IN THE COURT OF APPEALS OF IOWA

No. 0-587 / 99-1219
Filed January 10, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

GEORGE (NMN) COFFER,
Defendant-Appellant.

FILED
JAN 10 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

The defendant appeals his conviction and sentence, following a jury trial, for second-degree theft. **AFFIRMED.**

John A. Stitely, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Christen C. Odell, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel A. Dalrymple, Assistant County Attorney, for appellee.

Considered by Zimmer, P.J., and Hecht and Vaitheswaran, JJ.

HECHT, J.

George Coffer appeals from his conviction of theft in the second degree in violation of Iowa Code section 714.2(2) (1995). Coffer contends the conviction should be reversed because: (1) he was twice put in jeopardy for the same offense; (2) the record contains insufficient evidence to support a finding certain property seized from him was stolen, or he knew it was stolen; and (3) the district court admitted hearsay testimony. We affirm.

I. Factual Background and Proceedings. Reuben Stigler was an employee of Black Hawk Roofing in April of 1997. During the term of Stigler's employment with Black Hawk, the company was burglarized twice within one month. Computer equipment and company checks were stolen in the first burglary and replacement computer equipment and more company checks were stolen in a second burglary. In May of 1998, Coffer was charged in criminal case number FECR 077503 with exercising control over the stolen computer equipment.

The State presented evidence tending to prove Stigler delivered the stolen computer equipment valued at $4350 to Coffer and exchanged it for $50 cash and four rocks of crack cocaine valued at $130. Law enforcement officers seized the stolen equipment, a forged Black Hawk Roofing check, and computer discs containing Black Hawk's business records from Coffer's residence pursuant to a search warrant. Coffer testified Stigler lived with him temporarily in April of 1997 when Stigler "was having some problems with his [girlfriend]." Coffer further claimed in his testimony Stigler brought the computer equipment to the house

when he moved in and left it there when he returned to live with his girlfriend. This testimony was inconsistent with statements made by Coffer to Officer Engel before trial.

In pretrial conversations with officers, Coffer first claimed he had found the equipment in the alley near his garage. In another version of the story, Coffer claimed a black person brought the property to him and failed to retrieve it when Coffer decided not to purchase it. In his trial testimony, Coffer admitted both of the pretrial statements were false. A jury returned a guilty verdict against Coffer on February 4, 1999.

II. Double Jeopardy Claim. Coffer contends he was twice put in jeopardy for theft of the computer equipment. In addition to the conviction presently on appeal, in December of 1998, he was charged with delivery of a controlled substance and possession of stolen property on or about October 31, 1998, in Black Hawk County file number FECR 082205.[1] He raises the issue for the first time on appeal. Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal. *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997). "It is elementary that we do not consider issues not presented to or decided by the district court." *State v. Gogg*, 561 N.W.2d 360, 368 (Iowa 1997) (citing *State v. Halliburton*, 539 N.W.2d 339, 342 (Iowa 1995)).

---

[1] Coffer was convicted of these charges in May of 1999. His appeal to the Iowa Supreme Court from the conviction in case number 99-1218 has been transferred to this court for decision.

Even if the issue had been raised in the district court, however, it would have been without merit. The Double Jeopardy Clause affords a defendant three basic protections: it protects against a second prosecution for the same offense after acquittal; it protects against a second prosecution for the same offense after conviction; and it protects against multiple punishments for the same offense. *State v. Schmitz,* 610 N.W.2d 514, 515 (Iowa 2000). This case is the first of the two cases in which Coffer claims to have been tried for the same offense. By definition, therefore, the double jeopardy argument clearly has no merit in this appeal.

III. Sufficiency of the Evidence. Coffer first claims the State failed to generate a jury question on whether the computer equipment was stolen. Our standard of review on this issue is for errors of law. *State v. Chang*, 587 N.W.2d 459, 461 (Iowa 1998); *State v. Kraklio*, 560 N.W.2d 16, 17 (Iowa 1997); Iowa R. App. P. 4. The standards applied in such a review are well established. We view the evidence in a light most favorable to upholding the jury's verdict. *Kraklio*, 560 N.W.2d at 17. The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Blair*, 347 N.W.2d 416, 418-19 (Iowa 1984). We do not make an independent determination of whether the evidence established guilt beyond a reasonable doubt; rather, we determine the legal sufficiency of the evidence to support the verdict. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994). We give consideration to all the evidence, not just evidence supporting the verdict. *State v. Maring*, ___ N.W.2d ___, ___ (Iowa

2000). Circumstantial evidence is just as probative as direct evidence. *State v. Parrish*, 502 N.W.2d 1, 3 (Iowa 1993). In his motion for judgment of acquittal, Coffer's trial counsel conceded the sufficiency of the proof the property was stolen. Accordingly, Coffer has waived this issue. *Gogg*, 561 N.W.2d at 368.

Coffer also challenges the sufficiency of the evidence to prove he knew the computer equipment was stolen. We conclude there is clearly substantial evidence in the record from which a reasonable juror could find beyond a reasonable doubt Coffer knew the property was stolen. A reasonable juror could find Coffer gave consideration of $130 for computer equipment valued at $4350. This circumstantial evidence strongly suggests Coffer knew the equipment was stolen. Furthermore, Coffer lied to an investigating officer about the manner in which the computer equipment came into his possession. "A false story told by a defendant to explain or deny a material fact against him is by itself an indication of guilt." *State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993); *Blair*, 347 N.W.2d at 422 (defendant's inconsistent statements are probative circumstantial evidence from which the jury may infer guilt). The evidence is clearly sufficient to support the jury's finding Coffer knew the equipment was stolen. We affirm on this issue.

IV. Hearsay Claim. Coffer claims the trial court erred in receiving Officer Engel's testimony about statements made by Black Hawk Roofing's manager, Reid Martin, who identified the stolen equipment during the investigation of the crime. We review rulings on the admission of hearsay evidence for correction of errors of law. *See State v. Ross*, 573 N.W.2d 906, 910 (Iowa 1998). Admission of hearsay alone is not a valid ground for reversal where the State has upheld its

burden of proving the challenged evidence did not impact on the jury's verdict of guilty. *State v. Barrett,* 445 N.W.2d 749, 754 (Iowa 1989); *State v. Nims,* 357 N.W.2d 608, 609 (Iowa 1984). Furthermore, prejudice has not been established where substantially similar evidence has been admitted but was not objected to. *State v. McKettrick,* 480 N.W.2d 52, 60 (Iowa 1992). Martin identified the stolen equipment during his trial testimony. Accordingly, Coffer suffered no prejudice when Officer Engel testified Martin had identified the stolen property prior to trial. We affirm on this issue.

AFFIRMED.