

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 29 1982

CLERK SUPREME COURT

Filed June 29, 1982

STATE OF IOWA,

)

Plaintiff-Appellee,

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vs.

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JEFFREY TABER,

)

2-105

Defendant-Appellant.

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Appeal from Linn District Court, August F. Honsell, Jr., and William R. Eads, Judges.

Defendant appeals his conviction of second-degree burglary in violation of sections 713.1 and 713.3, The Code. **AFFIRMED.**

Gerald J. Kucera, Cedar Rapids, for defendant-appellant.

Thomas J. Miller, Attorney General, and John Messina, Assistant Attorney General, for defendant-appellant.

Heard en banc.

Defendant appeals his conviction of second-degree burglary in violation of sections 713.1 and 713.3, The Code. He claims the trial court erred: (1) in overruling his motion to suppress certain evidence; (2) in allowing defendant's shoes to be introduced into evidence; and (3) in overruling his motion for judgment of acquittal based on insufficient evidence to support a guilty verdict. We affirm.

Defendant and one Douglas Pelzer were charged by information with the December 12, 1980, burglary of First Avenue Discount, a Cedar Rapids service station and convenience store. They were found and arrested shortly after 1:00 a.m., hiding near the Earl May Garden Center (approximately one block away from the store) after the police had been notified that suspicious movements had been seen near the Center. At the time, the arresting officers knew that the break-in had just taken place at the nearby store. Some cash and several items (including an ice scraper and chapstick, similar items being sold at the store) were found on defendant's person which were seized as evidence. In addition, the arresting officers examined the area where defendant and Pelzer were hiding and found a stack of seventeen one-dollar bills and a large wallet. At some point after defendant had been taken to the police station, his shoes were seized after one of the officers noted that the distinctive sole pattern was similar to a footprint observed and later photographed at the store.

On February 25, 1981, defendant filed a motion to suppress all items seized from him, alleging that the search was done without probable cause and therefore violated his fourth amendment rights. This motion was overruled; after trial to a jury, defendant was found guilty of the offense charged. His motion for new trial was also overruled and he brought this appeal.

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Defendant's first two issues may be considered together. He claims that the various pieces of evidence referred to above should not have been allowed into evidence because they were obtained in violation of his fourth amendment rights. Specifically, he asserts that his arrest was invalid as being without probable cause and any evidence resulting therefrom must be suppressed. In considering this issue, we must review the facts de novo in light of the totality of the circumstances. State v. Schrier, 283 N.W.2d 338, 341-42 (Iowa 1979).

In determining the validity of a warrantless arrest, we must consider "whether the officers made a valid arrest based on probable cause to believe defendant [was] involved in criminal conduct." State v. Sanders, 312 N.W.2d 534, 537 (Iowa 1981). "Probable cause consists of circumstances which would lead a reasonable person to believe defendant committed the crime." State v. Shane, 255 N.W.2d 324, 326 (Iowa 1977).

We have no trouble in concluding defendant's arrest was valid. The police had probable cause to arrest him in view of the following circumstances known to the police at the time of the arrest: (1) a robbery had just occurred at First Avenue Discount; (2) defendant and his companion were found hiding in a secluded area approximately one block from the scene of the burglary; (3) it was past 1:00 a.m. when defendant was arrested; (4) a large leather wallet and a stack of seventeen one-dollar bills was found lying on the ground where defendant was hiding; and (5) defendant's companion was found with more than five dollars in change on his person. Armed with these facts, we believe the policemen could reasonably believe that defendant was involved in the burglary. Since defendant's arrest was lawful, it follows that any evidence seized incident thereto could be admitted without violating his constitutional rights. See Schrier, 283 N.W.2d at 342.

Nor were defendant's rights infringed by the seizure of his shoes at the police station after his arrest and their introduction as evidence at trial. He claims a warrant was required to justify the seizure of his shoes. An identical argument was rejected by the United States Supreme Court in United States v. Edwards, 415 U.S. 800, 94 S. Ct. 1234, 39 L. Ed. 2d 771 (1974):

When it became apparent that the articles of clothing were evidence of the crime for which Edwards was being held, the police were entitled to take, examine, and preserve them for use as evidence, just as they are normally permitted to seize evidence of crime when it is lawfully encountered.

Surely, the clothes could have been brushed down and vacuumed while Edwards had them on in the cell, and it was similarly reasonable to take and examine them as the police did, particularly in view of the existence of probable cause linking the clothes to the crime. Indeed, it is difficult to perceive what is unreasonable about the police examining and holding as evidence those personal effects of the accused that they already have in their lawful custody as the result of a lawful arrest.

415 U.S. at 806, 94 S. Ct. at 1238, 39 L. Ed. 2d at 777. See also Bizzett v. Brewer, 262 N.W.2d 273, 278 (Iowa 1978). In like manner here, when it was discovered after defendant's lawful arrest that his shoes had the same pattern as that found in the footprint at the scene of the burglary, the police were entitled to seize those shoes as evidence without a warrant. We find no error in the introduction of the challenged evidence.

II.

Defendant also claims he was entitled to a judgment of acquittal because there was insufficient evidence by which he could be found guilty. We disagree. In determining the sufficiency of the evidence to support a guilty verdict, we examine all of the evidence in the light most favorable to the prosecution. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). The jury's verdict is binding on us unless the record contains no substantial evidence to support the verdict or unless

it is clearly against the weight of the evidence'. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981).

We find that the jury's verdict has ample support in the record. Defendant and his companion were found near the burglarized store very soon after the burglary was reported. The amount of money found on and near them very nearly equalled the amount of money stolen. The store's owner positively identified the large wallet found where defendant was hiding. Defendant's distinctive shoe sole pattern matched a footprint found near the store. This and other evidence is sufficient to support the jury's guilty verdict.

Defendant's conviction is affirmed.

AFFIRMED.

All judges concur except Carter, J., who concurs specially.

CARTER J., (concurring specially).

Although I disagree that the police had probable cause to arrest defendant at the time that said arrest was initially made, they did have grounds to detain the defendant as part of an investigatory stop and it would have been proper to continue such investigatory stop until probable cause was established. Under these circumstances the motion to suppress evidence was properly denied.