FILED
DEC 23 1980
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Plaintiff-Appellee,

vs.

RONNIE KAY MATLOCK,

Defendant-Appellant.

Filed December 23, 1980

0-283
63308

Appeal from Black Hawk District Court - Peter Van Metre, Judge.

Defendant appeals his conviction for introducing a controlled substance, marijuana, into the Black Hawk County Jail in violation of section 719.8, supplement to the Code 1977, alleging 1) that section 719.8 denies him equal protection because it imposes the same penalty for introducing marijuana into a jail as for introducing other more dangerous drugs into a jail, and 2) that trial court erred in admitting testimony about evidence obtained through an allegedly illegal strip search. AFFIRMED.

W. H. Gilliam of Rapp & Gilliam, Waterloo, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Douglas F. Staskal, Assistant Attorney General; and David Correll, Black Hawk County Attorney; for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant appeals from his conviction for introducing a controlled substance (marijuana) into the Black Hawk County Jail in violation of section 719.8, supplement to the Code 1977. He alleges 1) that section 719.8 denies him equal protection because it imposes the same penalty for introducing marijuana into a jail as for introducing other more dangerous drugs into a jail and 2) that trial court erred in admitting testimony about evidence obtained through an allegedly illegal strip search. We affirm on both issues.

Defendant, an inmate of the Black Hawk County Jail, left the jail premises for a job interview pursuant to the work-release program. Upon his return, he was subjected to a strip search and was required to turn his shoes upside down. A marijuana cigarette fell out of one shoe. Defendant was charged with introducing a controlled substance (marijuana) into the jail.

Trial was scheduled for August 1, 1978. On July 13, 1978, defendant filed a motion to dismiss alleging that section 719.8, supplement to the Code 1977, violates the Equal Protection Clause of the fourteenth amendment and that defendant, under the Work Release Program, was not an inmate within the meaning of section 719.8. Trial court overruled the motion. Trial to the court was held October 10, 1978. An order finding defendant had committed all the elements of the charged offense was entered January 31, 1979. Defendant's appeal followed.

I. **Scope of Review.** Since this is an action at law, our review is on assigned error only. Iowa R. App. P. 4.

II. **Constitutionality of Section 719.8, Supplement to the Code 1977.** Defendant contends that section 719.8, supplement to the Code 1977, denies him equal protection by imposing the same penalty for introducing marijuana into a jail as is imposed for introducing other, allegedly more dangerous, drugs into a jail. He asserts that the classification under the statute is arbitrary and irrational. The State, on the other hand, argues that the classification is reasonably related to carrying out the legitimate purpose of the statute, that being to further the State's intent in maintaining control and order in the institutional environment. The State contends that maintaining control and order also includes preventing the development of widespread distribution and marketing of controlled substances in correctional institutions.

We agree with the State's assertion that a reasonable basis for inclusion of marijuana with other controlled substances in section 719.8 has been demonstrated.

Statutes, when enacted, are presumed constitutional; the burden is upon the challenger to show, beyond a reasonable doubt, that the statute is unconstitutional. State v. Henderson, 269 N.W.2d 404, 405 (Iowa 1978); State v. Kueny, 215 N.W.2d 215, 216 (Iowa 1974). When a constitutional challenge under the Equal Protection Clause of the fourteenth amendment is raised, the classification in question ". . . must be sustained unless it is patently arbitrary and bears no rational relationship to a legitimate governmental intent." State v. Leins, 234 N.W.2d 645, 647 (Iowa 1975) (quoting Lunday v. Vogelmann, 213 N.W.2d 904, 907 (Iowa 1973)).

We find defendant failed to carry his burden of proof on this issue. We agree with the State that the statute at issue does not punish use, but rather punishes the introduction of any controlled substance into a correctional facility. Any such introduction, whether the substance be marijuana, cocaine, or other controlled substances, carries the potential for disruption of the institution. This is a sufficient basis upon which to determine that the statute has a rational relationship to an articulated governmental interest.

We thus conclude section 719.8, supplement to the Code 1977, is constitutional.

**III. Illegal Search of Defendant.** Defendant next contends that the testimony of the deputy who conducted the search of defendant should not have been admitted under the fourth amendment protection from illegal searches and the fifth amendment protection against self incrimination. Defendant argues that since he was on work release and housed in an area of the jail exclusively reserved for work release inmates, he had the same level of expectation of privacy as any other citizen would have. We disagree.

First, we note the State asserts that considerable doubt exists as to whether defendant preserved error on his objection to testimony regarding the results of his search. An objection, even with a constitutional basis, may not be raised for the first time on appeal. State v. Holbrook, 261 N.W.2d 480, 482 (Iowa 1978). While defendant raised his fifth amendment right against self-incrimination in his efforts to suppress the testimony at trial, he made his first fourth amendment challenge in a memorandum of law filed on November 17, 1978, over a month after trial. The memorandum does not mention the fifth amendment challenge. Trial court's ruling stated "[t]he defendant's Motion to Dismiss and his renewed objection to the results of the search are now Overruled." We have considerable doubt as to whether trial court considered the fourth amendment objection. Assuming trial court did consider it, defendant failed to comply

with the requirements of Iowa R. Crim. P. 10(2)(c) or 11(1)(3).

If error had been preserved, we would find no fourth amendment violation in the search of defendant. We believe Bell v. Wolfish, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979), applies. There the Supreme Court stated ". . . assuming for present purposes that . . . pretrial detainees . . . retain some fourth amendment rights upon commitment to a correction facility [citations omitted], we nonetheless conclude that these searches [strip searches, including body cavities,] do not violate that amendment." Wolfish, 441 U.S. at 558, 99 S. Ct. at 1884, 60 L. Ed. 2d at 481.

We believe that the search here, as justified by the need to control dangers to security, was reasonable under Wolfish. See Wolfish, 441 U.S. at 546, 99 S. Ct. at 1878, 60 L. Ed. 2d at 473. The search was limited to observing the defendant change his clothes and searching those items. The deputy testified that the purpose was to ascertain whether any person was bringing any alcoholic beverage, drug paraphernalia, illegal drugs, or weapons into the jail. All persons entering the jail were on notice of the possibility of the search and standard procedure was to search inmates returning to the jail. The justification for the search, to control security dangers, was argued with strong support from Wolfish. 441 U.S. at 546, 99 S. Ct. at 1878, 60 L.Ed. 2d at 473. With work release programs, there is frequent movement in and out of the facility necessitating an on-going vigilence to prevent contraband from entering and security disruptions from occurring. Further, the place of the search, the locker room, was a private room. We conclude the search was reasonable and that no violation of the fourth amendment occurred.

Having found no error, we affirm trial court.

AFFIRMED.