IN THE COURT OF APPEALS OF IOWA

No. 1999-460 (9-717) / 98-1977
Filed January 26, 2000

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CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

SCOTT C. TYLER,

Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, David E. Schoenthaler, Judge.

Scott Tyler appeals from the judgment and sentence entered following his conviction of second degree theft as a habitual offender. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miler, Attorney General, Martha E. Boesen, Assistant Attorney General, and William E. Davis, County Attorney, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ. Vaitheswaran, J. takes no part.

MAHAN, J.

Scott Tyler argues there is insufficient evidence to support his conviction for theft in the second degree. We affirm.

Tyler was employed as a telemarketer and manager with Promotion Consultants Incorporated (PCI), a telemarketing and fund raising business. The Kabba Shrine (Kabba) had an account with PCI for assistance with a yearly circus fundraiser. Kabba hired PCI to solicit ticket sales, and to mail the tickets.

During the 1997 sales campaign, the Kabba treasurer discovered postage costs in Davenport were higher than in 1996, and higher than in other cities. As a result, Kabba conducted an inventory of its envelope supply. Kabba determined it gave PCI 6000 envelopes for ticket sales in 1997. The total cost of the postage should have been $1920, if PCI used one stamp per envelope, however PCI charged Kabba $3020 for postage in 1997. Therefore, PCI overcharged Kabba by $1120.

Kabba officials contacted PCI regarding the overcharge, and arranged a meeting with Steven Patch, the owner of PCI, and Tyler to discuss the increased postage costs. During the meeting Tyler explained PCI billed Kabba for additional postage because PCI ran out of Kabba envelopes in 1997, and used Kabba envelopes from 1996.

In the summer and fall of 1997, Tyler entered negotiations with Patch to purchase PCI. They could not agree on a price for the business. As a result, Tyler agreed to leave in January 1998.

After Tyler left PCI, he contacted Clark Kauffman, a reporter with the Quad City Times. During an interview, Tyler told Kauffman PCI stole $1000 from

Kabba, which PCI converted to a fundraising campaign for two of PCI's other clients, the Davenport and Moline police officers' associations. Tyler reported the theft was deliberate and he admitted he lied to Kabba officials, claiming the increased postage was due to a bookkeeping error.

The Scott County Attorney filed a trial information charging Tyler with theft in the second degree, as a habitual offender, in violation of Iowa Code sections 714.1(1), 714.2(2), and 902.8 (1997). At the close of the State's case, and at the conclusion of the evidence, Tyler moved for judgment of acquittal. Tyler stipulated he had two previous felony convictions for purposes of the habitual offender sentencing enhancement. The jury found Tyler guilty of theft in the second degree, as a habitual offender. The trial court sentenced Tyler to an indeterminate term of imprisonment not to exceed fifteen years, with a mandatory minimum of three years. Tyler appeals.

I. **Standard of Review.** Tyler's motion for judgment of acquittal challenges the sufficiency of the evidence. Our review is for errors of law. *State v. Rivers*, 588 N.W.2d 408, 409 (Iowa 1998). We will uphold a jury's verdict if it is supported by substantial evidence. *State v. Casady*, 597 N.W.2d 801, 804 (Iowa 1999). In determining whether the evidence is substantial, we view the evidence in the light most favorable to the State. *Id.* Evidence is substantial if a rationale fact finder could be convinced of the defendant's guilt beyond a reasonable doubt. *Rivers*, 588 N.W.2d at 409.

II. **Sufficiency of the Evidence.** Tyler argues the trial court erred in denying his motion for judgment of acquittal because the State failed to prove he

misappropriated more than $1000. "A person commits theft when the person . . . takes possession or control of the property of another, with the intent to deprive the other thereof." Iowa Code § 714.1(1). To support a charge of theft in the second degree, the value of the property must exceed $1000, but not exceed $10,000. *Id.* § 714.2(2).

The testimony in this case supports the jury's finding Tyler misappropriated more than $1000 in postage stamps from Kabba, and committed theft in the second degree. Tyler argues he introduced evidence estimating Kabba's loss to be $600 or $700. The only evidence supporting this argument is the testimony of Tyler and his wife, Linda. We conclude the jury, as the finder of fact could have accepted or rejected this testimony. *State v. Arne*, 579 N.W.2d 326, 328 (Iowa 1998). We find substantial evidence supports the jury's verdict.

AFFIRMED.