FILED
JAN 27 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed January 27, 1988 **211**
vs.	)	
RICHARD BROOKS,	)	7-613 87-763
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Woodbury County (No. 42278), Richard J. Vipond, Judge.

Defendant appeals from his conviction for child stealing in violation of Iowa Code section 710.5. **AFFIRMED.**

Charles L. Harrington, Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; and R. Allen Corzine, Assistant County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Hayden and Sackett, JJ. Schlegel, J., takes no part.

PER CURIAM 212

Defendant appeals from his conviction for child stealing in violation of Iowa Code section 710.5 (1985), claiming there was insufficient evidence to establish that he was guilty of such crime. We affirm the conviction.

In August 1986, Grant Wiese advertised a used car for sale. Richard and Laura Brooks responded to the ad and on August 28, 1986, they went to Mr. Wiese's home. Mrs. Brooks talked with the Wieses. During the conversation the Wieses permitted Mrs. Brooks to hold their seven-month-old son, David. Mrs. Brooks told Mr. and Mrs. Wiese that she owned a riding lawn mower and that she would like to trade the lawn mower for the automobile. During the evening of August 29, Mr. Wiese went to the Brooks' home to look at the lawn mower. He told them that he would let them know whether he wanted the lawn mower.

On August 30, 1986, Mr. and Mrs. Brooks drove to the Wiese home after receiving a note from Mr. Wiese earlier that day. Mr. Brooks parked the car on the street and remained in the automobile. Mrs. Brooks approached Mr. Wiese where he was working in his garage. Mr. Wiese said that he did not want the lawn mower.

Mr. Wiese's son was also present at this time; Mrs. Brooks asked if she could hold him. Mr. Wiese permitted her to do so. As soon as she received the child from Mr. Wiese, Mrs. Brooks began to walk out of the garage. She asked if she could show the child to her husband. Without waiting for an answer, she continued walking toward the street.

At first Mrs. Brooks walked at a normal pace. She began walking faster, however, as she got closer to the street. Mr. Wiese followed her. When she got to the curb, Mr. Brooks shouted, "Hurry up. He's right behind you." Mr.

Wiese then began to run. He caught up with Mrs. Brooks when she got to the automobile. He took the child from her. She did not resist.

Both Mr. and Mrs. Brooks then told Mr. Wiese that they would like to have the little boy. Mr. Wiese said that they could not have him. Mr. and Mrs. Brooks then drove away. The incident was then reported to the police.

Defendant waived a jury trial. The district court found defendant guilty of the crime of child stealing in violation of Iowa Code section 710.5 and sentenced him to serve a term of imprisonment not to exceed ten years.

Defendant appeals from his conviction, contending the district court erred in overruling his motion for judgment of acquittal. He claims there was insufficient evidence to find him guilty of the crime charged.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. Findings of fact are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

Iowa Code section 710.5 (1985) provides:

> A person commits a class "C" felony when, knowing that the person has no authority to do so, the person forcibly or fraudulently takes, decoys, or entices away any child with intent to detain or conceal such child from its parents or guardians, or other persons or institution having the lawful custody of such child, unless the person is a relative of such child, and the person's sole purpose is to assume custody of the child.

To establish that defendant is guilty of the crime of child stealing, the State has the burden to prove by evidence beyond a reasonable doubt that on August 30, 1986: (1) David Wiese was under the age of fourteen years, (2) Mr. and Mrs. Grant Wiese were the parents having lawful custody of David Wiese, (3) the defendant fraudulently took David Wiese from his parents, (4) the defendant took David Wiese with the intent to detain or conceal the child from his parents, (5) the defendant knew that he or she had no authority to take David Wiese from his parents, and (6) the defendant was not a relative of David Wiese and

the defendant's sole purpose was not to assume custody of the child. II Iowa Uniform Jury Instructions 1014 (1978).

The defendant contends that he had no intention of taking the baby; he maintains that his comment to his wife to "hurry up" was because of the traffic on the street. However, we are unpersuaded by this rationale in light of defendant's other statement, " [the father's] right behind you," made in conjunction with the statement, "Hurry up." In addition, defendant asked Mr. Wiese if he could have the child. We find the facts in this case create more than a suspicion concerning defendant's intent; the comments made by defendant were not made in a joking manner nor were they related to the traffic. The findings of fact of the district court are supported by substantial evidence.

We affirm the judgment of the district court.

AFFIRMED.