

FILED

FEB 23 1983

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed February 23, 1983

390

vs.

)

BLANCHE ELIZABETH CAGE,

)

2-473

67819

Defendant-Appellant.

)

Appeal from Marshall District Court - David R. Hansen, Judge.

Defendant appeals from her conviction for theft in the second degree in violation of Iowa Code sections 714.1(1) and 714.2(2). AFFIRMED.

John W. Ackerman, Cedar Falls, for defendant-appellant.

Thomas J. Miller, Attorney General, and Roxann M. Ryan, Assistant Attorney General, for plaintiff-appellee.

Considered en banc.

PER CURIAM

Defendant appeals from her conviction for theft in the second degree in violation of Iowa Code sections 714.1(1) and 714.2(2). She asserts that the evidence of aiding and abetting was insufficient to support the trial court's verdict of guilty and that two witnesses should not have been permitted to testify that prior to the theft for which she was charged defendant and an acquaintance had been in other retail stores acting suspiciously. We affirm.

I. We decline to modify the holding of State v. O'Connell, 275 N.W.2d 197 (Iowa 1979) that circumstantial evidence is as probative as direct evidence. In determining whether the evidence was sufficient to support the finder of fact's verdict of guilty, we review all of the evidence in a light most favorable to the State and accept all legitimate inferences which may fairly and reasonably be deducted therefrom. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981). We find the evidence sufficient to convince a rational trier of fact beyond a reasonable doubt that defendant actively aided and abetted the theft. See State v. Robinson, 288 N.W.2d 337 (Iowa 1980).

II. Over objection that the evidence was irrelevant, two witnesses were permitted to testify that prior to the theft for which she was charged defendant had been seen in other retail stores acting suspiciously in the company of Vicky Price. Evidence introduced at trial indicated that Price shoplifted various items of clothing, the theft of which formed the basis of the charge against defendant. We find that the testimony concerning the prior behavior of defendant and Price was properly admitted for the purpose of showing their joint participation in a common scheme or system of criminal activity. See State v. Cott, 283 N.W.2d 324 (Iowa 1979).

AFFIRMED.