IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

422

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
SANDRA SUE HARRIS,) 8-479
Defendant-Appellant.) 87-1486

Appeal from the Iowa District Court for Clay County (5319), J.H. Andreasen, Judge.

Defendant appeals from the judgment and sentence entered after a bench trial in district court for the crimes of theft in the second degree, in violation of Iowa Code chapter 714. **AFFIRMED.**

Raymond E. Rogers, Acting Chief Appellate Defender, and James R. Huff, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Bruce Kempkes, Assistant Attorney General, for plaintiff-appellee.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

HAYDEN, J. 423

Defendant, Sandra Sue Harris, appeals from the judgment and sentence entered after a bench trial in district court, finding her guilty of theft in the second degree. On appeal, the defendant alleges there was insufficient evidence to support her conviction. We affirm.

A car had been taken from a car lot in Spencer, Iowa. During a routine check in the parking lot of a Budget Inn Motel in Pratt, Kansas, police officers discovered this car. Defendant and one Vernard Barglof were arrested and charged with conspiracy to take the car, theft in the second degree, and other charges. Defendant was found guilty by the court of theft in the second degree and conspiracy to take the car. Because the defendant may not be sentenced for both conspiracy and the offense which is the target of the conspiracy, the court sentenced the defendant-appellant only upon conviction of theft in the second degree. She was sentenced to a term of imprisonment not to exceed five years, but this was suspended and she was given three years probation. She challenges the sufficiency of evidence to support her conviction in this appeal. We affirm.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4.

To sustain a guilty verdict, the State must prove beyond reasonable doubt:

> (1) That on or about January 22, 1986, the defendant knowingly took possession or control of the 1981 Oldsmobile automobile.
> (2) That the defendant did so with the intent to permanently deprive Don Pearson Ford of the 1981 Oldsmobile automobile; and
> (3) That the 1981 Oldsmobile automobile at the time of the taking was owned and in the possession of Don Pearson Ford.

The defendant argues the State cannot carry its heavy burden of proving these allegations beyond a reasonable doubt. Those principles governing a challenge to the sufficiency of the evidence are summarized as follows:

> When reviewing a challenge to the sufficiency of the evidence, 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 evidence in the record. . . . Direct and circumstantial evidence are equally probative so long as the evidence raises a "fair inference of guilt and [does] more than create speculation, suspicion, or conjecture." . . . It is necessary to consider all the evidence in the record and not just the evidence supporting the verdict to determine whether there is substantial evidence to support the charge. . . . Substantial evidence means evidence which would convince a rational factfinder that the defendant is guilty beyond a reasonable doubt. (Citations omitted.)

State v. Wheeler, 403 N.W.2d 58, 60 (Iowa App. 1987).

Despite the defendant's contentions, we find, after reviewing the evidence the State produced at trial, a rational trier of fact could find beyond a reasonable doubt defendant on or about January 22, 1986, took possession or control of a 1981 Oldsmobile automobile from Don Pearson Ford with the intent to deprive the dealership thereof.

Evidence indicates the defendant took the Oldsmobile without permission from the parking lot of Don Pearson Ford and drove it to Pratt, Kansas. When she was arrested in Kansas, she told authorities that she and Barglof "were angry" because the dealer who repossessed the car was attempting to resell it for less than its full value and it would be worth more down South. The testimony indicated defendant and Barglof were together in another car parked adjacent to the dealership lot on the night the car was stolen. There is sufficient circumstantial evidence to support the trial court's determination that defendant obtained the car keys from Barglof and he provided her transportation to the lot area where she could carry out the theft of the vehicle. We therefore determine sufficient evidence was produced to sustain the verdict convicting the defendant of theft in the second degree.

AFFIRMED.