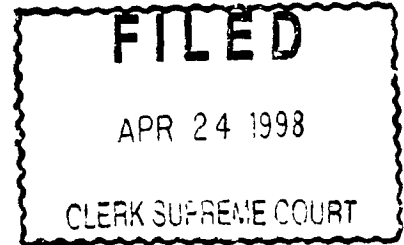


IN THE COURT OF APPEALS OF IOWA

No. 8-094 / 97-0725



STATE OF IOWA,

Plaintiff-Appellee,

vs.

SHANNON RUAL TOLBERT,

Defendant-Appellant.

Appeal from the Iowa District Court for Mahaska County, Annette J. Scieszinski, Judge.

Defendant appeals his conviction and sentence for second-degree theft.

AFFIRMED.

Joel D. Yates of Clements Law Firm, Oskaloosa, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, and Charles A. Stream, County Attorney, for appellee.

Heard by Sackett, P.J., and Streit and Mahan, JJ.

SACKETT, P.J.

Defendant-appellant Shannon Rual Tolbert appeals following his conviction of second-degree theft contending there is not substantial evidence to support the conviction. We affirm.

Defendant was arrested at a self-service car wash in Oskaloosa after the owner of the car wash, Burdette Brown, called police claiming someone was taking a number of coins out of his coin changer.

Defendant, in a car with Tiffany Stanford and Carl Lineberger when confronted by Brown, said he put a \$5 bill in the changer but it would not give him a car wash so he pushed the refund button. There were no \$5 bills in the changer.

Defendant, Stanford, and Lineberger all had a substantial amount of change in their pockets. The car had a handful of quarters on the front seat floor. There was a large cooler and an insulated nylon bag in the back seat. The cooler was filled with \$1600 in quarters and the bag with \$266.

There was found in defendant's pocket a \$5 bill sliced in the middle and taped back together. This has been referred to in the record as a "pull" bill.

The three passengers in the car were given their rights under Miranda and taken to the police station. On the way to the station, Stanford said the money in the cooler was money Lineberger obtained when he sold jewelry to make the trip from North Carolina to Iowa. She said they made the trip so Lineberger could learn how

to pull money from change machines. Lineberger said he paid \$500 for the lessons. He denied any of them had used the scam anywhere else. Lineberger later gave a written confession and related he pulled the scam in Illinois and Indiana.

Defendant confessed to stealing money from the Oskaloosa car wash. He said he never used the "pull" bill to steal money from change machines before he arrived in Oskaloosa. He pled to fourth-degree theft for stealing the money from the Oskaloosa car wash. This plea is not a subject of this appeal.

Defendant was also charged with second-degree theft in violation of Iowa Code sections 714.1(4) and 714.2(2) (1995) on the basis he was in possession of stolen property for having the quarters in the cooler and nylon bag. Defendant waived a jury and the case was tried to the court. The trial court found defendant guilty as charged of second-degree theft for being in possession of property he knew to be stolen.

Defendant appeals contending there was not substantial evidence to prove beyond a reasonable doubt he was guilty of theft in the second degree for possession of the quarters. He first contends there was not substantial evidence to support a finding the quarters were stolen. The trial court found defendant could infer the quarters stolen based on its finding Lineberger purchased directions for scamming change machines in North Carolina and gave the information to defendant; defendant was in possession of a severed bill used as a device to extract quarters from change

machines; and defendant was using the scam to take quarters from the Oskaloosa car wash.

The trial court also found there was evidence all passengers in the car exercised control over the stolen quarters and each knew or had reason to believe the quarters had been stolen.

The offense of exercising control over stolen property is composed of two elements: (1) the accused must exercise control over stolen property; and (2) the accused must do so with the knowledge the property is stolen. *State v. Winders*, 366 N.W.2d 193, 196 (Iowa App. 1985). Defendant and the two other passengers were exercising control over the quarters at the time he was arrested. The more difficult question is whether the State presented sufficient proof the quarters were stolen property.

The scope of our review on a defendant's appeal from a criminal conviction is the same whether a court or a jury is the fact finder. *State v. Hall*, 287 N.W.2d 564, 565 (Iowa 1980). In reviewing the finding of guilt, this court views the evidence in a light most favorable to the State. *Id.* The trial court's finding of guilt is binding upon this court unless there is not substantial evidence in the record to support it or such finding is clearly against the weight of the evidence. *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981). Substantial evidence means such evidence as could convince a rational trier of fact that the defendant is guilty of the crime charged

beyond a reasonable doubt. *Id.* It is sufficient to raise a fair inference of guilt as to each essential element of the crime, although the evidence must do more than raise suspicion, speculation, or conjecture. *State v. LaPointe*, 418 N.W.2d 49, 51 (Iowa 1988).

No specific thefts were identified as to time or place. Lineberger admitted thefts in Illinois and Indiana. There was evidence defendant traveled from North Carolina to Iowa with Lineberger and Stanford. Lineberger admitted he purchased the instructions for the procedure, and used the procedure in Indiana and Illinois. Defendant admitted by his plea he used it in Iowa. The procedure was performed expertly in Iowa. A "pull" bill was found in defendant's pocket and in Lineberger's pocket, and additional bills were found in Stanford's shoe. This evidence, coupled with some \$1600 in loose quarters, is substantial evidence from which the trial court could find the quarters stolen.

We affirm.

AFFIRMED.