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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed April 8, 1983

vs.)

JOSEPH JAMES JACOBS, JR.,) 3-01/66345

Defendant-Appellant.)

Appeal from Scott District Court - C. H. Pelton, Judge.

Defendant appeals his conviction and sentence for larceny in the daytime in violation of Iowa Code § 709.5 (1975). AFFIRMED.

Scott D. Rosenberg, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Roxann M. Ryan, Assistant Attorney General, for plaintiff-appellee.

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

PER CURIAM

Defendant appeals his conviction and sentence for larceny in the daytime in violation of Iowa Code § 709.5 (1975). He claims that the trial court erred in: 1) failing to suppress evidence seized after an allegedly illegal investigatory stop in violation of his fourth amendment rights; 2) failing to suppress certain inculpatory statements made by him and obtained in violation of his Miranda rights; 3) admitting into evidence a list of stolen items over hearsay objections; and 4) sentencing defendant to incarceration rather than probation. We affirm.

Defendant was charged by information on December 12, 1976, with larceny in the daytime over $20 (Iowa Code § 709.5(1975)) in connection with an automobile break-in at a Davenport shopping center. On December 13, defendant filed a motion to suppress all evidence seized from his car, police testimony concerning their observation of defendant before and after arrest and of the contents of his automobile and certain incriminating statements made by him. This motion was overruled. Trial was held, and on March 8, 1977, the jury returned a guilty verdict. Defendant was sentenced to an indeterminate term not to exceed five years. This appeal followed.

Our review is on errors assigned. Iowa R. App. P. 4. When constitutional rights and claims are in issue, however, we find the facts **de novo.** State v. Lamp, 322 N.W.2d 48, 50 (Iowa 1982).

I. Defendant first asserts that his fourth amendment rights were violated by the warrantless stop of his car by police and that any evidence obtained as a result of that stop should not have been allowed. Earlier on the day of the stop a police informant told the arresting officers that defendant had taken a radio of his but stated that he did not wish to press charges since he was not sure that defendant intended to keep it. He also indicated that defendant was involved in minor criminal activity unrelated to the present charge. The officers had no personal knowledge of the informant other than the fact that he was a police

informant. Later that day he told them that a third person whom he did not identify had told him that defendant had broken into a car at a shopping mall and taken some items from it. When the officers called in to ask if any such items had been reported stolen from a car at the mall they were told that there had been no such report. Acting without a warrant they stopped defendant's car, which matched the description given by the informant, when they observed it travelling in a manner consistent with the information provided by the informant. Inside it in plain view were various items that ultimately turned out to have been stolen. One of the officers also saw in plain view a store receipt containing what turned out to be the name of the person whose car was broken into. Shortly thereafter the officers received a report of the theft at the mall, confirming the informant's information. They then seized the items from defendant's car. At trial, they were allowed to testify as to these events over defendant's objection and after the court overruled his pretrial motion to suppress.

On this issue, defendant claims only that the investigatory stop was illegal; he raises no independent claim that the resulting search and seizure was constitutionally flawed in any way other than as connected with the stop. We therefore limit our analysis to that issue.

The Lamp court spelled out the principles governing the legality of investigatory stops.

> It is well settled that the fourth amendment requires reasonable cause to stop a vehicle for investigatory purposes. When a stop is challenged on the basis that reasonable cause did not exist, the State must show that the stopping officer had "specific and articulable cause to support a reasonable belief that criminal activity may have occurred." Circumstances giving rise to suspicion or curiosity will not suffice. The officer is bound by the true reason or reasons for making the stop; that is, the officer may not rely on reasons that he or she could have had but did not actually have. If the State fails to meet its burden, the evidence obtained as a result of the stop must be suppressed. [citations omitted]

322 N.W.2d at 51. In this case, the officers stopped defendant after being tipped by an informant that defendant had broken into a car. The question then becomes: did the informant's tip provide the officers with "specific and articulable cause" to support a "reasonable belief" that defendant had engaged in criminal activity so as to justify the investigatory stop?

The United States Supreme Court considered this issue in Adams v. Williams, 407 U.S. 143, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972). There, the Court refused to prohibit police officers from relying on information, obtained from informants, in order to have reasonable cause for a stop and frisk. Commenting on informants' tips in general, the Court noted:

> Informants' tips, like all other clues and evidence coming to a policeman on the scene, may vary greatly in their value and reliability. One simple rule will not cover every situation. Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized. But in some situations—for example, when the victim of a street crime seeks immediate police aid and gives a description of his assailant, or when a credible informant warns of a specific impending crime—the subtleties of the hearsay rule should not thwart an appropriate police response.

407 U.S. at 147, 92 S. Ct. at 1924, 32 L. Ed. 2d at 617-18. Thus, we must determine whether the information provided by the informant in this case was accompanied by sufficient "indicia of reliability" so as to justify the officers' reliance thereon in stopping defendant's car.

We believe that the officers were justified in relying on the information provided. First, the information was obtained from conversations with a regular informant for the Davenport police department. This renders the information more credible than if it had been received in an anonymous telephone tip; i.e., he would not be a regular informant if his information was not credible or reliable. In addition, the informant gave the officers an accurate description of defendant's car; he was also an acquaintance of defendant. Under these circumstances, we

agree with the State that the additional information obtained by the officers regarding defendant's breaking into a car at the shopping center was sufficiently reliable to justify their investigatory stop of defendant's car. Like the Supreme Court in Adams, we do not attempt to lay down any specific rules regarding the value and reliability of informants' tips as a basis for making investigatory stops. The determiantion of such questions necessarily depends on the specific factual circumstances present in each case. We simply find in this case that the reliability of the informant's tips was such that the officers had reasonable cause to stop defendant's car. Since the stop was lawful, the evidence obtained therefrom was properly admitted at trial. The trial court was correct in overruling defendant's motion to suppress on this issue.

II. Defendant next argues that the trial court erred in admitting certain inculpatory statements made by him at the time of his arrest. He claims that these statements were obtained in violation of his Miranda rights. Specifically, he claims that the statements were obtained after he invoked his right to confer with an attorney.

We agree with the State that defendant did not properly preserve this issue for our review. At trial, defendant's attorney objected to the introduction of the statements at issue in the following terms:

> Q. Did you then discuss with Mr. Jacobs his possible involvement in the theft of those items from the car at Northpark?
>
> A. Yes, sir.
>
> Q. What did Mr. Jacobs tell you?
>
> A. Mr. Jacobs stated —
>
> MR. METCALF: Just a minute. Object to that as calling for a possible admission or confession on the part of this defendant. There is no showing on the present state of the record that any such confession or admission was voluntarily made.

The only issue raised by this objection involves the voluntariness of defendant's "admission." Nowhere in the record is there any objection to the introduction of these statements on the grounds that defendant's right to confer with an attorney was violated. Defendant did not specifically alert the trial court to this issue. It therefore will not be a basis for reversal by this court. State v. Washington, 257 N.W.2d 890, 895 (Iowa 1977) ("Every ground of exception which is not particularly specified [at trial] is to be considered abandoned." (emphasis added)).

III. Defendant's third assignment of error involves a claim that the trial court should have excluded allegedly hearsay evidence. This evidence was a specific list of the items stolen from the car at the shopping center. The owner of the car did not prepare the list herself but testified and was cross-examined at length as to its accuracy. It was prepared by the county prosecutor with information provided by the owner who double-checked the list immediately before trial.

We may assume that the list fit under the technical definition of hearsay since it was prepared by an out-of-court declarant and it was offered to prove the truth of the matter therein—i.e., the items stolen and their value. See McCormick on Evidence § 246 (2d ed. 1972). We agree with the State, however, that defendant was not prejudiced by the introduction of this evidence. As we have already indicated, it was prepared with information given by the owner. She testified as to its accuracy and was cross-examined about its contents. Under these circumstances, the trial court did not commit prejudicial error in admitting this evidence.

IV. Finally, defendant claims that the trial court abused its discretion in sentencing him to imprisonment instead of probation. We will not interfere with a sentence within statutory limits unless the record indicates an abuse of discretion. State v. Noonan, 246 N.W.2d 236, 237 (Iowa 1976). We find no such indication in this case and therefore affirm the sentence.

Having found no merit in any of defendant's contentions, we affirm his conviction and sentence.

AFFIRMED.