

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN R. SIMMONS,

Defendant-Appellant.

UNPUBLISHED

February 11, 2000

No. 213427

Wayne Circuit Court

LC No. 97-008574

Before: O'Connell, P.J., and Meter and T. G. Hicks*, JJ.

MEMORANDUM.

Defendant appeals by right from his conviction, following a bench trial, of receiving and concealing stolen property valued over \$100, MCL 750.535; MSA 28.803. The trial court, applying a fourth-offense habitual offender enhancement under MCL 769.12; MSA 28.1084, sentenced defendant to 6 to 180 months' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that there was insufficient evidence to support his conviction. He asserts that the evidence did not establish the value of the property, his possession of the property, or his knowledge that the property was stolen. We disagree.

In determining whether sufficient evidence was presented to sustain a conviction, a court must view the evidence in the light most favorable to the prosecution and determine whether a rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended on other grounds 441 Mich 1201 (1992).

Here, there was sufficient evidence to establish each of the disputed elements beyond a reasonable doubt. The complainant testified that he bought the property in question – golf clubs and a golf bag – for \$400 and that they were worth over \$100 at the time they were taken. This testimony was sufficient to establish the value of the property. *People v Dyer*, 157 Mich App 606, 611; 403

* Circuit judge, sitting on the Court of Appeals by assignment.

NW2d 84 (1986). Moreover, there was sufficient evidence to establish defendant's constructive possession of the golf equipment. Defendant acknowledged the presence of the golf

equipment in the truck in which he was riding, and he told the police that he had discussed selling the clubs. This indicia of control established knowing and constructive possession. *People v Davis*, 101 Mich App 198, 202; 300 NW2d 497 (1980).

Finally, the court could infer that defendant was present when the clubs were stolen and at the least aided and abetted their theft. Defendant was found in a pickup truck near the crime scene within an hour of the theft, and he, as well as the pickup truck, matched the general descriptions given by the complainant with regard to the theft of the clubs. The court reasonably could find that defendant had knowledge that the clubs were stolen based on his participation in the theft, especially since defendant had no reasonable explanation for his possession of the stolen clubs. See *People v Salata*, 79 Mich App 415, 421-422; 262 NW 2d 844 (1977).

Affirmed.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks