

FILED

AUG 29 1985

CLERK SUPREME COURT

489

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Filed August 29, 1985

Plaintiff-Appellee,

)

vs.

)

5-273

84-931

MICHAEL THOMAS KERENS,

)

Defendant-Appellant.

)

Appeal from the Iowa District Court for Clinton County, L. D. Carstensen,
Judge.

Defendant appeals from judgment entered upon his conviction of
third-degree theft, asserting that the trial court abused its discretion in admitting
evidence of other thefts. **AFFIRMED.**

Charles L. Harrington, Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Steven K. Hansen, Assistant
Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., Snell, and Hayden, JJ.

The defendant asserts error in his trial and subsequent conviction for theft in the third degree, claiming the court should not have allowed evidence to be admitted of other thefts not related to the theft prosecution which is the subject of this appeal. We affirm.

The defendant, Michael Kerens, was accused of possessing a stolen stereo and waterbed. At trial a witness testified he saw his stolen stereo at the apartment where Kerens lived. Another witness said he had seen his stolen waterbed at the apartment. The woman who rented the apartment and with whom Kerens lived said Kerens had brought the stereo and waterbed to her apartment. Evidence was also presented that the owner of an automobile shop had sold defendant an automobile in exchange for cash, an Apple computer, and a television set. Witnesses testified the computer equipment had been stolen from Washington Middle School in Clinton. The jury returned a verdict of guilty of theft in the second degree, but on April 2, 1984, the court determined the evidence was insufficient to establish the crime and entered judgment on the included offense of theft in the third degree.

On appeal Kerens says the court erred in overruling his objections to evidence of theft of the computer from the school. He says it is unrelated to the theft of the waterbed and stereo and caused undue prejudice.

The defendant argues the case of State v. Leto, 305 N.W.2d 482 (Iowa 1981) cited by the State is not on point although the court held evidence of possession of stolen pickup trucks was admissible in prosecuting a charge of stealing a van. Id. at 490. This case is distinguishable, defendant says, because the record in that case showed the accused's body repair business was a "chop shop" for stolen motor vehicles. However, in State v. Gibb, 303 N.W.2d 673, 682 (Iowa 1981), the court allowed admission of evidence that the defendant

had on his person packets of cocaine to prove knowledge of the presence of the cocaine which formed the basis of his conviction. In that case there was no connection between the drugs found on the defendant's person and the drug charge he faced. Id.

The State says the evidence is admissible because it tends to show that he knew the waterbed and stereo were stolen. We agree. Iowa Rule of Evidence 404(b) indicates evidence of other crimes is not admissible to show the person acted in conformity with such acts but may be admitted to show proof of motive, intent, knowledge, or absence of mistake or accident. If the prior crime is relevant, the trial court uses its discretion to decide whether the probative value of the evidence outweighs the prejudicial effect of information. State v. Mendiola, 360 N.W.2d 780, 782 (Iowa 1985); State v. Conner, 314 N.W.2d 427, 429 (Iowa 1982). In Mendiola the court found the probative value of defendant's prior conviction of possession with intent to deliver outweighed the prejudicial effects, and was admissible to prove knowledge with respect to the current crime. Id. Of importance is whether the defendant's knowledge is crucial to the State's case. Id.

Here the defendant's knowledge of whether the property was stolen was crucial to the case and could not be proven by direct evidence. We generally allow a wide latitude in admitting such evidence when direct evidence is lacking. State v. Wesson, 260 Iowa 331, 334, 149 N.W.2d 190, 192 (Iowa 1967).

We conclude the prejudicial effects of the evidence does not outweigh its probative value and affirm the trial court.

AFFIRMED.