FILED
AUG 2 4 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	393
PATRICK E. SANFORD,	)	8-09 87-296
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Polk County (No. 32777) - Theodore H. Miller, Judge.

The defendant appeals from his conviction, following a trial to the court, for the crime of burglary in the second degree. **AFFIRMED.**

Charles Harrington, Appellate Defender, and John P. Messina, Assistant Appellate Defender, for the defendant-appellant.

Thomas J. Miller, Attorney General; David L. Dorff, Assistant Attorney General; and Odell McGhee, Assistant County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J.

Defendant Patrick Sanford appeals from his conviction, following a trial to the court, for burglary in the second degree in violation of Iowa Code sections 713.1, 713.5 (1985). Defendant asserts the district court erred in overruling defendant's motion to suppress evidence. We affirm.

When confronted with an alleged constitutional violation, we resolve the issue by making our own independent evaluation of the totality of the circumstances. State v. Johnson, 395 N.W.2d 661, 663 (Iowa App. 1986); State v. Conger, 375 N.W.2d 278, 279 (Iowa App. 1985). Our review is de novo. State v. Harlan, 301 N.W.2d 717, 718 (Iowa 1981).

On August 10, 1986 at approximately 11:50 p.m., a deputy sheriff on routine patrol discovered that the Graham Equipment Company had been burglarized. The officer observed a gold 1974 Chevrolet Nova in the Graham parking lot. The officer also noticed two sets of footprints near the building. About twenty-five minutes after the discovery of the burglary, another deputy sheriff saw the defendant and another man standing beside a drive-up telephone about a half block from the burglary site. The officer pulled up and asked the men to identify themselves and explain their presence; the men responded that they had walked from a nearby residence to use the telephone, to get some exercise, and to buy some cigarettes at a nearby Quick Trip. The officer told the men to stay there because some other officers wanted to talk to them about a burglary.

When another officer arrived, the defendant and his companion were frisked, placed in different patrol cars and questioned about the burglary. Defendant denied involvement. It was after a third police officer arrived and after the defendant was read his Miranda warnings that the defendant admitted to owning the 1974 gold Nova but continued to deny involvement in the burglary.

The defendant was then taken to the police station and questioned further. A subsequent search of the defendant's gold Nova disclosed items stolen from Graham Equipment, at least one of which bore the defendant's fingerprint.

The defendant states his appeal in the alternative: (1) the police did not have reasonable cause to initially detain him and (2) even assuming the police had grounds to make an investigatory stop, the detention exceeded the bounds of a stop and became a warrantless arrest without probable cause.

In State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982), the supreme court listed three (3) factors in determining whether an investigatory stop is based on reasonable cause:

> 1. Police were investigating a specific crime.
> 2. Police had a description of the assailant and the vehicle he was driving.
> 3. The perpetration of the crime was reasonably close in time and distance to the investigatory stop under the circumstances.

Those factors are satisfied in this case for the initial stop near the drive-up telephone.

1. The police were investigating the Graham Equipment burglary one-half block away.

2. The police had observed two sets of footprints left on the dewed grass leading away from the broken window. The defendant and his companion were standing by a drive-up telephone without a car after midnight in an industrialized area and therefore the information provided police with sufficient basis to be reasonably suspicious of defendant.

3. The crime had occurred very recently. The footprints were made after dew had fallen after dark. The police had reason to suspect the burglars were in the immediate vicinity because some of the loot was at the back door ready to be removed. Also, a strange vehicle with possible loot inside was parked near the burglary site. The initial officer had patrolled the area for five years and knew the company vehicles. A search of the premises revealed no burglars inside the building. The investigatory stop was conducted within one-half block of the burglary site.

We now turn our focus to the question of whether the investigatory stop was turned into a warrantless arrest without probable cause when the defendant was separated from his companion, frisked, placed in a squad car and given Miranda warnings.

In State v. Scott, 405 N.W.2d 829, 832 (Iowa 1987) the supreme court said:

> An officer investigating a burglary, especially in a residential area at an early morning hour, has reasonable cause to believe a frisk is neces-

> sary for his safety since the suspect might be armed with weapons, or tools such as knives and screwdrivers which could be used as weapons . . . (citing People v. Myles, 50 Cal.App.3d 423, 430 (1975)).

In Scott, the police had requested the defendant to accompany them to the officer's vehicle to discuss the burglary. Scott at 831. Scott is the authority for the reasonableness of the intrusion to the point of frisking the defendant and placing him in the police vehicle. In this case the added fact of two suspects justifies separation into separate vehicles in the search for the truth of the investigation. The giving of the Miranda warnings was a bonus and did not make the investigative stop an arrest. The added presence of the initial investigating officer at the burglary site in questioning Sanford in the police vehicle was not sufficiently intrusive to expand the stop into an arrest. The first officer had additional facts that could help in the investigative stop.

The trial court correctly denied defendant's motion to suppress.

AFFIRMED.