

IN THE COURT OF APPEALS OF IOWA

No. 6-608 / 05-1021
Filed September 7, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ALFRED A. HICKS,
Defendant-Appellant.

Appeal from the Iowa District Court for Warren County, Peter A. Keller and William H. Joy, Judges.

Alfred Hicks appeals his conviction for second-degree criminal mischief.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Dennis Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Gary Kendell, County Attorney, and Jennifer Russell, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Alfred Hicks appeals his conviction for second-degree criminal mischief, a class D felony, in violation of Iowa Code section 716.1 and 716.4 (2003). He argues the district court erred when it refused to grant his motion to suppress. We affirm.

I. Background Facts and Proceedings

On October 8, 2004, Indianola Police Officer Tony Bemino responded to Roberta Hicks's report that her car had been vandalized. The front and rear windshields of the car were broken, and the antenna was removed. There were also fresh scratches on the hood and passenger side. Finally, the inflation stems of the tires had been removed, flattening the tires.

Roberta told Officer Bemino she had an argument with her ex-husband, Alfred Hicks, in a bar the previous evening. Her car was vandalized between the time she arrived home from confronting Hicks and 7:30 a.m.

On October 11, 2004, Officer Bemino spoke with Hicks at Wal-Mart Tire Lube and Express, where Hicks is the service manager. Hicks stated he stayed at the bar until 2:00 a.m., then went to the home he shared with Peggy Foote. Officer Bemino then spoke to Foote, who was also working at Wal-Mart. Foote stated that Hicks had left the home at 2:00 a.m., telling her that he had to take care of some business. He was gone for approximately twenty minutes.

Officer Bemino arrested Hicks the same day. After waiving his *Miranda* rights, Hicks confessed to smashing Roberta's car windows. He would not, however, confess to scratching the car, removing the antenna, or flattening the tires.

On October 12, 2004, the district court determined probable cause existed for Hicks's arrest. He was charged on October 22, 2004 with second-degree criminal mischief, a class D felony. Prior to trial, Hicks filed a motion to suppress statements he made after his arrest. He alleged his arrest was illegal because it was made without a warrant and, therefore, his statements were the fruit of an illegal seizure. The court denied the motion, finding Hicks's arrest was proper. Hicks was found guilty on April 11, 2005. He was sentenced to a five-year suspended sentence. Hicks appeals, alleging his arrest was illegal under both the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution.

II. Standard of Review

We review challenges based on the Fourth Amendment de novo. See *State v. Freeman*, 705 N.W.2d 293, 297 (Iowa 2005). We engage in an independent review of the totality of the circumstances based on the entire record. *Id.* While we give weight to, but are not bound by, the district court's findings of fact and credibility. *Id.* Because our supreme court has found no basis to distinguish the protections afforded by the Fourth Amendment to the federal constitution from article I, section 8 of our state constitution, our discussion of Hicks's arrest applies equally under both constitutional provisions. *State v. McCoy*, 692 N.W.2d 6, 15 (Iowa 2005).

III. Merits

Hicks argues his arrest was illegal because Officer Bemino had no warrant and no probable cause to arrest. According to Iowa Code section 804.7(3), an officer may make an arrest without a warrant "where the peace officer has

reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it.” Iowa Code § 804.7(3). The “reasonable ground” standard within the Code is the same as probable cause. *Freeman*, 705 N.W.2d at 298. In other words, in order to be valid, a warrantless arrest must be supported by probable cause. *State v. Ceron*, 573 N.W.2d 587, 592 (Iowa 1997). Probable cause exists when the totality of the circumstances known to the arresting officer would lead a reasonable, prudent person to believe both that a crime is being or has been committed and that the arrestee is committing or has committed it. *Freeman*, 705 N.W.2d at 298; *Ceron*, 573 N.W.2d at 592; *State v. Harris*, 490 N.W.2d 561, 563 (Iowa 1992). In determining whether probable cause is present, the court must consider all of the evidence available to the officer, regardless of whether each component would support probable cause on its own. *Ceron*, 573 N.W.2d at 592; *Harris*, 490 N.W.2d at 563. The facts supporting probable cause need not be strong enough to sustain a conviction, but must rise above mere suspicion. *Ceron*, 573 N.W.2d at 592; *Harris*, 490 N.W.2d at 563.

At the time he arrested Hicks, Officer Bemino knew (1) Hicks had lied about staying with Foote all night; (2) Hicks lived a block away from Roberta; (3) Hicks had a twenty-minute timeframe during which he could have completed the vandalism; (4) Hicks and Roberta had a public confrontation at a bar that night; (5) the inflation stems on Roberta’s tires had been removed, requiring a special tool; and (6) Hicks worked for Wal-Mart Tire and Lube Express, where he had access to the tools required for removing tire inflation stems. According to

the evidence available to Officer Bemino at the time of the arrest, Hicks had the motive, means, and opportunity to commit the vandalism. A reasonable and prudent person could indeed believe he had committed the crime. We conclude the facts, taken together, rise above mere suspicion and provide probable cause for Hicks's arrest.

Hicks's conviction is affirmed.

AFFIRMED.