FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

314

STATE OF IOWA,)

Plaintiff-Appellee,) Filed February 24, 1982

vs.)

CLIFFORD McLOAN BROWN,) 1-428
65686

Defendant-Appellant.)

Appeal from Polk District Court - Joel D. Novak, Judge.

Defendant appeals from his conviction for robbery in the first degree asserting that: (1) since there was no probable cause for a stop of his vehicle, evidence obtained from the stop should have been suppressed; and (2) the evidence was insufficient to identify defendant as a perpetrator. AFFIRMED.

Clark L. Holmes, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and John P. Messina, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Defendant appeals from his conviction for robbery in the first degree asserting that: (1) since there was no probable cause for a stop of his vehicle, evidence obtained from the stop should have been suppressed; and (2) the evidence was insufficient to identify defendant as a perpetrator. We affirm.

Since the defendant alleges his constitutional rights were violated, we review the evidence concerning that issue de novo. State v. Aschenbrenner, 289 N.W.2d 618, 619 (Iowa 1980).

I.

On March 15, 1980, two persons robbed Don's Super Valu at gunpoint at approximately 3:30 a.m. Two witnesses who were outside the store during the robbery gave police officers a description of the two men and a vehicle apparently used as the getaway car. Two other witnesses also described the robbers to police.

Within about an hour of the robbery, a police officer saw a dirty brown and green station wagon and wondered if it might be the getaway car. The officer followed the car for about two miles, and he observed the driver commit two violations of traffic ordinances. After the second violation the officer called for assistance, stopped the car, and engaged the driver (defendant Brown) in conversation about the traffic violations and about Brown's inability to produce a driver's license or a vehicle registration form. When other officers approached, one glanced through a window of the station wagon and observed a shotgun case which appeared to be full. Subsequently, an officer shone a flashlight beam into the car and saw parts of a handgun protruding from under a seat. The shotgun and handgun were seized, and while seizing the handgun the officers discovered a quantity of money beside it under the seat. The officers then requested by radio that witnesses to the robbery be brought to the scene of the vehicle stop. These

witnesses identified Brown and his companion as the robbers.

Prior to trial, the defendant moved to suppress evidence of the guns and money seized from the car and also to suppress evidence of the identifications made at the scene of the vehicle stop. The defendant alleged that officers had lacked probable cause to stop the station wagon. The trial court sustained the motion to suppress insofar as it concerned the money but overruled all other parts of the motion.

II.

Defendant argues that the traffic violations were a pretext to stop the defendant's vehicle and that the police officer really stopped the car to check out his mere suspicions that the occupants of the car had been the perpetrators of the robbery. Therefore, the stop was illegal and all the evidence obtained as a result of the stop should have been suppressed. We disagree.

The police officer's testimony indicates that he stopped the vehicle because the driver committed two traffic violations. The grounds for the stop were not a pretext conjured up by the police. See generally State v. Farrell,242 N.W.2d 327, 329 (Iowa 1976). Since the stop was not illegal, the weapons found in plain view were admissible, Id. at 330. The witnesses' identifications at the scene were also properly admitted.

III.

Defendant next argues that there was insufficient evidence to support the jury's verdict finding defendant guilty of first degree robbery. We view the evidence in the light most favorable to the state and if there is substantial support for the verdict in the record, it will be upheld. State v. Robinson, 288 N.W.2d 337 (Iowa 1980).

There is sufficient evidence in this case to support the verdict. Several witnesses identified the defendant as one of the perpetrators at the vehicle stop

scene. One witness made an in-court identification of the defendant. The vehicle in which the defendant was riding when it was stopped was a very dirty green station wagon with brown side panels. Two of the witnesses testified that a station wagon was parked in back of the grocery store during the robbery. One witness said the station wagon was brown, the parking lights were on, the engine was running, and the door was slightly open. A shotgun case and handgun were found in plain view in the car when it was stopped. This was sufficient evidence to convince a rational juror that the defendant was guilty beyond a reasonable doubt.

AFFIRMED.