FILED 171
NOV 24 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed November 24, 1981

vs.)

WILLIAM DENNIS MOREHEAD,) 1-282/65465

Defendant-Appellant.)

Appeal from Greene District Court - Paul E. Hellwege and E. J. Flattery, Judges.

Defendant appeals from his conviction for burglary in the second degree in violation of sections 713.1 and 713.3, The Code. AFFIRMED.

William C. Ostlund, Jefferson, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Julie Pottorff, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Carter and Johnson, JJ. Snell, J., takes no part.

Defendant appeals from his conviction for burglary in the second degree in violation of sections 713.1 and 713.3, The Code. Defendant was found guilty of breaking into a state liquor store and stealing $343.10 worth of liquor. On appeal he contends that the court should have granted his motion for change of venue and should have sustained his motion to suppress evidence obtained through a search warrant. We find no merit in either issue and affirm the conviction.

The defendant was charged with burglary in the second degree in a trial information filed on January 7, 1980. On February 27, 1980, he moved for a change of venue asserting, among other things, that residents of the county were prejudiced against him. The motion was supported by a newspaper clipping and three affidavits. The affidavits and most of the motion are directed to a claim of prejudicial publicity, but defendant's argument on appeal is centered upon a claim that the citizens of the county knew him by reputation and were prejudiced against him. Defendant's motion for change of venue was resisted by the State which attached 26 affidavits to its resistance which were executed by persons who stated that they had never heard of defendant.

I. Our task on appeal on the change of venue issue is to review the record de novo to determine whether the trial court abused its discretion in ruling that defendant failed to demonstrate a substantial likelihood that he could not receive a fair and impartial trial in the county. State v. Cornelius, 293 N.W.2d 267, 269 (Iowa 1980); State v. Paulsen, 265 N.W.2d 581, 588 (Iowa 1976). Mere exposure to news accounts does not prove that there is a substantial likelihood of prejudice in the minds of the prospective jurors in the county in which the trial is to be held. Cornelius, 293 N.W.2d at 269. Here, there was approximately a five-month delay between the publication of the newspaper articles upon which defendant relied (which were largely factual accounts of defendant's arrest) and the time of defendant's trial. In addition, we cannot accept defendant's assertion that the knowledge and attitudes of a few citizens residing in the county seat are necessarily typical of the knowledge and attitudes of a petit jury panel selected on a county-wide basis. There is no showing in the present record that there was in fact any difficulty in obtaining, through the regular jury selection process, a requisite number of potential jurors who were unacquainted with the facts of the case and otherwise impartial. See State v. Davis, 196 N.W.2d 885, 889 (Iowa 1972). We hold that the trial court did not abuse its discretion in overruling defendant's motion for change of venue.

II. We next consider defendant's contention that the trial court erred in denying his motion to suppress evidence obtained in a search of defendant's residence and automobile conducted pursuant to a warrant. Defendant's sole contention in this regard is that the affidavit upon which the warrant was issued fails to show probable cause that a crime was being committed or that evidence of a crime was being concealed on the premises or in the automobile which was the subject of the search. We have examined the affidavit and find it sufficient to show probable cause for issuance of the warrant.

In making the foregoing determinations, we apply a test of probable cause which requires that "a person of reasonable prudence would believe a crime was being committed on the premises to be searched or evidence of a crime was being concealed there." State v. Post, 286 N.W.2d 195, 199 (Iowa 1979); State v. Wright, 244 N.W.2d 319, 320 (Iowa 1976). In the present case, the affidavit in question was executed by the officer who had personally investigated the scene of the liquor store break-in. He states in the affidavit that he observed gravel-sized pieces of broken glass on the floor inside the building. It is indicated that the glass was tracked throughout the store. Later, the officer observed gravel-sized glass fragments in defendant's vehicle which was the subject of the search. The affidavit further shows that the officer observed footprints with a distinctive tread pattern of an athletic shoe or boot at the scene of the crime and later observed a similar footprint in the snow outside defendant's residence. The affidavit further shows that the officer observed liquor or liquor wrappers of a type consistent with liquor removed from the store in both defendant's residence and automobile. We conclude that the foregoing facts, as recited in the affidavit tendered in the application for the search warrant, were sufficient to support the issuance of the warrant in the face of defendant's present challenge that no probable cause was shown. We have considered all issues presented and find no basis for reversal.

AFFIRMED.