IN THE COURT OF APPEALS OF IOWA

000427

No. 7-612 / 96-2269

FILED
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CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

DARREL SCHWARZ,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, J. G. Johnson, District Associate Judge.

The defendant challenges the sufficiency of the evidence to support her conviction for fourth-degree theft. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Tricia A. Johnston, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

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VOGEL, J.

The defendant challenges the sufficiency of the evidence to support his conviction for fourth-degree theft. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court rule 9.

Sometime between March 1 and March 11, 1996, aluminum molds were stolen from the premises of Sampson Supply and Manufacturing in Waterloo. On March 11, the defendant, Darrel Schwarz, attempted to sell aluminum molds to another Waterloo business, Vic Fuller's Salvage and Wrecking . The owner of the salvage business, Betty Fuller, was suspicious because the molds were imprinted with a name indicating to her they belonged to Sampson. Fuller refused to buy the molds and her son later contacted Sampson about them. Sampson then discovered its molds were missing and the defendant was charged with fourth-degree theft in violation of Iowa Code section 714.2(4) (1995). The molds were not recovered.

At trial the defendant denied having taken any aluminum molds to the salvage yard. There was conflicting testimony about the name(s) imprinted upon the stolen molds and upon the molds the defendant tried to sell to Fuller.

The court denied the defendant's motions for a judgment of acquittal and a jury found him guilty as charged. On appeal, the defendant challenges the sufficiency of the evidence to support his conviction. He contends the evidence was insufficient to

prove his possession or control over the property of another or that he attempted to sell the molds to Fuller.

A jury's guilty verdict is binding upon us unless we conclude the record lacks substantial evidence to support such a finding. *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993). A jury is free to accept the evidence it finds most credible and is not required to accept the defendant's version of the facts. *State v. Pletka*, 310 N.W.2d 525, 527 (Iowa 1981). A verdict is binding unless the finding is clearly against the weight of the evidence. *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981).

We find substantial evidence to support the jury's verdict. The jury found the testimony of Ms. Fuller more credible than that of the defendant. From the testimony at trial the jury could find the State proved all the elements set forth in jury instructions 5 and 11.

Jury instruction 5 set forth the following elements of theft:

1. On or about the 8th - 11th day of March 1996, the Defendant took control or possession of merchandise
2. The Defendant did so with the intent to deprive Samson Supply and Manufacturing of the merchandise.
3 The property, at the time of the taking, belonged to Samson Supply and Manufacturing.

Jury instruction 11 expanded on possession of stolen property:

1. That property claimed by the State to be stolen was in fact stolen.
2. That the Defendant had possession of said property.
3. That said possession was recent.

We therefore affirm the judgment of the district court.

AFFIRMED.