

IN THE COURT OF APPEALS OF IOWA

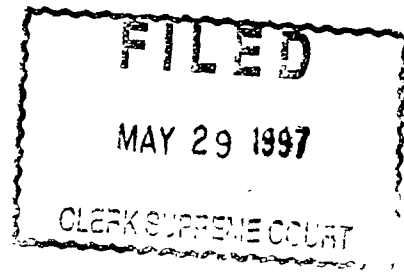
No. 7-175 / 96-1396

000431

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KENNETH MICHAEL KULA,
Defendant-Appellant.



Appeal from the Iowa District Court for Jones County, Van D. Zimmer, Judge.

The defendant appeals his conviction, following a bench trial, for fourth-degree theft. **AFFIRMED.**

Michael E. Sheehy of White & Johnson, P.C., Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Connie S. Ricklefs, County Attorney, and Craig Elliott, Assistant County Attorney, for appellee.

Considered by Habhab, C.J., and Sackett and Cady, JJ.

PER CURIAM

This is an appeal by a defendant claiming his conviction for theft in the fourth degree, in violation of Iowa Code sections 714.1(1) and 714.2(4), was not supported by substantial evidence. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On January 2, 1995, Steve Mysak went to his farm to check on some corn stored there. It had snowed during the night, and Mysak noticed fresh tire tracks in the snow at the farm. Some of Mysak's corn was missing. Members of the Jones County Sheriff's Department found a wagon of corn at the farm of Kenneth Kula. There was no snow on the corn in the wagon. Kula's pickup truck made tire tracks similar to those seen at Mysak's farm. Also, genetic testing showed the corn in the wagon matched other corn stored by Mysak and did not match corn in Kula's field.

Kula was charged with theft in the second degree, based on the amount of corn Mysak estimated was missing. The case was tried to the court. The district court found Kula guilty of theft in the fourth degree. The court found Kula was only responsible for the amount of corn found on his farm, which had a value of \$229. Kula was given a deferred judgment. However, he asked to have the deferred judgment revoked and a conviction entered so he could appeal.

On appeal, Kula contends his conviction is not supported by substantial evidence. He points out that the State's evidence is circumstantial. Kula testified he had harvested the corn from his own field on December 31, 1994. Kula's testimony

was supported by the testimony of his father and wife. Kula also claims the corn tested from the wagon was not a representative sample.

When a criminal defendant challenges the sufficiency of evidence to support a conviction, we review all of the evidence in the record in a light most favorable to the State. *State v. Garr*, 461 N.W.2d 171, 173 (Iowa 1990). We must uphold the conviction if there is substantial evidence in the record to support it. *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *State v. Robinson*, 288 N.W.2d 337, 339 (Iowa 1980).

We find there was substantial evidence in the record to support the district court's decision. The corn found in the wagon on Kula's farm did not have any snow on it, although it had snowed during the night. Also, tire tracks similar to those made by Kula's pickup were found in the snow at Mysak's farm. We believe the corn in the wagon was sufficiently tested to show it did not genetically match corn in Kula's field.

We affirm the decision of the district court finding Kula guilty of theft in the fourth degree. Costs of this appeal are assessed to Kula.

AFFIRMED.