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DEC 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed December 30, 1981

vs.)

CHARLES CRABTREE,) 1-403
66037

Defendant-Appellant.)

Appeal from Pottawattamie District Court - Glen M. McGee, Judge.

Defendant appeals judgment of conviction and sentence on the offense of burglary in the second degree in violation of section 713.3, The Code. AFFIRMED.

Mark S. Trustin of Watts & Moran, Omaha, Nebraska, and Noran L. Davis, Council Bluffs, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Roxann Ryan, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals judgment of conviction and sentence on the offense of burglary in the second degree in violation of section 713.3, The Code. On appeal he contends that the trial court erred in denying his motion to suppress evidence and in sentencing him to an indeterminate term of fifteen years as an habitual offender. We disagree and affirm the judgment and sentence.

I. The Denial of Defendant's Motion to Suppress Evidence. Defendant's motion to suppress evidence in the trial court sought to prevent the introduction of physical evidence some of which was seized without a warrant and some of which was seized pursuant to a search warrant. He also sought to suppress oral statements made to police officers. Those items seized pursuant to the search warrant were ordered suppressed by the trial court and are not at issue on this appeal. The items which were seized without a warrant and the oral statements were not suppressed by the trial court.

The grounds of the motion to suppress those items seized without a warrant involved allegations that the seizure was made without probable cause in violation of the defendant's federal Fourth Amendment rights and corresponding rights under Article I, section 8 of the Iowa Constitution. The grounds advanced for suppressing the oral statements were that they were obtained during a period of illegal detention.

No claim of error is advanced on appeal concerning the ultimate admission at trial of the oral statements challenged in the motion to suppress. We therefore give no consideration to that portion of the trial court's ruling on this appeal. Defendant's arguments in the trial court on his motion to suppress the physical evidence concerned an alleged absence of probable cause for a search or seizure. The trial court found that with respect to the warrantless search, probable cause had been established. We need not reach this issue because we find, as urged by the State on appeal, that the record clearly shows that the police had cause to make a valid investigatory stop of defendant's pickup truck and that any evidence thereafter seized was either in plain view or was discarded by defendant in the presence of the police, thus removing any expectation of privacy in the discarded property. Under such circumstances, there is no need for the State to establish probable cause for a search or seizure. The issue is whether or not the record justifies the investigatory stop of defendant and his motor vehicle. In this regard, the record reflects that in making the stop of the defendant and his motor vehicle, the police had been informed of a specific crime involving stolen furniture and a pickup truck. The defendant was seen driving a pickup truck loaded with furniture at

1:00 a.m. in the general vicinity of the reported crime. These circumstances are sufficient to constitute "specific articulable cause" for making an investigatory stop of defendant's motor vehicle. See State v. Dixon, 241 N.W.2d 21, 23 (Iowa 1976).

The officers, upon stopping the pickup truck, recognized the defendant and were possessed of knowledge about the defendant which indicated that he had previously threatened police officers. Accordingly, a patdown search was justified. See 3 LaFave, Search and Seizure, § 9.4 at 112-15 (1978). While the defendant may have subsequently been arrested without probable cause, the challenged evidence was not seized as a result of that illegality. See State v. Hungerford, 311 N.W.2d 699, 700 (Iowa App. 1981). No reversible error may be predicated on the trial court's ruling on the motion to suppress.

II. The Habitual Offender's Sentence. Defendant also contends on appeal that the trial court was incorrect in concluding that it could not impose a shorter prison sentence than an indeterminate sentence of 15 years on the habitual offender finding. We conclude that the issue thus raised has been resolved adversely to defendant in State v. Dohrn, 300 N.W.2d 162, 164 (Iowa 1981). We have considered all issues presented on appeal and find no basis for reversal.

AFFIRMED.