

IN THE COURT OF APPEALS OF IOWA

No. 2-663 / 11-1334
Filed September 19, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES KEELEY REUTHER,
Defendant-Appellant.

Appeal from the Iowa District Court for Buchanan County, Jeffrey L. Harris, District Associate Judge.

James Keeley Reuther appeals his convictions following bench trial for burglary in the third degree and theft in the fourth degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, September Lau, Assistant Attorney General, and Shawn M. Harden, County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

James Keeley Reuther appeals his convictions following bench trial for burglary in the third degree, in violation of Iowa Code sections 713.6A and 714.1 (2009), and theft in the fourth degree, in violation of section 714.2. He asserts the trial court erred in finding sufficient evidence to support guilty verdicts. Because reasonable inferences, supported by surrounding circumstances and established facts, warrant a finding of guilt beyond a reasonable doubt, we affirm.

I. Background Facts and Proceedings.

Caleb Krugger moved into his new residence on an acreage in June 2010. The property included a machine shed where Krugger stored his tools.¹ Reuther had previously frequented the property, as his girlfriend used to live there. Krugger saw Reuther on his property when he was in the process of purchasing it. A month later, Krugger noticed he was missing tools, including a BG686 Stihl leaf blower. There was no sign of forced entry, but the locked shed is readily opened with a credit card.

Krugger surmised that Reuther may have committed the offenses because Reuther called him and asked “to come out there and collect some barn boards,” and Krugger told him no. Less than a week after he discovered the missing tools, Krugger tried to locate Reuther. In his search for Reuther, he went to the campground where Reuther worked and found a BG686 leaf blower among Reuther’s tools that matched Krugger’s missing tool.

¹ Krugger is a general contractor who builds and refinishes fine furniture in the winter.

Kruger easily identified the leaf blower as his because it had the same “overspray” of red furniture stain that marked his leaf blower. He testified that he had absolutely no doubt the tool was his, based on these distinct markings. Kruger seized the leaf blower and gave it to the deputy sheriff. The serial number had been removed.

The deputy sheriff went to the acreage to visit with Kruger about the incident. During their discussion, Reuther drove by the acreage and the deputy stopped him, to investigate his license. The deputy knew Reuther’s license was restricted and he was required to take a direct route home from his employment; however, the gravel road by the acreage was close to, but not the most direct route. According to the deputy, Reuther indicated he knew Kruger’s property, knew that it had been sold, and “liked to drive by periodically and keep an eye on the place to see the progress.”

Reuther told the deputy the leaf blower was his and that he had purchased it at the B & B Farm Store in Jesup. Reuther indicated he could provide a receipt as proof of purchase, but he was ultimately unable to do so. The bookkeeper at B & B Farm Store confirmed Kruger’s receipt for his leaf blower but could not find a record of a purchase by Reuther, though the store keeps meticulous records with four separate methods to document purchase and registration of Stihl equipment. Every Stihl leaf blower sold by B & B Farm Store from January through October 2009 was registered with Stihl. No leaf blower was registered to Reuther, who claimed he purchased the tool after July 4, 2009.

Reuther alleges the court erred in finding sufficient evidence to support convictions of burglary in the third degree and theft in the fourth degree, because the State failed to prove that Reuther entered Krugger's shed or that he took Krugger's property from the shed.

After a January 26, 2011 bench trial, the district court found Reuther guilty as charged.² Reuther filed a motion for new trial, which the district court denied on May 16, 2011.

II. Standard of Review.

We review challenges to the sufficiency of evidence for errors at law. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). We review the evidence in the light most favorable to the State, including all reasonable inferences that may be deduced from the record, to determine whether the finding of guilt is supported by substantial evidence. *Id.* Evidence is substantial if it would convince a rational fact-finder of the defendant's guilt beyond a reasonable doubt. *Id.* "In assessing the sufficiency of the evidence, we find circumstantial evidence equally as probative as direct." *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011).

III. Discussion.

Reuther asserts the district court erred in finding sufficient evidence to sustain his convictions. He specifically alleges that when the evidence is construed in the light most favorable to the State, it merely demonstrates Reuther was in possession of Krugger's stolen leaf blower.

² Reuther also made a motion for directed verdict at the close of the State's evidence, which the court denied.

“[I]t is the State’s ‘burden to prove every fact necessary to constitute the crime with which the defendant is charged, and the evidence presented must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture.’” *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011) (quoting *State v. Kemp*, 688 N.W.2d 785, 789 (Iowa 2004)). Proof of possession of recently stolen property, standing alone, would not permit a rational fact-finder to conclude beyond a reasonable doubt that the possessor committed a burglary. *State v. Lewis*, 242 N.W.2d 711, 723 (Iowa 1976). However, an inference of guilt based upon possession of recently stolen property may be sufficient to support a conviction if the evidence of record regarding the surrounding circumstances warrants a finding of guilt beyond a reasonable doubt. See *State v. Hall*, 371 N.W.2d 187, 189 (Iowa Ct. App. 1985).

[W]here a party in possession of recently stolen property is charged with burglary there must be evidence in the record relating to the surrounding circumstances for the jury to consider in determining whether the evidence warrants a finding beyond a reasonable doubt of the presumed fact defendant committed the breaking and entering from the proved fact he possessed recently stolen property.

Lewis, 242 N.W.2d at 723.

The district court could have reasonably convicted Reuther and denied his motions for directed verdict and new trial, as substantial evidence supports the

convictions of burglary in the third degree³ and theft in the fourth degree.⁴ In its order denying Reuther's motion for a new trial and arrest of judgment, the court outlined the following facts contained in the evidence of record which specifically support a finding of guilt beyond a reasonable doubt for each of the charged offenses:

1. The discovery of the leaf blower in defendant's possession within a week that it was stolen from the victim.
2. Defendant's statement, when he attempted to establish ownership, that he purchased the leaf blower from B & B Farm Store in Jesup, Iowa was fully contradicted by the custodian of the records for B & B Farm Store.
3. The testimony of the victim who identified the leaf blower, in part, by the distinctive markings on the leaf blower.
4. The unexplained absence of the leaf blower's serial number during the time the leaf blower was temporarily in defendant's possession.
5. The absence of any credible evidence or explanation which would establish that the defendant had legally come to possess the leaf blower after it was stolen from the victim.
6. Defendant's almost intimate knowledge of the leaf blower's location.
7. There were a number of ways in which the tool shed containing the leaf blower could have been successfully entered by the defendant.
8. Defendant's unexplained and recent possession of the stolen leaf blower.
9. Defendant's trial testimony is wholly inconsistent with the facts and more credible testimony and evidence which the court elects to believe.

³ Burglary is defined in section 713.1, which provides "[a]ny person, having the intent to commit a felony, assault or theft therein, who, having no right, license or privilege to do so, enters an occupied structure, such occupied structure not being open to the public . . . commits burglary."

⁴ Section 714.1(1) provides that a person commits theft when he "[t]akes possession or control of the property of another . . . with the intent to deprive the other thereof."

As in *Hall*, the evidence of record demonstrates that Reuther could not have obtained the leaf blower as he claimed.⁵ 371 N.W.2d at 190. The court, sitting as fact-finder, may determine that this negates any claim that Reuther obtained the property rightfully. See *id.* When considered with the evidence that the locked structure could be readily entered without leaving a sign of forced entry; Reuther's knowledge of the structure; the victim's sighting of Reuther on the property prior to the discovery of his loss; Reuther's admission that he periodically drove by the acreage "to keep an eye on the progress"; the relatively short period of time between the theft and discovery of the tool in Reuther's possession; and Reuther's drive by the property immediately after he learned the victim retrieved the tool, evidence of the circumstances surrounding Reuther's possession of the recently stolen property, though circumstantial, is sufficient to support the court's inference that Reuther broke into Krugger's shed and stole the leaf blower.

We decline Reuther's invitation to reverse on due process grounds because "reason and common sense" do not justify the conviction based "upon the proven facts before the jury." *Francis v. Franklin*, 471 U.S. 307, 314-15 (1985). The fact-finder was free to find Reuther entered the machine shed to commit a theft based upon circumstantial evidence. *Brubaker*, 805 N.W.2d at 172 (concluding the jury was free to find a substance was an illegal drug using circumstantial evidence). For the reasons stated, we believe the circumstantial

⁵ Contrary to his testimony, evidence demonstrated conclusively that Reuther did not purchase a leaf blower from B & B Farm Store in Jesup. He offered no other explanation for how he obtained the leaf blower.

evidence raises a fair inference of guilt on each essential element. *Id.* We have no difficulty concluding that reason and common sense lead to this result.

IV. Conclusion.

The district court could have reasonably convicted Reuther and denied his motions for directed verdict and new trial, as sufficient evidence warrants a finding of guilt beyond a reasonable doubt on both charges.

AFFIRMED.