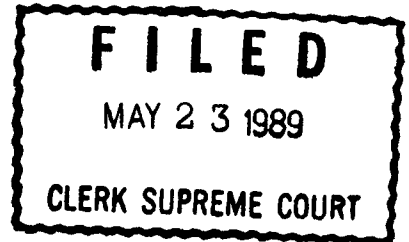


IN THE COURT OF APPEALS OF IOWA

STATE v. IOWA,)
Plaintiff-Appellee,)
vs.)
WILLIAM PARRISH, JR.,)
Defendant-Appellant.)

9-110
88-753



468

Appeal from the Iowa District Court for Polk County
(No. 37947), Richard Strickler and Ray Hanrahan, Judges.

The defendant appeals from his conviction, following a
jury trial, of second-degree burglary. **AFFIRMED.**

William L. Wegman, State Public Defender, and Linda Del
Gallo, Assistant State Public Defender, for defendant-
appellant.

Thomas J. Miller, Attorney General; Christie J. Scase,
Assistant Attorney General; and Odell McGhee, Assistant
Polk County Attorney, for defendant-appellant.

Considered by Oxberger, C.J., and Schlegel and Sackett,
JJ.

OXBERGER, C.J.

On the morning of December 20, 1987, a Des Moines police officer received two radio messages regarding separate burglary attempts nearby involving two black men who left the scene in a small blue car with a large rear window. Shortly after hearing the second alert, the officer saw such a car drive past him at a high rate of speed. He followed the car and noticed that the men matched the broadcast description. He then stopped the car. The items in the car were identified as having been stolen that morning in a burglary.

A jury found Parrish guilty of second-degree burglary. He contends that the trial court erred by overruling his motion to suppress evidence obtained as a result of an illegal investigatory stop of his car. He also alleges that there was insufficient evidence to support the verdict.

I. Investigatory Stop

Parrish contends the investigatory stop was without reasonable cause and therefore that the trial court's overruling of his motion to suppress was in error.

The fourth amendment requires a showing of "reasonable cause" to justify the stopping of a vehicle for investigatory purposes. When constitutional rights are at issue, our review is of the totality of the circumstances.

State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982) (citing Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889, 906 (1968)). "When a stop is challenged on the basis 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.'" State v. Lamp, 322 N.W.2d at 51 (quoting State v. Aschenbrenner, 289 N.W.2d 618, 619 (Iowa 1980) (emphasis added in Lamp)). Reasonable cause exists when an officer observes unusual conduct leading the officer to conclude that criminal activity may be afoot. State v. Donnell, 239 N.W.2d 575, 577 (Iowa 1976).

The police officer testified that at approximately 10:15 a.m. on December 30, 1987, he heard a radio transmission regarding an attempted burglary in Des Moines involving two black men who departed the scene in a small blue car with a large rear window; one of the suspects was described as a small man wearing Levis, a Levis' jacket, and a stocking cap. Approximately one hour later, the officer received another dispatch while stopped at a gas station at 34th Street and University Avenue in Des Moines. This dispatch instructed him to stop and check two black men travelling in a small blue car with a large rear window in connection with an attempted break-in near 36th and Sheridan. Shortly after the second broadcast, the officer observed a small blue car with a large back window traveling at a high rate of speed eastbound on University.

The officer noticed that a large black man was driving. The officer immediately began to follow the car. When he caught up with the car he observed a person wearing a stocking cap in the passenger seat of the car. It was at this point that the officer activated his lights and stopped the car. The defendant was driving. When the officer looked inside the car, he saw a VCR and three watches on the floor and a television set on the back seat. Parrish also had a Seiko watch on his wrist. All of these items were among those later identified as having been stolen that morning in a burglary.

We find the information which the officer received through the radio dispatches coupled with the officer's matching observations and the high rate of speed of the car would indicate to the officer that criminal activity may be afoot. Therefore, we find reasonable cause existed to stop the defendant.

II. Sufficiency of Evidence

Defendant also raises a challenge of the sufficiency of the evidence to support his conviction. When reviewing the sufficiency of evidence, we view the evidence in the light most favorable to the State, including all legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. State v. Blair, 347 N.W.2d 416, 418-19 (Iowa 1984). A jury verdict is binding upon this court and will be upheld unless the record lacks substantial evidence to support the charge.

Id. Substantial evidence means evidence which would convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt.

Id. (Citations omitted.)

The State's theory was that Parrish was guilty of second-degree burglary on an aiding and abetting theory. A defendant may not be convicted of a crime upon a theory of aiding and abetting unless there is sufficient evidence to show he assented to or approved of the criminal act either by actively participating in it or encouraging in prior to or at the time of its commission. State v. Doss, 355 N.W.2d 874, 877-78 (Iowa 1984) (emphasis in original). A defendant's participation in a crime as an aider and abettor may be proven by circumstantial evidence. Id. (Citing State v. Barnes, 204 N.W.2d 827, 828 (Iowa 1972)). For purposes of proving guilt beyond a reasonable doubt, circumstantial evidence is as probative as direct evidence. State v. Mulder, 313 N.W.2d 885, 888 (Iowa 1981).

Testimony at trial established that the victim of the burglary for which the defendant was charged, Dr. Mark Kelly, returned to his home at approximately 11:30 a.m. on December 30, 1987. He discovered his front door window had been broken, his door was unlocked, and the house had been ransacked. A television set, VCR, three Seiko watches, one gold Sasson watch, a drawer full of athletic socks, a cigar box of coins, and a rainbow pillow case had been stolen.

Two other attempted burglaries occurred in Northwest Des Moines on the morning of December 30, 1987. Robert Parish testified that shortly after 10:00 a.m. a small black man, later identified as Mark Jewett, kicked in his front door. Jewett fled when he was confronted by Robert Parish. He was seen leaving the scene in a small blue car driven by a large man. Robert Parish later identified the blue Renault driven by the defendant as the get-away car.

Mark Jewett also attempted to gain entry to Rachel Izzolena's home between 10:00 and 11:00 that morning. Ms. Izzolena was home when Jewett rattled the door. Jewett fled after she spoke to him through the door. He was seen leaving in a small blue car driven by a large black man. Ms. Izzolena identified the defendant's car as this vehicle.

When the stopping officer approached the defendants to ask the driver for his license he observed a television in the back seat, several watches and a box of coins on the floor and a VCR between the defendant's legs. These items were later identified as those stolen from Dr. Kelly's home. Defendant was also found to be wearing one of Dr. Kelly's watches.

Mark Jewett, the passenger in defendant's car at the time of the stop, pled guilty to burglary of Dr. Kelly's residence.

Viewing the above evidence in a light most favorable to the State, we conclude that a rational trier of fact would

have found that the defendant either knowingly allowed Jewett to use his car in the burglary or that the defendant actively served as driver in the burglary. We conclude that the record contains substantial evidence to support the conviction.

AFFIRMED.