

IN THE COURT OF APPEALS OF IOWA

No. 8-760 / 07-1243
Filed November 13, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRIAN DEAN GILBERT,
Defendant-Appellant.

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

Defendant appeals his conviction for first-degree theft. **AFFIRMED.**

Paul Rosenberg of Paul Rosenberg & Associates, P.C., Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney
General, John P. Sarcone, Polk County Attorney, and Nan Horvat and Daniel C.
Voogt, Assistant County Attorneys, for appellee.

Considered by Miller, P.J., and Potterfield, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

ROBINSON, S.J.**I. Background Facts & Proceedings**

On March 15, 2006, Deputy Scott Faiferlick of the Dallas County Sheriff's Department stopped an Audi on Interstate 80 for a traffic violation. With the agreement of the occupants, the Audi was moved to an Iowa Department of Transportation (DOT) garage near Adel, Iowa, to be searched. Detective Adam Infante and Deputy Jon Thomas assisted Faiferlick in searching the vehicle and, as the search progressed, Sheriff Brian Gilbert and Deputy Sheriff Kevin Frederick arrived at the scene.

The officers removed eight packages of money from the passenger's side rear wheel well. These packages had been vacuum sealed in plastic. Additionally, two of the eight packages had been also placed inside white plastic bags, and one of the white plastic bags had two black markings on it. The officers also removed nineteen packages of money from the driver's side rear wheel well; these had been packaged in Saran Wrap. The officers took pictures of the packages of money at the DOT garage. The money from the passenger's side was placed in three or four brown paper bags, and the wallet of the driver was placed on top of the money in one of these bags. The money from the driver's side was placed in a duffel bag.

The brown paper bags and duffel bag were placed in the back seat of Detective Infante's blue Chevrolet Trailblazer for transport to the sheriff's office. The officers agreed Infante would drive the Audi. Gilbert stated he would drive the Trailblazer, and Frederick would drive the sheriff's vehicle back to the

sheriff's department in Adel. (Gilbert and Frederick had arrived at the DOT garage together in the sheriff's vehicle.) Frederick, Infante, and Gilbert left the DOT garage in that order, at the same time.¹ Faiferlick remained behind to clean up after the search. Infante and Frederick arrived at the sheriff's department at about the same time. As Faiferlick was driving to the sheriff's department a few minutes later, he saw a blue Trailblazer on a gravel road. Faiferlick arrived at the sheriff's department before Gilbert.

Deputy Douglas Lande testified that at the sheriff's department, he observed two brown paper bags on the front passenger seat and the duffel bag on the floor in the Trailblazer. The officers unloaded the paper bags and duffel bag from the Trailblazer and brought them into the sheriff's department. One of the DEA officers asked for the driver's wallet. Faiferlick looked in the paper bags, and initially was unable to find the wallet. He discovered it underneath the packages of money. Faiferlick made a comment that one of the white plastic bags seemed to be missing, but no further action was taken at that time. Faiferlick, Thomas, and Gilbert took the paper bags and duffel bag to the evidence room, and Gilbert locked the door.²

The next morning, on March 16, the money was removed from the evidence room, and Gilbert, Faiferlick, and Infante took more pictures of the packages of money. The officers decided to remove the money from the packages in order to count it. To assist in the count, they organized the money

¹ Deputy Thomas had already left the DOT garage to take the occupants of the Audi to the sheriff's department to be questioned by federal Drug Enforcement Administration (DEA) officers who had been called to Dallas County by Detective Infante.

² Only Sheriff Gilbert and evidence custodian, Deputy Steve Bandy, had keys to the evidence room.

by denomination. At one point, Faiferlick asked about the white plastic bag with black markings, and Gilbert held up the bag, but it was empty at that point. Faiferlick and Infante counted the money in a money counting machine, and it totaled \$781,724.

On March 18, Faiferlick was working on his report of the incident, when he noticed there was one less package of money taken from the passenger side of the vehicle, as shown in the photographs taken on March 16 at the sheriff's department than there was in the photographs taken at the DOT garage. Faiferlick called Infante, who was off duty, and went to his house to discuss the matter with him. Faiferlick was called away to report to a dispatch, and nothing was resolved.

On March 21, Faiferlick and Deputy Steve Bandy, the evidence custodian, met with Infante. Bandy brought the packaging from the money, and they compared the packaging to the photographs and concluded a package of money seized from the Audi on March 15 was missing based on the photographs taken the next day at the sheriff's department. In particular, they concluded the package of money that had been in a white plastic bag with black markings was the missing package.

The three men met with Sheriff Gilbert later that same day and raised their concerns. Gilbert asked if they wanted to "muddy their names" with this. The officers insisted the matter should be investigated by an outside agency. Gilbert then met with the county attorney, Wayne Reisetter, and Gilbert stated he believed \$120,000 was missing. Reisetter contacted the Division of Criminal

Investigation (DCI). During the DCI investigation Gilbert stated for the first time that he had stopped off at his house, after leaving the DOT garage in the blue Trailblazer, and before going to the sheriff's office. He stated he remembered his garage door was open and he did not want neighborhood dogs to get into the garage.

Gilbert was charged with theft in the first degree, in violation of Iowa Code sections 714.1 and 714.2 (2005). A jury found Gilbert guilty of first-degree theft, which is theft of more than \$10,000. Gilbert was given a suspended sentence and placed on probation for five years. He appeals, claiming there is insufficient evidence in the record to support his conviction.

II. Standard of Review

We review challenges to the sufficiency of the evidence for the correction of errors at law. *State v. Schmidt*, 480 N.W.2d 886, 887 (Iowa 1992). A guilty verdict is binding on appeal, unless there is not substantial evidence in the record to support it, or the verdict is clearly against the weight of the evidence. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). Substantial evidence means evidence that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.* "When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonable be deduced from the evidence in the record." *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006). We consider all evidence presented, not just

that of an inculpatory nature. *State v. Lambert*, 612 N.W.2d 810, 813 (Iowa 2000).

III. Merits

Gilbert asserts the evidence against him raises mere suspicions, and does not actually show that he took the package of money. He claims the evidence does not show when the package of money disappeared, or who took it. He points out that several different people had access to the packages of money at the DOT garage and at the sheriff's department before they were placed in the evidence room. He notes that a property control sheet was not filled out before the money was placed in the evidence room, per usual operating procedure. He also points out that a brown paper bag of personal belongings was returned to the occupants of the Audi, and raises the possibility that the missing package of money could have remained in the bag.

We conclude there is sufficient evidence in the record to support the jury's verdict. The pictures taken at the DOT garage show eight packages of money were taken from the passenger's side of the Audi. Two of these eight packages were in white plastic bags. The jury could find from the evidence that the eight packages of money were placed in brown paper bags, and the bags were placed in the backseat of the Trailblazer. Faiferlick placed the driver's wallet on top of the packages of money in one of the paper bags. Gilbert told the others he would drive the Trailblazer, stating he wanted to test drive it. Faiferlick saw a blue Trailblazer on a gravel road, which would not have been on the route to the sheriff's department. Gilbert arrived at the sheriff's department after the other

officers, even though he had left at the same time as Infante and Frederick. He arrived even after Faiferlick, who had stayed behind to clean up after the search at the DOT garage.

When Gilbert arrived at the sheriff's department, the brown paper bags were in the front seat, although the officers had placed them in the back seat before Gilbert left the DOT garage. The driver's wallet was no longer on top of the packages of money in one of the paper bags, but was underneath the packages of money. When photographs of the packages of money were taken the next day, the package of money in a white plastic bag with black markings was missing. When the officers were unwrapping the money, Gilbert showed the white plastic bag with black markings to the others, and it was empty at that time. Furthermore, when the officers first raised their concerns to Gilbert, he questioned whether it would be wise to have an investigation into the missing money. Gilbert did not state until sometime later, when the matter was under investigation, he had stopped at his house on the way between the DOT garage and the sheriff's department.

We conclude there is sufficient evidence in the record to permit a rational finder of fact to find Gilbert guilty beyond a reasonable doubt. *See State v. Tapia*, 751 N.W.2d 405, 406 (Iowa Ct. App. 2008). The evidence raised more than mere suspicion that Gilbert was the person who took the missing package of money.

We affirm Gilbert's conviction for first-degree theft.

AFFIRMED.