FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed June 26, 1984
vs.	)	
JACK DEAN JOHNSON,	)	4-128 / 68853
Defendant-Appellant.	)	

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Appeal from the Iowa District Court for Story County - Russell Hill, Judge.

Defendant appeals from his conviction for second-degree burglary. REVERSED AND REMANDED.

Barry J. Nadler of Hegland, Newbrough, Johnston, Brewer & Maddux, Ames, for defendant-appellant.

Thomas J. Miller, Attorney General, and Steven M. Foritano, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

Defendant appeals from his conviction for second-degree burglary. He contends the trial court erred by: 1) refusing to suppress evidence obtained in an allegedly illegal search and seizure; 2) permitting his impeachment with a 1964 conviction; 3) permitting an alleged accomplice to testify that defendant had committed other burglaries; 4) giving the jury an instruction on joint criminal activity which was not supported by the record; 5) denying his pre-trial application for public funds to hire an investigator; 6) compelling him to appear at trial in distinctive prison garb; and 7) permitting the State to present a witness whose name did not appear on the minutes of testimony. We reverse and remand for a new trial.

On December 12, 1980, defendant, Billy Miller, and Michael Williams were riding in defendant's truck. Defendant dropped Miller and Williams off at the property owned by Dwayne and Betty Tjelmeland. The Tjelmelands owned a house approximately one-half mile south from their rural residence where they stored certain pieces of furniture. Miller and Williams proceeded to break into the house and remove certain items. All three men loaded the items onto the truck, and they left the area.

Defendant testified that Williams told him that Mr. Tjelmeland owed him a sum of money. Miller and Williams asked if they could use his truck to go pick up some items to reimburse Williams for his lost wages. Defendant admitted that he drove Miller and Williams to the Tjelmeland property, dropped them off, and then picked them up and the items from the Tjelmeland home.

On June 3, 1981, Detectives David Anderson and Gerry Bearden sought to obtain a search warrant for defendant's residence. The court determined there was not sufficient probable cause to issue the warrant. Anderson and Bearden then took Williams, their informant, to defendant's home on the evening of June 3, 1981. Williams supposedly saw a stolen stove through the window of defendant's

residence and so informed the detectives who were then able to obtain a search warrant based on Williams' information. It was later determined that this stove was in fact not stolen. Next day, defendant's landlord, William Ringle, was given a search warrant which gave the police the right to search for the stove previously seen on the ground floor of defendant's home. The officers then searched the entire residence and the area surrounding the residence.

Mr. Ringle was unable to read the search warrant because of the illegibility of the writing. Someone tried to read the warrant to Ringle about fifteen minutes after the search began. After the police had searched for some time, Mr. Ringle volunteered to show them where certain property was located—down a path approximately 100 yards from the house. As a result, the officers found and seized a number of the items that had been taken from the Tjelmeland property. It was subsequently discovered at the hearing on defendant's motion to suppress that the search warrant was based on false evidence by the government's informant. As a result of this finding, the court held that the warrant was invalid and suppressed all of the items found in the house. The court, however, held that evidence found outside defendant's residence was admissible under the no-standing rule and the consent of his landlord to the search. The evidence was introduced at trial by way of testimony and photographs over defendant's objection.

The trial was split between two weeks. During the second week of trial, defendant was required to wear a jail shirt into court with the words "Story County Jail" written on the back. Sheriff Stark told him that he had to put on the jail uniform when he was incarcerated. Defendant was seated in front of the jury with his back to them; he alleges that, it appears that during the trial, his counsel was not aware what was written on the back of the shirt. On June 4, 1983, the defendant was convicted of burglary in the second degree. He was subsequently sentenced to a term not to exceed ten years. This appeal followed.

I.

Defendant first contends that the trial court erred in failing to suppress the evidence seized outside his residence. He claims both that he had standing to challenge the search of the area surrounding the house and that Ringle did not validly consent to the search. We need not consider the consent issue because we conclude defendant did not have standing to challenge the search of the area surrounding his residence since he did not have a legitimate expectation of privacy in that outside area.

A person's ability to challenge a governmental search and seizure depends upon whether that person can demonstrate a reasonable or legitimate expectation of privacy that has been invaded by the goverment action. Smith v. Maryland, 442 U.S. 735, 740, 99 S. Ct. 2577, 2580, 61 L. Ed. 2d 220, 226 (1979). This determination turns on two questions; first, whether defendant has, by his conduct, exhibited an actual or subjective expectation of privacy and, second, whether that subjective expectation is one that society is prepared to recognize as reasonable. Id. at 740, 99 S. Ct. at 2580, 61 L. Ed. 2d at 226-27. One may not claim a legitimate expectation of privacy for activities conducted out of doors in fields except in the area immediately surrounding the home. Oliver v. United States, ____ U.S. ____, ____, 104 S. Ct. 1735, 1741, 80 L. Ed. 2d 214, 224 (1984). Finally, "[a] person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." Rakas v. Illinois, 439 U.S. 128, 134, 99 S. Ct. 421, 425, 58 L. Ed. 2d 387, 395 (1978).

Under these principles, we believe it is evident that defendant's challenge to the search and seizure conducted in this case cannot stand. First, the area from which the contested evidence was seized belonged to Ringle and not defendant. Even if defendant's property interest as Ringle's tenant extended beyond that portion of the residence that he occupied, he has not demonstrated a subjective

expectation of privacy in the outside area, nor do we believe he could. The challenged evidence was discovered and seized approximately 100 yards north of the residence in an area connected to the residence by a dirt path. The stolen items were placed uncovered on an old truck flatbed and were left out in the open and exposed to the elements. At no time during the suppression hearing or the trial did defendant assert in any way that he considered that area private. Defendant bore the burden of proving that he had a legitimate expectation of privacy in that area outside his residence. Rawlings v. Kentucky, 448 U.S. 98, 104, 100 S. Ct. 2556, 2561, 65 L. Ed. 2d 633, 641 (1980). Because he failed to sustain this burden, the trial court did not err in admitting the evidence of stolen items seized outside defendant's residence.

II.

Defendant next claims that the court erred in allowing him to be impeached by a 1964 burglary conviction. The State was permitted to introduce this conviction over defendant's objection during his cross-examination by the State.

Prior felony convictions may be used to attack witness credibility, but only if the felony involved dishonesty or false statement and the trial court determines the probative value of such evidence outweighs the danger of unfair prejudice after considering the nature and age of the conviction, its bearing on veracity, and its propensity to improperly influence the minds of the jurors. State v. Martin, 217 N.W.2d 536, 542 (Iowa 1974). We conclude that the trial court erred in allowing this evidence. First, the State did not demonstrate that the 1964 conviction involved dishonesty or false statement. The supreme court has not determined whether a burglary conviction involves truth or veracity for these purposes; cf. State v. Conner, 241 N.W.2d 447, 455 (Iowa 1976) (felonies involving theft reflect on veracity). We need not determine this issue, however, because the age of the conviction is such that the court should have excluded it; the court abused its discretion by failing to do so. At the time of trial, in 1982, the conviction was

eighteen years old. Although there is no specific period of years fixed for measuring the admissibility of a prior conviction against a remoteness challenge, State v. Cuevas, 282 N.W.2d 74, 81 (Iowa 1979), the supreme court has held that a fourteen-year-old conviction was too remote and was inadmissible. State v. Thornburgh, 220 N.W.2d 579, 584 (Iowa 1974). In Cuevas, the court held the trial court did not abuse its discretion in excluding from evidence convictions that were sixteen and eighteen years old even though subsequent convictions militated against the prejudicial effect of their age. Because the court abused its discretion in this case by admitting an eighteen-year-old conviction, defendant's conviction must be reversed and the case remanded for a new trial.

III.

We consider defendant's remaining issues insofar as they may arise again on retrial. We agree with defendant that there was insufficient evidence in the record to support the jury instruction on joint criminal conduct under Iowa Code section 703.2. That provision, as opposed to aiding and abetting under section 703.1, "'relates to additional or other crimes committed by defendant's accomplices without defendant's personal participation, and without joint planning of the crimes.'" State v. Irvin, 334 N.W.2d 312, 314 (Iowa Ct. App. 1983). The record contains no evidence of the commission of any crime other than burglary, the one of which defendant was charged. The trial court therefore erred in giving this instruction. State v. Mays, 204 N.W.2d 862, 865 (Iowa 1973).

IV.

Regarding defendant's request for funds to hire a private investigator by authority of Iowa Code section 815.7, the trial court's failure to make appropriate findings of fact and conclusions of law in its apparent denial of the request makes it impossible for us to determine whether the court abused its discretion in so denying. Defendant's counsel gave the following reasons for requesting funds for an investigator:

> 3. That the Defendant believes that certain statements, inducements, promises and other means of coercion were used on some of the State's witnesses and on relatives of these witnesses in order to secure their testimony.
>
> 4. That it is necessary in order to obtain a fair trial that these allegations be investigated, and that such investigation would not be feasible by the attorney for the Defendant in as much as if the contentions of the Defendant are true in regard to the statements used to obtain this testimony, then the mere presence of the attorney for the Defendant would mean that these individuals would not honestly respond to inquiries.

We believe these reasons are sufficiently specific to give the trial court an understanding why counsel believed an investigation was necessary. See State v. Williams, 207 N.W.2d 98, 105 (Iowa 1973). If a similar request is made by defendant on remand, the trial court shall enter an order granting or denying the request along with specific findings of fact and conclusions of law in support of its decision. "If trial court, focusing upon needs of defense counsel, finds the application is reasonable then it should be granted, but if found to be frivolous, unreasonable or without underlying factual support then a denial is in order." State v. McGhee, 220 N.W.2d 908, 913 (Iowa 1974).

V.

Defendant's remaining issues need not long detain us. We find no merit in his claim of being compelled to wear identifiable jail clothes (a khaki shirt with the words "Story County Jail" stenciled on the back) during the last two days of trial for the simple reason that he raised no objection to such clothing until after the trial was over.

> [A]lthough the State cannot . . . compel an accused to stand trial before a jury while dressed in identifiable prison clothes, the failure to make an objection to the court as to being tried in such clothes, for whatever reason, is sufficient to negate the presence compulsion necessary to establish a constitutional violation.

Estelle v. Williams, 425 U.S. 501, 512-13, 96 S. Ct. 1691, 1697, 48 L. Ed. 2d 126, 135 (1976).

Nor do we find reversible error in the court's admission of evidence of other crimes committed by defendant. Michael Williams, one of defendant's accomplices, was thoroughly cross-examined by defense counsel about prior burglaries in which Williams was involved and where and with whom they were committed. On redirect, the State asked Williams if defendant was involved in any of those other burglaries; Williams responded in the affirmative. Presumably defense counsel was trying to establish that Williams was mistaken in claiming that defendant was involved in the instant burglary and that they were not usually "partners in crime." We believe this attempt on defendant's part opened the door so as to allow the State to show that Williams and defendant had in fact been accomplices in past burglaries. See State v. Pepples, 250 N.W.2d 390, 393-94 (Iowa 1977).

Finally, the court did not abuse its discretion in allowing the State to call as a witness Billy Miller (the other accomplice); his name was not endorsed on the minutes of testimony. Defendant suffered no prejudice since he had actual knowledge that Miller would be called by the State as a witness. In addition, defendant had deposed Miller prior to trial and was thus made aware of the substance of his testimony. Finally, and most importantly, the court granted defendant a continuance after allowing the State to call Miller as a witness in order to give defendant additional time for preparation. See Iowa R. Crim. P. 18(3). Under these circumstances, there was no reversible error. State v. Buford, 308 N.W. 2d 31, 34 (Iowa 1981).

For the reasons stated above, defendant's conviction and sentence are reversed and the cause remanded for a new trial consistent with this opinion. Because a new trial will be held, we do not consider defendant's claims of ineffective assistance of counsel.

REVERSED AND REMANDED.