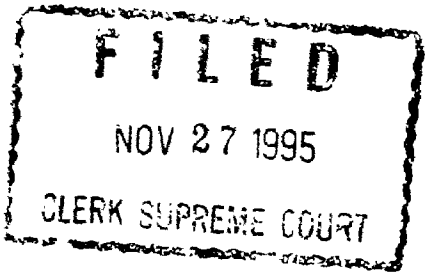
IN THE COURT OF APPEALS OF IOWA

No. 5-486 / 94-1794



STATE OF IOWA,

Appellee,

vs.

ALEXANDER ROBERT REED,

Appellant.

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge.

Alexander Reed challenges his conviction, following a bench trial, of second-degree theft. **AFFIRMED.**

Mark S. Pennington of Kutmus & Pennington, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General; Martha E. Boesen, Assistant Attorney General; John P. Sarcone, County Attorney; and James P. Ward, Assistant County Attorney, for appellee.

Considered by Donielson, C.J., and Sackett and Cady, JJ.

DONIELSON, C.J.

On November 19, 1993, Douglas Kaster noticed his 1991 Suzuki 750 motorcycle had been stolen from the garage of his mother's house in southeast Des Moines. He reported the theft to the police. This motorcycle was blue and white.

In the afternoon of November 19, 1993, police officer Michael Craig was driving south on 55th Street in Des Moines while responding to a call at North Waterbury Road. As he was driving down 55th Street, he saw a blue and white motorcycle illegally pass several other cars, run a red light, and turn west onto University Avenue. Craig testified he got a clear look at the driver as he made the turn. Craig proceeded to respond to the call at North Waterbury Road.

Stephen Shepard and his son, Jeffrey, were driving west on University Avenue, about one and one-half blocks east of the intersection with 55th Street, at the time the motorcycle ran the red light and turned west onto University Avenue. They saw the motorcycle tip over to the left. They stated the driver of the motorcycle abandoned the motorcycle and ran south down 57th Street.

After spending a few minutes determining the call at North Waterbury Road was a false alarm, Craig decided to go back to the area of 55th Street and University Avenue to look for the motorcyclist. As he was driving north on 56th Street, Craig saw the driver of the motorcycle running south on the same road. Craig then heard a report on his police radio that there had been an accident in the area of 57th Street

and University Avenue involving a stolen motorcycle and that the suspect had run south away from the scene.

Craig turned his car around, but no longer saw the suspect on 56th Street. He turned west onto Pleasant Drive, where he saw the suspect crouched down beside a van. The person Craig picked up on Pleasant Drive was defendant Alexander Reed. Reed had a tear in the left leg of his pants and an injury on this leg. He also had scrapes on the left arm of his leather jacket. Craig recognized Reed as the person he had seen on the motorcycle. Shepard and his son were brought to the scene. They were unable to identify Reed, but stated Reed's clothing and general appearance were similar to the person they had seen on the motorcycle.

The motorcycle involved in the accident on University Avenue was later determined to be the motorcycle stolen from Kaster. Reed was charged with the crime of theft in the second degree, in violation of Iowa Code sections 714.1(4) and 714.2(2), under a theory that he had exercised control over stolen property. He was also charged with being a habitual offender.

The case was tried to the court. Reed testified that on the afternoon of November 13, 1993, he had been driving west on Grand Avenue with his friend John Owens, when his car broke down near 56th Street. He stated a friend, Todd Amandus, lived at 5611 Brattleboro Avenue, and he decided to walk north on 56th Street to his home to seek help. He stated that after he walked part of the way, he

remembered Amandus would not be home, so he turned around and walked back south on 56th Street.

Reed stated that when he got to Pleasant Drive, he decided to take Pleasant Drive over to 63rd Street. On Pleasant Drive, he saw a man coming out of his house, and he asked him if he could use his telephone. Reed testified he called his friend Douglas Stuber and asked him to pick him up. He stated that while he waited outside, he was stopped by police officers. Owens and Stuber gave testimony in support of Reed's testimony.

The district court found Reed guilty of the crime charged. Due to his status as a habitual offender, defendant was sentenced to a term of imprisonment not to exceed fifteen years. He appeals.

Defendant contends there was insufficient evidence in the record to support the court's conclusion that he was guilty of theft in the second degree. He states there is insufficient evidence he was the person driving the stolen motorcycle. He believes the court should have given more weight to his testimony and that of Owens and Stuber. Defendant claims he is the victim of false identification and was unjustly convicted.

A defendant's claim that the State failed to present sufficient evidence to prove him guilty beyond a reasonable doubt must first be raised by way of motion for judgment of acquittal in the trial court, and cannot be raised for the first time on appeal. *State v. Grosvenor,* 402 N.W.2d 402, 406 (Iowa 1987). Here, defendant

failed to file a motion for judgment of acquittal, and thus, did not preserve error on this issue.

However, even if defendant had preserved error, we find there is substantial evidence in the record to support his conviction. When a criminal defendant challenges the sufficiency of the evidence to support a conviction, we review all the evidence in the record in a light most favorable to the State. *State v. Garr*, 461 N.W.2d 171, 173 (Iowa 1990). We must uphold the conviction if there is substantial evidence in the record to support it. *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *State v. Robinson*, 288 N.W.2d 337, 339 (Iowa 1980).

Officer Craig testified he recognized Reed as the person he saw on the motorcycle. The condition of Reed's clothing, with rips and tears on the left side, and the injury to his person on the left side, is consistent with Shepard's testimony he saw the motorcycle tip over onto the left side. Furthermore, Shepard testified the clothing and general appearance of Reed were consistent with the person he saw on the motorcycle. We conclude this is sufficient evidence to support defendant's conviction.

We affirm defendant's conviction for the crime of theft in the second degree. Costs of this appeal are assessed to defendant.

AFFIRMED.

Cady, J., concurs; Sackett, J., specially concurs without opinion.