FILED
FEB 28 1995
CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

No. 4-578 / 94-153

**STATE OF IOWA,**

Appellee,

vs.

**PENNY MARIE MUNDY,**

Appellant.

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Appeal from the Iowa District Court for Boone County, Mark S. Cady, Judge.

Penny Mundy appeals from her conviction, following an Alford plea, of attempted burglary in the third degree and third-degree theft. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, and Steven J. Oeth, County Attorney, for appellee.

Considered by Hayden, P.J., and Sackett and Huitink, JJ. Cady, J., takes no part.

**HAYDEN, P.J.**

On June 26, 1993, at about 12:15 a.m., Scot Landals and Debbie Lorenzen arrived at their rural Boone County home on 991 Mink Lane. They noticed a light was on and heard a door slam. Scot left to summon help while Debbie remained. Debbie noticed a blue pickup truck driving slowly on the road past her house. The truck turned around in a neighbor's driveway and drove by again very slowly. Debbie obtained the license number and telephoned the sheriff's office.

At about 12:40 a.m., Sheriff's Deputy Lowell Hurley stopped a truck matching the description which had been given. The truck was driven by Penny Mundy. The officer saw drug paraphernalia and a knife with a twelve inch blade in the vehicle. Penny was given her Miranda rights. She then told the officer she had been in the house on Mink Lane and had only taken the knife. Penny was arrested.

When officers arrived at 991 Mink Lane they discovered the home had been broken into. Officer Hurley noted several items had been placed near the door, including a VCR and a guitar. Some other items had been placed in a garbage can near the door.

The State charged Penny Mundy with third-degree burglary, operating while intoxicated, and possession of LSD. The State was later granted permission to amend the trial information from possession of LSD to possession of marijuana.

On October 12, 1993, the parties entered in a plea agreement. The State amended the trial information to charge Penny with attempted burglary in the third degree, in violation of Iowa Code sections 713.2 and 713.6B (1993), and theft in the third degree, in violation of sections 714.1, 714.2(3), and 703.1. Penny agreed to enter an Alford plea to the charges, and in exchange the State agreed to dismiss the original charges against her and to remain silent at sentencing. Penny signed a written guilty plea. After a hearing, the district court accepted her plea.

Penny filed a motion in arrest of judgment, claiming she did not appreciate the legal consequences of her plea and claiming there was no factual basis for the plea. The district court denied her motion. She was given suspended sentences on the two convictions and placed on probation. Penny appealed.

Penny contends the district court abused its discretion in overruling her motion in arrest of judgment. She claims the court should have granted her motion and allowed her to withdraw her guilty plea. Penny believes the court failed to establish a sufficient factual basis to support her plea to theft in the third degree. Theft in the third degree involves items worth in excess of $500. See Iowa Code § 714.2(3) (1993). Penny claims there is insufficient evidence to show she had possession or control of items worth in excess of $500. She states she only had

possession of the knife and there was no evidence to show this alone was worth more than $500.

It is discretionary with the trial court whether to grant or deny a withdrawal of a plea of guilty. State v. Ramirez, 400 N.W.2d 586, 588 (Iowa 1987). We will not find an abuse of discretion unless the defendant shows such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. Id.

An Alford plea, based on the case of North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), allows a defendant to plead guilty without admitting the elements of the offense. Committee on Professional Ethics and Conduct v. Sturgeon, 487 N.W.2d 338, 340 (Iowa 1992). In such a plea the defendant acknowledges the evidence strongly negates the defendant's claim of innocence and enters the plea to avoid a harsher sentence. Id.

All guilty pleas must be made voluntarily, intelligently, and with a factual basis. State v. Kirchoff, 452 N.W.2d 801, 804 (Iowa 1990). In an Alford plea, because the defendant is denying his or her guilt, a factual basis must be established independent of the defendant's statements. Farley v. Glanton, 280 N.W.2d 411, 416 (Iowa 1979). The factual basis must be precise enough and sufficiently specific to show the accused's conduct on the occasion involved was within the ambit of conduct which may be defined as criminal. Id.

Section 714.1(1) defines provides a person commits theft when the person:

> Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.

Iowa Code § 714.1(1) (1993).

Penny contends she did not take possession or control of the VCR, guitar, or other items which were stacked by the door of the residence at 991 Mink Lane. The district court relied on the value of these items to conclude there was sufficient evidence Penny had taken items worth more than $500.

Section 714.1 was intended to encompass all which was formerly included in the offense of larceny. 4 John L. Yeager & Ronald L. Carlson, Iowa Practice § 312 (1979). "Larceny" was defined as the wrongful taking and carrying away of personal property of another from any place, with a felonious intent to convert it to the taker's own use without the consent of the owner. State v. Jackson, 251 Iowa 537, 543, 101 N.W.2d 731, 735 (1960).

In discussing the crime of larceny, the supreme court has stated it was not essential for the thief to succeed in removing the property so it was completely and permanently lost to the owner. State v. Rozeboom, 145 Iowa 620, 627, 124 N.W. 783, 786 (1910). The court also stated the least removal of property from the place where the thief finds it, with intent to steal it, is sufficient for the commission of the crime of larceny. Id. at 628, 124 N.W. at 786.

We conclude the principles set forth in Rozeboom are still in effect today. In order to commit the crime of theft, a person need not have continuous possession or control over the property of another. It is sufficient if, at some point in time, the person has possession or control over the property of another, with the intent to deprive the other of the property.

In the present case, there was evidence to show Penny took items from where she found them within 991 Mink Lane and exhibited possession and control by moving the items and stacking them by the door and this was done with the intent to deprive the owners of the property. We conclude these actions are sufficient to constitute "theft" as defined by section 714.1(1).

We conclude there is a sufficient factual basis in the record to find Penny committed theft of items worth more than $500. The district court did not abuse its discretion in refusing to allow Penny to withdraw her guilty plea. We affirm the decision of the district court.

**AFFIRMED.**