

IN THE COURT OF APPEALS OF IOWA

No. 3-223 / 92-445

FILED

JUN 29 1993

CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSEPH HOWARD,
Defendant-Appellant.

000389

Appeal from the Iowa District Court for Black Hawk
County, L.D. Lybbert, Judge.

Joseph Howard appeals from his conviction, following a
jury trial, of theft in the first degree in violation of
Iowa Code sections 714.1(4) and 714.2(1)(1991). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S.
Lipman, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Thomas G. Fisher,
Jr., Assistant Attorney General, Thomas J. Ferguson, County
Attorney, and Linda A. Hall, Assistant County Attorney, for
appellee.

Heard by Donielson, P.J., and Sackett and Habhab,
JJ.

000390

SACKETT, J.

Defendant-appellant Joseph Howard appeals his conviction, after a jury trial, of theft in the first degree in violation of Iowa Code sections 714.1(4) and 714.2(1) (1991). Defendant contends the district court erred in (1) refusing to suppress evidence defendant contends was the fruit of an illegal warrantless search and (2) in admitting hearsay. We affirm.

There had been a number of thefts of electronic equipment in the Waterloo/Cedar Falls area. Chandler, of the Waterloo Police Department, told deputy sheriff Reicherts he had information defendant had received the stolen property and was selling it. Defendant had served as a confidential informant for Reicherts on other occasions. Defendant and Reicherts met in a parking lot at Reicherts' request. Reicherts told defendant the Waterloo police suspected he had stolen property. Reicherts told defendant he was only interested in getting the property and if it were turned over, defendant would not be prosecuted. Defendant admitted to Reicherts he had some of the property and Reicherts asked defendant to take him to his home to get the stolen property. Defendant took Reicherts to where he lived with a girl friend. When defendant and Reicherts arrived at his home, defendant's girl friend and some other people were there. After being shown some of the property, Reicherts had the area secured and got a search warrant. On request, defendant and his

000391

girl friend signed consenting to the search. There were a number of stolen items recovered in the search. After the first search, there was a second search.

Prior to trial, defendant filed a motion to suppress the information he had given Reicherts because Reicherts had elicited the statements on promises of leniency. The district court, after a hearing, agreed with defendant on this issue and suppressed defendant's statements to the officer.

Defendant then filed a motion to suppress the property obtained in the searches claiming the searches were the fruit of the suppressed statements. The district court denied this motion finding there was a sufficient basis for issuing a search warrant without the suppressed statements.

Defendant contends on appeal it was error to deny his second motion to suppress. He contends the items seized were the fruits of an unlawful warrantless search that was based on the suppressed statements. Defendant contends the procedure also invalidated the second search.

The State first responds that the issue was waived because the motion was not filed within forty-five days.

According to defendant's brief, he agrees with the testimony of Reicherts that defendant and his girl friend signed a written consent for the search. The search based on the written consent was valid. See State v. Garcia, 461 N.W.2d 460, 464-65 (Iowa 1990), cert. denied, _____ U.S. _____, 111 S. Ct. 1115, 113 L. Ed. 2d 223 (1991); see generally State v. Ege, 274 N.W. 2d 350 (Iowa 1979).

Defendant next contends the trial court erred in admitting a statement of Aaron Burch into evidence. Burch, one of the perpetrators of the burglaries, had given the statement to Reicherts. The statement explained how property was taken in a number of break-ins and how the stolen property was taken to defendant's home. Burch did not testify at trial and his statement was introduced through Reicherts. Defendant contends he objected to the exhibit on hearsay grounds, noting the admission of the statement denied him his right to cross-examination. The State contends defendant at trial only objected to the statement on foundational and confrontational grounds.

Defendant's trial counsel made a number of objections as the State sought to lay the foundation to introduce this statement into evidence. While Reicherts was being asked if he had obtained a statement from Burch, defendant's attorney said, "We object to that as being irrelevant. Mr. Burch is going to testify. Otherwise it's hearsay." However, at the time the exhibit was offered into evidence, defendant contended only that he was denied the right to cross-examine the witness, no foundation was laid, and it would be a violation of his constitutional protections with regard to confrontation and due process.

Defendant does not on appeal address the confrontation or cross-examination issue or advance that his trial counsel was not effective for failing to object to the introduction of the exhibit as containing hearsay.

The State contends the statement was not prejudicial. The statement was prejudicial because it detailed how the items were stolen and why they were brought to defendant's home supporting the State's contention defendant intentionally kept the property. Defendant did not preserve error on his hearsay objection. A party who fails to alert the district court to its contentions at trial cannot thereafter rely on those contentions to seek reversal on appeal. See State v. Miles, 344 N.W.2d 231, 233 (Iowa 1984); State v. Hansen, 286 N.W.2d 163, 165-66 (Iowa 1979).

AFFIRMED.