

IN THE COURT OF APPEALS OF IOWA

FILED

MAR 20 1984

CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,)

Filed March 20, 1984 135

vs.)

ARTHUR MEARLE RICE,)

Defendant-Appellant.)

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83-466

Appeal from the Iowa District Court for Scott County - Don A. Petruccelli,
Judge.

Defendant appeals from his conviction for theft in the third degree in
violation of Iowa Code section 714.2(3) (1983). AFFIRMED.

Charles Harrington, Appellate Defender, and LuAnn White, Assistant
Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Valencia Voyd McCown, Assistant
Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

Defendant appeals from his conviction for theft in the third degree in violation of Iowa Code section 714.2(3) (1983). Defendant asserts that there was insufficient evidence for the jury to find that defendant and a codefendant were acting in concert and, therefore, the value of the items taken by each should not have been aggregated. Defendant further contends that even if aggregation was proper, there was insufficient evidence that the value of the items taken was more than one hundred dollars. We affirm.

Our review of this criminal conviction is on error. State v. Cullison, 227 N.W.2d 121, 126-27 (Iowa 1975). In deciding questions of the sufficiency of the evidence to support a guilty verdict, we consider all the evidence viewed in the light most favorable to the prosecution. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). If we find such evidence as could convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt, then the conviction must be upheld. Id. at 339.

There was sufficient evidence in this case that defendant, Arthur Rice, was guilty of theft in the third degree. He and codefendant, Earl Fleming, and a juvenile, Nathaniel Johnson, were observed by a Target employee taking men's clothes into the fitting room and returning to the rack less merchandise than had been taken. Fleming and Johnson conversed at one point inside the store, and Rice and Johnson conversed later in the front part of the store. Defendant admitted that the three young men had arrived at the store together. Although they left the building at different times, they all met in the parking lot and left in the same car. The police followed the car out of the parking lot and stopped it a short distance away. A search of the car revealed several items of clothing underneath the front seat. All of the clothing had Target sale tags attached and the total value as determined from the tags was over two hundred dollars. A store employee testified that she had seen Fleming handle four of the items totaling

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\$76.00 and that she had seen Rice handle two articles totaling \$37.98. From this evidence the jury could have rationally concluded that the three persons were acting in concert. Since the value of the articles taken by Fleming and Rice were worth more than one hundred dollars but less than five hundred dollars, defendant was properly convicted of third-degree theft. Iowa Code § 714.2(3).

AFFIRMED.