.1.

Palen arrived at Strausser's residence after midnight wearing dark clothing and a black handkerchief over his face. Palen and Rose walked around Strausser's trailer, shining their lights in the windows. Witnesses saw Palen going toward Strausser's camper, and heard the door of the camper. They also saw the camper rocking back and forth as though someone was walking in it.

The next day the Strausser family found the trailer had been ransacked. The cabinet doors were open. The bedding had been removed from the bed. All the drawers and benches in the camper had been opened. We find the evidence was sufficient to support the finding Palen entered an occupied structure with intent to commit theft.

#### **B. Knowledge the Pickup Truck Was Stolen**

Finally, Palen argues there was insufficient evidence to prove he knew or had reasonable cause to believe the truck was stolen as required by Iowa Code section 714.1(4). *See State v. Hensley*, 534 N.W.2d 379, 384 (Iowa 1995). To satisfy this element the State must prove the facts and circumstances known to Palen were sufficient to satisfy him or cause him to believe the truck was stolen. *See State v. Selestian*, 515 N.W.2d 356, 358 (Iowa App. 1994).

The evidence revealed Palen and Rose were in possession of the truck which had been stolen a few weeks earlier. Palen was observed exiting the truck from the

driver's door. The steering column of the truck had been damaged so it could be started with a knife or screwdriver rather than with a key. Police found a screwdriver on the dashboard of the truck. The police never found an ignition key.

This evidence is sufficient to support a finding Palen knew the truck was stolen. It is reasonable to infer Palen was the driver of the truck, and was aware of the tampering with the steering column. Additionally, no ignition key was produced. This evidence was sufficient to support Palen's conviction.

We affirm the convictions.

**AFFIRMED.**