



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, )  
 )  
Plaintiff-Appellee, )  
 )  
vs. )  
 )  
LARRY D. GOWIN, )  
 )  
Defendant-Appellant. )

Filed March 24, 1981

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Appeal from Polk District Court - James P. Denato, Judge.

Defendant appeals from his conviction of theft in the second degree in violation of sections 714.1(1), 714.1(4), and 714.2(2), The Code 1979, alleging that the evidence was insufficient to support the jury's guilty verdict. AFFIRMED.

R. Earl Barrett, of Krpan Law Firm, of Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa and Mark R. Schuling, Assistant Attorney General of Iowa, for plaintiff-appellee.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

## PER CURIAM

Defendant, Larry D. Gowin, appeals from his conviction of theft in the second degree in violation of sections 714.1(1), 714.1(4) and 714.2(2); The Code 1979, alleging that the evidence was insufficient to support the jury's guilty verdict. Defendant was sentenced to a period of incarceration not to exceed five years. We affirm.

On August 1, 1979, at approximately 6:00 p.m., defendant, accompanied by a friend, Bob Furnish, went to Butler Motors in Des Moines, Iowa, and inquired about a 1964 Chevrolet El Camino truck that was parked on the premises. Since the business was just closing for the day, Mr. Butler asked defendant to return at another time, and defendant left. When Mrs. Butler arrived at Butler Motors the next day, between 9:30 and 9:45 a.m., she discovered that the vehicle about which defendant inquired was missing. At approximately 2:00 p.m. the same day, Officer Roger Rowley, of the Des Moines Police Department spotted the El Camino at East Fourteenth Street and Grand Avenue in Des Moines. After the Des Moines Police set up a surveillance of the vehicle, defendant exited a nearby building, entered the vehicle, and drove off. The police then stopped defendant and arrested him.

The State has the burden of proving all elements of a crime charged beyond a reasonable doubt. State v. King, 256 N.W.2d 1, 10 (Iowa 1977). Defendant contends that the State failed to prove beyond a reasonable doubt all the elements necessary for conviction of second degree theft. In deciding whether there is sufficient evidence to support a conviction, we view all evidence on the record in the light most favorable to the State. State v. Robinson, 288 N.W.2d 337, 338, 340 (Iowa 1980). If there is substantial support for the verdict in the record, the jury verdict is conclusive. Id. at 338. Substantial evidence is such evidence as could convince a rational trier of fact that defendant is guilty beyond a reasonable doubt. Id. at 339.

[T]his inquiry does not require a court to "ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt." Instead the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Id. at 339. (Emphasis in original.)

At trial defendant moved for a directed verdict on the grounds that there was insufficient evidence concerning who owned the El Camino. The trial court overruled the objection. Since defendant's non-ownership is a necessary element of a theft crime, see § 714.1, The Code 1979, it was incumbent upon the State to disprove defendant's ownership. Among other evidence, William Butler's testimony that he is the title owner of the El Camino and the State's introduction into evidence of the physical document exhibiting Butler's ownership warranted a reasonable jury in concluding beyond a reasonable doubt that defendant did not own the El Camino.

When he moved for a directed verdict, defendant did not specify any other element of the charges as lacking in evidence. Matters not raised at trial may not be effectively asserted for the first time on appeal. State v. Washington, 257 N.W.2d 890, 895 (Iowa 1977); State v. Pardock, 215 N.W.2d 344, 347 (Iowa 1972). When a specific objection is overruled at trial, it is effective on appeal to the extent of the ground specified and no other. State v. Winquist, 247 N.W.2d 256, 259 (Iowa 1976). Every ground of exception which is not particularly specified is lost on appeal. State v. Droste, 232 N.W.2d 483, 487 (Iowa 1975). An objection that might have been supported by a legitimate reason but was not cannot support reversal. Winquist, 247 N.W.2d at 259. Therefore, because when moving for a directed verdict defendant specified only defendant's non-ownership as an element of theft the State failed to prove, defendant failed to preserve error on the issues of whether the State successfully met its burden in proving the remaining elements of theft.

Even assuming that defendant had preserved error on whether the State successfully proved the other elements of theft, he would not prevail on the merits. Circumstantial evidence may be equal or superior to direct evidence in proving guilt beyond a reasonable doubt. State v. O'Connell, 275 N.W.2d 197, 205 (Iowa 1979). The evidence discloses that defendant was turned away from Butler Motors just as it was closing on August 1, at which time Mr. Butler refused to discuss defendant's inquiry concerning the El Camino. Defendant testified that he left his residence at 1426 East Grand Avenue at 3:30 a.m. on August 2 and hitch-hiked to Bob Furnish's residence at 4000 Indianola Road. Defendant stated that for about an hour he helped Furnish try to extricate Furnish's 1968 Plymouth from a barbed wire fence. Defendant claimed that

Furnish then offered to loan him the El Camino and that defendant took possession of it at 8:00 a.m. The evidence in the instant case could convince a rational jury beyond a reasonable doubt that defendant was guilty of the offense charged, theft in the second degree. Defendant testified that he did not steal the El Camino, that he borrowed it from Furnish and that when he took possession of it he did not know it was stolen. However, the weight and credibility to be attached to a witness' testimony is a factual issue for a jury and not a legal issue for a court. State v. McDaniel, 265 N.W.2d 917, 921 (Iowa 1978). The jury obviously chose to disbelieve defendant's testimony, and it is not our province to tamper with its judgment.

AFFIRMED.