

FILED

FEB 26 1985

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed February 26, 1985

vs.

)

EDWARD L. VOS,

)

4-563
84-901

Defendant-Appellant.

)

Appeal from the Iowa District Court for Pottawattamie County - Leo Connolly, Judge.

Defendant appeals from his conviction of second-degree burglary in violation of Iowa Code section 713.5. On appeal, he asserts that insufficient evidence was presented at trial to support his conviction. Specifically, he claims that the evidence proving his possession of stolen property was insufficient and also that the evidence relating to circumstances surrounding his possession was insufficient. **AFFIRMED.**

Troyce A. Wheeler of Anderson & Wheeler, Council Bluffs, for defendant-appellant.

Thomas J. Miller, Attorney General, and Pamela S. Greenman, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Snell, JJ.

Defendant appeals from his conviction of second-degree burglary in violation of Iowa Code section 713.5. On appeal, he asserts that insufficient evidence was presented at trial to support his conviction. We affirm.

On December 12, 1983, police investigated a burglary at the home of Ervin Rasmussen. An inspection of the house revealed that entry had been gained through a pried-open door. Items reported missing included a television set, \$300 in cash, jewelry, and eleven rolls of pennies.

Approximately one hour after the burglary was reported, defendant Edward Vos was stopped by the police for a traffic violation. He was fifteen blocks away from the burglarized house. The police officer discovered that defendant had an outstanding arrest warrant, and after confronting him with this information, defendant ran. While the officer pursued the defendant, the other occupant of the Vos vehicle also fled.

Police found eleven rolls of pennies on the console located between the front seats of defendant's car. One officer identified them as the coins taken from the Rasmussen home because they had been marked with the names of the Rasmussen grandchildren. The identification was later confirmed by Mr. Rasmussen.

Two weeks later, Vos was arrested. At questioning, he denied any knowledge of the burglary. He stated that he had been driving around the area of the burglary on the day it occurred and gave conflicting statements concerning the identity of his passengers. Defendant asserted that he did not put the rolls of pennies in the car and he did not know who placed them there.

Defendant was charged by trial information with second-degree burglary in violation of Iowa Code section 713.5. Trial was held before the court, and at the close of State's evidence, defendant moved to dismiss on the ground that there was insufficient evidence of defendant's presence in the burglarized house.

Defendant was found guilty as charged and was sentenced to a term of up to ten years. He has appealed from this result.

In reviewing a sufficiency of the evidence claim, we view the evidence in a light most favorable to the State. State v. McFadden, 320 N.W.2d 608, 614 (Iowa 1982). All the evidence is considered, not merely the evidence that supports the verdict. Id. We will uphold the verdict if it is supported by substantial evidence which could convince a rational trier of fact of defendant's guilt beyond a reasonable doubt. Id.

Applying these principles, we conclude that the conviction should be affirmed. It is undisputed that the rolls of pennies were found in the defendant's vehicle. The trier of fact can infer guilt from this if it is shown that 1) the defendant was in possession of the stolen goods, and 2) surrounding circumstances would indicate that application of the inference is warranted. State v. Lewis, 242 N.W.2d 711, 723 (Iowa 1976). Defendant claims that neither ground for the inference is satisfied. We cannot agree.

The record reflects that stolen property was found on the console of defendant's car. While defendant claims he did not know how the pennies got there, it is entirely within the province of the trier of fact to disbelieve this statement. A determination that the defendant's testimony was not credible appears reasonable under the circumstances. Vos made conflicting statements regarding who he was with on the day in question, and was either unwilling or unable to detail his activities during the day.

Furthermore, surrounding circumstances would demonstrate that an inference of guilt from possession of stolen property is warranted. Evidence indicates that Vos was in the area of the burglary on the evening that it occurred. Additionally, the police found a screwdriver, a hammer, and flashlight in the defendant's car. These are the type of tools which could have been used to pry open the door of the Rasmussen house.

Defendant points to the fact that he was initially cooperative with the police officer who stopped him for a traffic violation. Indeed, Vos only fled after he was told of an outstanding arrest warrant. However, contrary to defendant's assertion, this does not necessarily negate an inference of guilt. Rational minds could differ as to what conclusion could be drawn from this evidence.

Viewing the record as a whole, there was sufficient evidence to support an inference of guilt from the possession of recently stolen property.

AFFIRMED.