IN THE COURT OF APPEALS OF IOWA

No. 0-608 / 89-608

STATE OF IOWA,

Appellant,

vs.

JAMES T. BANOS,

Appellee.

FILED
FEB 26 1991
CLERK SUPREME COURT

Appeal from the Iowa District Court for Warren County, John P. Crouch, District Associate Judge.

The State challenges the trial court's suppression of weapons found during an inventory search of defendant's automobile. The defendant challenges the trial court's finding that his car and camper were not a "dwelling" as defined by the Iowa Code. **REVERSED IN PART AND AFFIRMED IN PART.**

Bonnie J. Campbell, Attorney General, Bruce Kempkes, Assistant Attorney General, and Kevin Parker, County Attorney, for appellant.

James T. Banos, Iron Mountain, Michigan, appellee, pro se.

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

OXBERGER, C.J.

Iowa State Trooper, Steve Ponsetto, stopped the defendant, James Banos on the morning of June 6, 1985 after the pilot of a law-enforcement airplane notified Ponsetto that Banos' car was speeding. Banos, a Michigan resident, was traveling north on Interstate 35 and was exceeding the posted speed limit by ten miles per hour. During the stop, Banos produced a Michigan driver's license which appeared to have expired in 1983. When Ponsetto checked with Michigan authorities he was told Banos did not have a current Michigan license. Ponsetto then issued Banos a citation for speeding and driving without a license.

Banos objected to signing the tickets because he felt his signature would waive any objections he might have regarding Iowa courts' jurisdiction over him. He eventually signed the tickets adding the words "under protest and duress" after his signature.

After conferring with his headquarters by radio, Ponsetto concluded Banos' modified signature did not insure Banos' future compliance with Iowa law and placed Banos under arrest. Ponsetto then transported Banos to the Warren County Courthouse. Banos' vehicle, a Volkswagen rabbit automobile with a collapsible camper/tent attached to its roof was towed to the Warren County Sheriff's Office parking lot in Indianola. After the car arrived in the parking lot, a State Trooper conducted an inventory search

of the car. During the inventory the trooper found and seized two loaded guns. After seizing the guns, officers proceeded to copy printed material and audio tapes found in the vehicle along with removing and developing film from a camera found in the vehicle. The officers testified they collected the film, written materials, and audio tapes for information gathering on right-wing extremist groups of which they believed Banos was a member.

Based on the evidence of the seized weapons, the State charged Banos with carrying weapons, a violation of Iowa Code section 724.4. Banos moved to suppress the guns seized from his vehicle. After a hearing, the trial court granted Banos' motion and ordered the guns suppressed. The trial court found:

> Defendant's Motion to Suppress on the claim that the search went beyond a mere inventory has merit since the officer was ordered by his superiors to take film out of a camera and develop it and was told to photo copy private papers of the defendant's. Therefore the Motion to Suppress is sustained in that the Defendant is protected by the 4th Amendment to the U.S. Constitution from an unreasonable Search as was made in this case.

The court later clarified its prior ruling stating the suppression order included the two guns along with all the other items seized or copied. The court also stated "the prime purpose of the search was an attempt by the State to gain intelligence data about a radical right wing group."

The State challenged the suppression order by applying for discretionary review. Banos, acting pro se, also

applied for discretionary review, challenging the court's ruling his camper-conveyance is not a dwelling as defined by Iowa Code section 702.10. Both applications for discretionary review have been granted. We note that although Banos has filed everything in the record pro se, he was represented by counsel throughout the suppression hearing.

The State contends the trial court erroneously ordered the evidence of the guns suppressed because the guns were seized during a valid inventory search. The State concedes the seizure of the film, written materials and audio tapes was improper. The State asserts that since the improper events did not occur until after the seizure of the guns any improper motives connected with those events does not impact on the weapons and the seizure of the guns need not be invalidated by the subsequent improprieties.

In his application for discretionary review, Banos urges the charge of carrying weapons should have been dismissed for a reason unrelated to the suppression of the evidence. He contends that under Iowa Code section 724.4(4)(a), the crime of carrying weapons does not apply to a weapon "in the person's own dwelling." He then argues his car with the attached collapsed camper met the definition of "dwelling" found in Iowa Code section 702.10.

The State, which sought discretionary review first, has taken the procedural role of appellant in this proceeding.

Several of Banos' arguments in his brief with respect to his arrest do not appear to have been presented to the trial court. Ordinarily, matters not raised in the trial court, including constitutional questions, cannot be effectively asserted for the first time on appeal. State v. Lyon, 223 N.W.2d 193, 194 (Iowa 1974) Accordingly, we limit ourselves to the issue properly preserved and presented to us, whether the weapons found by state troopers in Banos' car were obtained in contravention of his fourth amendment right to be free from unreasonable searches and seizures by the State.

Because this issue involves an alleged violation of basic constitutional safeguards, we make an independent evaluation of the totality of circumstances. State v. Whitsel, 339 N.W.2d 149, 152 (Iowa 1983). In South Dakota v. Opperman, 428 U.S. 364, 372, 96 S. Ct. 3092, 3098-099, 49 L. Ed. 2d 1000, 1007 (1976), the Supreme Court stated "[t]he decisions of this Court point unmistakably to the conclusion reached by both federal and state courts that inventories pursuant to standard police procedures are reasonable."

Chapter 6 of the Iowa Administrative Code promulgated by the Public Safety Department authorizes vehicle impoundment by the patrol division and other peace officer

members of the department. The chapter provides for immediate impoundment of vehicles "under the control of a person at the time of arrest: . . . (c) To protect the vehicle from theft or further damage when the legal custodian is unavailable or incapable to give consent to such impoundment." 661 Iowa Admin. Code 6.2(5)(c) (1988). Further, vehicles may be impounded immediately when "[p]ositioned upon a public highway in such a location as to indicate that they constitute a hazard to traffic." 661 Iowa Admin. Code 6.2(6)(1988).

The troopers who testified at the hearing stated it was "standard operating procedure" to tow in the vehicle of individuals arrested for traffic offenses along Interstate 35 regardless of the time of day, the traffic flow and the vehicle's location along the shoulder. Further, Ponsetto stated that at the time he arrested Banos he had no idea how long it might be before Banos could return for his vehicle. Ponsetto and other troopers testified that even after Banos and his vehicle arrived in Indianola, they did not know how long a period of time would elapse before Banos could appear before a judge and collect his vehicle.

The Iowa Administrative Code provides the procedure a trooper must follow when impounding a vehicle. This procedure includes completion of a vehicle tow-in and recovery report which requires:

> An inventory of all property in the vehicle and a notation of any parts of the vehicle which appear

> to be missing or damaged. The inventory shall include a list of the contents of all containers in the vehicle. Each container shall be opened unless the officer conducting the inventory is confident that the contents of a particular container are evident from its exterior. All areas of the vehicle shall be inventoried within 24 hours of the impoundment. If keys, or other means of access are not available to the officer during that time, the officer is authorized to break locks to gain access to locked compartments of the vehicle. The inventory is a record which is intended for use in ensuring the safe return of the lawful possessor's property and for the resolution of questions which may later arise regarding the condition or contents of the vehicle.

661 Iowa Admin. Code 6.4(2)(d)(1990).

After evaluating the testimony, the Administrative Code and the circumstances of this case, we find the troopers acted within their discretion when impounding Banos' vehicle and the impoundment was not unreasonable. Further, we find the officers properly followed the procedures for impounding a vehicle when they inventoried the contents of the vehicle. Every officer testified that along with any other possible motivations for "searching" Banos' vehicle they conducted the inventory to ascertain the contents of the vehicle to protect the State as well as Banos from any future disputes about nonreturned items.

Recently, the supreme court held that although an officer is bound by his or her reason or reasons for conducting a search, the search is valid if any of the reasons provide grounds for the search. State v. Garcia, 461 N.W.2d 460, 464 (Iowa 1990)(emphasis in original). In Garcia the police suspected the defendant of drug-related

offenses, but stopped and arrested him for driving without a license. The police then found a gun in the glove compartment of the car when conducting a search incident to the arrest. Id. at 461-62. The court held that as long as one of the reasons for the search was valid, the other reasons did not invalidate the search. Id.

The officers found the guns while conducting a valid inventory of Banos' impounded vehicle. Under the reasoning of Garcia we find any other invalid motivations irrelevant with respect to suppression of the guns. The impoundment followed a valid arrest, and the officers involved all testified that one of the reasons they conducted the search was to inventory the contents of the vehicle. Further, the impoundment procedure required the officers conduct an inventory of the vehicle after they decided to impound it.

In the alternative, we also find from the record presented to us the officers found the guns prior to the seizure and copying of Banos' private papers, film and tapes. We do not believe the guns found pursuant to a valid inventory can be tainted by an improper seizure occurring later in time, and possibly during a separate search.

We find the trial court erroneously ordered the suppression of the guns seized during an inventory conducted of Banos' impounded vehicle. Therefore, we reverse the ruling of the trial court and remand this case

for entry of an order denying Banos' motion to suppress with respect to the guns.

Banos contends that regardless of whether the evidence of the guns is suppressed, the charges against him should have been dismissed. He bases his argument on the assertion his vehicle was his dwelling and therefore fits within an exception to Iowa Code Section 724.4 (Carrying Weapons), which Banos is charged with violating. Iowa Code section 724.4(4)(a) states in part that the crime of carrying weapons does not apply to "[a] person who goes armed with a dangerous weapon in the person's own dwelling . . .."[1]

Iowa Code section 702.10 defines a "dwelling" as "any building or structure, permanent or temporary, or any land, water or air vehicle, adapted for overnight accommodation of persons, and actually in use by some person or persons as permanent or temporary sleeping quarters, whether such person is present or not." (emphasis added).

In State v. Erickson, 362 N.W.2d 528, 533 (Iowa 1985), the supreme court rejected a similar argument with respect to weapons found in a semi-truck stating:

> A vehicle that is adapted for the overnight accommodation of persons has two main potential functions: to serve as a means of transportation or to serve as sleeping quarters. As long as the vehicle is in transit, its principle function is to serve as a means of transportation, and it is not a place of residence. (citation omitted).

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1. We note the State failed to address this issue in any of its arguments to this court.

We reject the contention a car being driven on the interstate with a collapsed tent style camper attached to the outside roof of the automobile fits within the definition of a "dwelling" such that the driver can carry loaded guns within the automobile. The vehicle's principal function at the time Trooper Ponsetto arrested Banos for driving in excess of the posted speed limit was as a means of transportation. Therefore, we affirm the trial court's ruling that Banos' vehicle did not constitute a dwelling at the time he was arrested.

REVERSED IN PART AND AFFIRMED IN PART.