FILED
MAR 29 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,)
vs.)
MILTON FREELS,)
Appellant.)

Filed March 29, 1978

445
60561

Appeal from Black Hawk District Court - Peter Van Metre, Judge.

Defendant claims he was denied a fair sentence hearing by the "in chambers" and on the record considerations of the circumstances of his arrest for failure to appear for sentencing and the items found in his possession. - Affirmed.

Don E. Gottschalk, of Gottschalk & Patterson, Waterloo, for Appellant.

Richard C. Turner, Attorney General of Iowa, and David Correll, Black Hawk County Attorney, for Appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

The core issue of this appeal is whether the procedural conduct of defendant Milton Freels' sentencing hearing meets the fairness requirement of State v. Delano, 161 N.W.2d 66, 74 (Iowa 1968). We find that it does and accordingly affirm.

In January 1975, Freels entered his plea of guilty to a charge of false pretenses in violation of § 713.1, The Code 1973. Subsequently, he failed twice to appear for sentencing in 1975 and a bench warrant was issued for his arrest. He was taken into custody in December 1976. A police inventory search of the satchel he was carrying when arrested yielded a sawed-off gun, a black hooded mask and gloves.

Preliminarily to the sentencing, "in chambers" and subsequently on record, the court was apprised of the circumstances of Freels' arrest and the items found in his possession. Apparently during the "in chambers" colloquy, the sentencing recommendation of the presentence investigator was changed from probation to incarceration. Freels' counsel was present during both the "in chambers" and on record discussions of the matter.

Freels' claim for reversal under Delano turns on his view that the search was illegal and therefore any consideration at sentencing of items seized is precluded. We find no illegality in a search which constitutes nothing more than standard "booking" procedure. State v. Entsmenger, 160 N.W.2d 480 (Iowa 1968). We see no reason to distinguish between items seized from the person and items carried by the person in a satchel.

Freels claims the judge's denial of a continuance of the sentencing hearing to allow his counsel to research the constitutionality of the search was reversible error. More than two months transpired from the search at which his counsel was present and the hearing. We find no abuse of discretion in denying the continuance requested.

Freels also claims the judge should have disqualified himself because of his knowledge 1) of the illegally-seized gun and paraphernalia and 2) of other arrests made or other charges filed subsequent to the 1973 false pretenses charge. The judge affirmatively stated he was not considering any information regarding other arrests or charges in rendering his sentencing decision. Any consideration of the

gun, mask and gloves was proper as outlined above.

Freels finally argues on appeal that he was not accorded his right of allocution pursuant to § 789.6, The Code. He received the opportunity to volunteer any information helpful to his cause as required by State v. Christensen, 201 N.W.2d 457 (Iowa 1972).

We believe Freels received a fair sentencing hearing.

AFFIRMED.