

IN THE COURT OF APPEALS OF IOWA

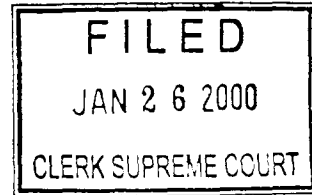
No. 1999-560 (9-821) / 99-0140

Filed January 26, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

AARON DOUGLAS GANFIELD,
Defendant-Appellant.



Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower and Jon Fister, Judges.

Aaron Ganfield appeals his judgment and sentence, following a bench trial, for possession of more than five grams of methamphetamine with intent to deliver while in immediate possession of a firearm. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant County Attorney, for appellee.

Heard by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

MAHAN, P.J.

Arnell Ganfield appeals his judgment and sentence, following a bench trial, for possession of more than five grams of methamphetamine with intent to deliver while in immediate possession of a firearm. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Officer Kevin Dill stopped Ganfield after he observed Ganfield was not wearing a seatbelt and made two turns without signaling. Officer Dill issued Ganfield a citation for violation of a restricted license and searched him incident to citation. After discovering a bag of cocaine in Ganfield's pocket, Officer Dill arrested Ganfield and performed a search incident to arrest. Officer McNamee read Ganfield his *Miranda* rights. At the police station, Ganfield was reminded of his *Miranda* rights and spoke to Officers Dill and McNamee. The officers terminated the interview when Ganfield invoked his right to counsel. Ganfield was convicted and now appeals.

I. Ganfield contends the search incident to citation was unconstitutional. Issues must be presented and passed upon by the district court before they can be raised and decided on appeal. *State v. Jefferson*, 574 N.W.2d 268, 278 (Iowa 1997). We may not consider an issue raised for the first time on appeal, "even if it is of constitutional dimension." *State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994) (quoting *Patchette v. State*, 374 N.W.2d 397, 401 (Iowa 1985)). In his motion to suppress, Ganfield challenged the legality of the stop but did not challenge the constitutionality of the search incident to citation. Consequently, he has waived a constitutional challenge of the search incident to citation and we will not address this issue on appeal.

II. Ganfield contends his counsel was ineffective for failing to move to suppress incriminating statements he made to law enforcement officers based on a violation of his Sixth Amendment right to counsel. We have carefully reviewed the record and there is no indication the officers continued to question Ganfield after he invoked his right to counsel. See *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S. Ct. 1880, 1884-85, 68 L. Ed. 2d 378, 386 (1981) (holding authorities should not subject an accused to further interrogation, after he has invoked his right to counsel). Therefore, Ganfield's claim is meritless and fails on this issue. See *State v. Rice*, 543 N.W.2d 884, 888 (Iowa 1996).

III. Ganfield contends the district court erred in denying a motion for new trial or in arrest of judgment. Ganfield's motion was filed on December 9, 1998, forty-four days late and was ruled untimely. Ganfield argues the motion should have been considered timely because it was filed the day after the United States Supreme Court decided *Knowles v. Iowa*, 525 U.S. 113, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998). However, in March of 1998, the United States Supreme Court granted the petition for a writ of certiorari in *Knowles v. Iowa*, ___ U.S. ___, 118 S. Ct. 1298, 140 L. Ed. 2d 465 (1998) (mem.). The motion to suppress hearing was held in April of 1998, the trial in September 1998. Counsel could have requested an extension for filing post-trial motions under Iowa Rule of Criminal Procedure 23(4)(a). **We find the district court did not err in ruling the post-trial motion was untimely.**

We affirm Ganfield's judgment and sentence.

AFFIRMED.