FILED
MAY 31 1979
IOWA SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed May 31, 1979
vs.)
TERRY LEE GROTE,) 85
Defendant-Appellant.) 61996

Appeal from Greene District Court - R. K. Richardson, Judge.

Defendant appeals jury conviction for larceny under section 709.1, The Code 1977, alleging trial court erred in denying him standing to contest the constitutionality of a search and seizure and that there was insufficient evidence to allow the jury to consider whether defendant was the person who committed the larceny. AFFIRMED.

Richard N. Winders of Cudahy, Wilcox, Handley, Magee & Polking, P.C., Jefferson, Iowa, for appellant.

Thomas J. Miller, Attorney General of Iowa; and Thomas A. Evans, Jr., Assistant Attorney General; for appellee.

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

PER CURIAM

Defendant, Terry Lee Grote, appeals a jury conviction for larceny in violation of section 709.1, The Code 1977, alleging trial court erred in denying him standing to contest the constitutionality of a police-conducted search and seizure and in denying his motions for directed verdict and new trial made on grounds of insufficient evidence to allow the jury to consider whether defendant was the person who committed the larceny. We affirm.

A Scranton police officer on routine patrol observed a person with long blond hair and wearing a red shirt start the engine and drive a tractor away from Juergens Implement Company at 1:45 a.m., August 27, 1977. The driver's appearance fit the description of defendant as he appeared in the earlier evening hours the night of the larceny. One witness testified that defendant stated to him a few days prior to the larceny that defendant intended to "take a tractor;" two witnesses stated they observed a person with long blond hair, wearing a red shirt, drive a tractor through town at approximately the time of the larceny. A Greene County deputy sheriff testified that he was contacted by the Scranton marshall to investigate the theft of a tractor about 1:45 a.m., August 27, 1977. He stated that he proceeded to the area where the tractor was said to be proceeding, intercepted fresh tire tracks on a newly-graded, damp gravel road at the outskirts of Scranton, and followed them for several miles. About 2:45 a.m., the deputy sheriff observed tractor tire tracks leading into the farmstead where defendant resided. The deputy followed the tracks to the house, attempted to rouse the resident without success, then followed the tracks down the driveway to the rear of the barn where the tractor was discovered. The barn and barn lot are more than 100 feet from the house and, at the time, were leased independently by the property owner to a tenant other than defendant.

I. On appeal defendant asserts trial court erred in overruling his motion to suppress on the ground that defendant lacked standing to contest the constitutionality of the search conducted by law officials when they investigated the barnyard area and seized control of the stolen tractor. We make an independent examination of the record because a constitutional issue is raised. State v. Farrell, 242 N.W.2d 327, 329 (Iowa 1976). It is well-established that standing to challenge an allegedly illegal search and seizure is a personal right. Simmons v. U.S., 390 U.S. 377, 389, 88 S.Ct. 967, 974, 19 L.Ed.2d 1247, 1256 (1968). Under the principles of Brown v. U.S., 411 U.S. 223, 93 S.Ct.

1565, 36 L.Ed.2d 208 (1973), and State v. Osborn, 200 N.W.2d 798 (Iowa 1972), one asserting the fourth amendment right must be charged with a possessory offense, be legitimately on the premises at the time of the contested search and seizure, or allege a proprietary or personal interest in the premises searched or property seized. Brown v. U.S., 411 U.S. at 229, 93 S.Ct. at 1569, 36 L.Ed.2d at 214; State v. Osborn, 200 N.W.2d at 804. See also State v. Bakker, 262 N.W.2d 538, 544 (Iowa 1978).

We conclude, however, that the proper test to be applied is found in Rakas v. Illinois, ___ U.S. ___, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978), decided after trial court's ruling on defendant's motion to suppress. In Rakas, the United States Supreme Court held that a person's right to challenge a search and seizure no longer would be considered a question of standing but would turn on the substantive analysis of the scope of the interest protected by the fourth amendment. The test adopted was whether the person has a legitimate (reasonable) expectation of privacy (freedom from governmental intrusion) in the invaded place. ___ U.S. at ___, 99 S.Ct. at 430, 58 L.Ed.2d at 401. A possessory interest in the items seized in the premises searched are matters relevant to the determination of whether a person has a reasonable expectation of privacy. We, therefore, must determine whether defendant had any possessory or other interest in the land from which the tractor was seized to enable him to have a reasonable expectation of privacy.

Defendant claims that he voluntarily undertook caretaking duties about the barnyard; he asserts no interest in the area based on leasehold or estate. We find no authority for the proposition that gratuitous undertakings establish a possessory interest in property which is uncontrovertedly leased to and used by another. Nor do we believe that any permissive use which defendant had of the area was sufficient to give rise to any reasonable expectation of privacy under these facts.[1] Trial court properly refused to suppress evidence of the seized tractor.

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[1] In footnote 17 of Rakus the court states that, contrary to the dissent's assertion that under the majority's "holding" one would not be permitted to object to a search unless he or she has a common-law property interest in the premises searched, ". . . we have taken pains to reaffirm the statements in Jones and Katz that 'arcane distinctions developed in property . . . law . . . ought not to control.' " ___ U.S. at ___, 99 S.Ct. at 434, 58 L.Ed.2d at 405. Petitioners in Rakus claimed only that they were legitimately on the premises and not that they had any legitimate expectation of privacy. Id.

II. Defendant alleges trial court erred in failing to grant his motion for directed verdict made at the close of the state's case-in-chief and again at the close of all the evidence and in failing to grant his motion for a new trial which alleged insufficient evidence to prove the crime charged beyond a reasonable doubt.

In making a determination as to the propriety of the trial court's ruling on a motion for a directed verdict in a criminal case we view the evidence in the light most favorable to the state and draw every legitimate inference that can reasonably and fairly be taken from it. State v. Overstreet, 243 N.W.2d 880, 883 (1976). In this case defendant offered no evidence to rebut the testimony of his expressed intent to "take a tractor"; testimony of two witnesses established that a person fitting defendant's description and appearance on the night of the larceny was seen driving the stolen tractor away from its legitimate location in the early hours of the morning; and the tractor was found by law enforcement officers, who followed its tread marks, in a barn lot located to the rear of defendant's residence. We find these facts sufficient to overcome a motion for a directed verdict and allow submission of the question of whether defendant was the person who committed the larceny to the jury. Once rendered a jury verdict will only be overturned if contrary to the weight of the evidence. State v. Herndon, 257 N.W.2d 19, 22 (Iowa 1977); State v. Overstreet, 243 N.W.2d at 884. We find the weight of this evidence sufficient to support the jury's verdict.

The judgment of trial court is affirmed.

AFFIRMED.