

IN THE COURT OF APPEALS OF IOWA

No. 6-548 / 05-1582
Filed August 23, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBBIE ALLEN DOHRN,
Defendant-Appellant.

Appeal from the Iowa District Court for Ringgold County, John Lloyd,
Judge.

Robbie Allen Dohrn appeals from his conviction for third-degree theft.

REVERSED.

Marla McCoid, Bondurant, for appellant.

Thomas J. Miller, Attorney General, Kristin Guddall, Assistant Attorney
General, and Clinton L. Spurrier, County Attorney, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Robbie Allen Dohrn appeals from his conviction for third-degree theft in violation of Iowa Code sections 714.1(1) and 714.2(3) (2003). He contends there was insufficient evidence to support his conviction. In addition, he claims his trial counsel was ineffective in several respects. We reverse.

I. Background Facts & Proceedings

The evidence, when viewed in the light most favorable to the State, reveals the following facts. In July 2004 Karen Brodsack, Dohrn's codefendant, contacted Randall Gregg of S & G Rentals (S & G) to rent a mobile home.¹ Brodsack told Gregg she needed a place to rent but did not have money for rent at the time. She also told him she had an unpaid utility bill from her previous residence. Gregg agreed to reduce Brodsack's rental deposit because he recently had a tenant move out and did not have time to clean the trailer Brodsack wanted to rent. Gregg also agreed to put Brodsack's utilities in his name, with the understanding she would pay him when the bills were due.

Brodsack moved into the rental trailer with Dohrn in July 2004. Brodsack began paying her rent late and failed to reimburse Gregg for some of the utility bills she incurred. Gregg visited the trailer in mid-December 2004 and discovered it had been vacated. Gregg testified the trailer was in disarray and was missing a refrigerator. At the time the trailer was vacated, Brodsack owed Gregg approximately \$800 in rent and \$530 in utilities.

¹ Randall Gregg, Kenneth Stephens, and Cindy Stephens own S & G. Gregg conducts the rental side of the business, and Kenneth Stephens performs maintenance.

Gregg sent a letter to Brodsack and Dohrn's new residence requesting the money and the refrigerator, but he did not receive a response. Gregg contacted the sheriff's office about the missing refrigerator. He indicated the refrigerator missing from the rental trailer was a white Whirlpool in relatively good condition.

A deputy investigated Gregg's claim. He located Brodsack and Dohrn in another rental trailer. He found an "older, very rough looking, white refrigerator" of a different brand at their residence. According to Brodsack, the refrigerator in S & G's trailer had stopped working, and she received a replacement from a friend or relative. She claimed the broken refrigerator was old and green. She told the deputy she had moved it to a shed behind S & G's trailer. The deputy and Gregg located an old, green, Hotpoint refrigerator in the shed behind the trailer Brodsack vacated. Gregg denied ownership of the green refrigerator and claimed he did not know anything about it.

The State charged Dohrn and Brodsack with third-degree theft and criminal mischief. The criminal mischief charge was tried to the bench at the same time the theft charge was tried to the jury. The jury was not advised this was occurring. Therefore, at trial evidence concerning the criminal mischief charge was heard by the jury. The jury convicted Dohrn and Brodsack of third-degree theft.² The court sentenced Dohrn to 360 days in jail with all but 120 days suspended and a \$500 fine.

² Iowa Code section 714.2(3) defines third-degree theft as the "theft of property exceeding five hundred dollars but not exceeding one thousand dollars in value." According to Gregg's testimony, the missing refrigerator was approximately six to seven years old. He testified that while a new refrigerator would cost between \$550 and \$600, he could probably purchase a used one for \$250. He also estimated that the value of the white Whirlpool refrigerator at issue in this case would be \$350 to \$400.

Dohrn now appeals.³ He contends the evidence was not sufficient to convict him of theft in the third degree. He also contends his trial counsel was ineffective for allowing a charge of criminal mischief to be tried to the court at the same time the jury heard his theft case. He claims the joint trial of the two offenses resulted in the jury hearing evidence that had no relevance to his theft charge. He argues that evidence supporting the criminal mischief charge should have been presented outside the presence of the jury. He also argues that, at a minimum, the testimony the jury heard regarding an issue which they were not deciding should have been the subject of a limiting instruction to the jury. Finally, he claims his trial counsel was ineffective for failing to file appropriate posttrial motions.

II. Scope & Standards of Review

We review sufficiency of evidence claims for the correction of errors at law. *State v. Petithory*, 702 N.W.2d 854, 856 (Iowa 2005). We will uphold the jury's verdict if substantial evidence supports it. *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005). Evidence is substantial if it would convince a rational factfinder that the defendant is guilty beyond a reasonable doubt. *Id.* We consider all the evidence in the record, not just evidence supporting the defendant's guilt. *State v. Randle*, 555 N.W.2d 666, 671 (Iowa 1996). We also consider legitimate inferences and presumptions that may reasonably be deduced from the evidence in the record, and we view the evidence in the light most favorable to the State. *State v. Casady*, 597 N.W.2d 801, 804 (Iowa 1999). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 6.14(6)(p).

³ Brodsack has filed a separate appeal from her conviction.

III. Discussion

We first address Dohrn's contention that the State failed to present sufficient evidence to support his conviction for third-degree theft. At the conclusion of Dohrn's trial, the court instructed the jury that the State had to prove the following beyond a reasonable doubt:

1. On or about the 22nd day of December, 2004, the defendant took possession or control of a refrigerator.
2. The defendant did so with the intent to deprive S & G Rentals, LLC, of the refrigerator.
3. The property, at the time of the taking, belonged to S & G Rentals, LLC.

It is fair to say that the focus of the evidence presented in this case related to the culpability of Dohrn's codefendant, Karen Brodsack. The evidence presented against Dohrn with respect to the theft charge was relatively weak. Dohrn did not participate in the rental agreement with S & G. The trailer was rented in Brodsack's name, and Gregg admitted he "really had very little contact with Mr. Dohrn." Furthermore, no witnesses observed Dohrn removing the refrigerator from the trailer. When a deputy looked through the trailer Brodsack and Dohrn were occupying in late December 2004, he did not locate a white Whirlpool refrigerator. The record contains no admissions by the defendants or direct evidence that Dohrn took the refrigerator.

The State suggests that sufficient circumstantial evidence proves Dohrn removed the white Whirlpool refrigerator from the trailer because Brodsack told the deputy "they" (she and Dohrn) took "their refrigerator" with them when they moved because it belonged to them. However, the record reveals Brodsack explained to the deputy that she and Dohrn moved an old, green, broken

refrigerator to a shed near the trailer she rented from S & G and replaced it with a refrigerator from a friend or relative. Furthermore, the refrigerator in Dohrn and Brodsack's new residence was an "older, very rough looking, white refrigerator," not a Whirlpool in good condition. A green refrigerator was subsequently located in a shed behind S & G's trailer, substantiating Brodsack's statements to the deputy.

A tenant who rented the trailer prior to Brodsack testified that the refrigerator in the unit at the time was an older, green refrigerator. Brodsack's niece also testified that the trailer had a green refrigerator that was taken to the shed behind the trailer when it broke, and Brodsack replaced it with a white refrigerator she received from a neighbor. Brodsack's niece claimed Brodsack removed this white refrigerator when she left the trailer, but she did not take the green refrigerator because it did not belong to her.

Even viewing the evidence in the light most favorable to the State, we find substantial evidence does not support the jury's verdict finding Dohrn guilty of third-degree theft.⁴ We therefore reverse his conviction.

REVERSED.

⁴ Because we have reversed Dohrn's conviction based on insufficiency of evidence, we need not address his ineffective assistance of counsel claims.