

IN THE COURT OF APPEALS OF IOWA

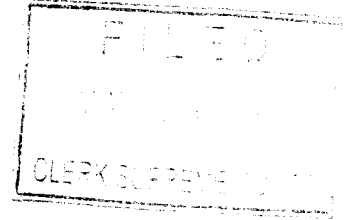
No. 9-258 / 98-0882

Filed May 26, 1999

STATE OF IOWA,
Appellee,

vs.

TERRY LEE PEARSON,
Appellant.



Appeal from the Iowa District Court for Linn County, Van D. Zimmer, Judge.

Terry Pearson appeals his conviction and sentence for possession with intent to deliver a controlled substance and being an habitual offender. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Martha J. Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Denver D. Dillard, County Attorney, and Russell Keast, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Streit and Mahan, JJ. Sackett, C.J., and Zimmer, J., take no part.

HUITINK, P.J.***I. Background Facts and Proceedings.***

In October 1997, Terry Pearson resided at a residential treatment facility in Cedar Rapids. During his stay, the staff of the facility learned Pearson was selling drugs out of a car parked on a vacant lot near the facility. In a random, but unrelated, search of all residential quarters at this facility, police discovered a set of car keys in Pearson's room. The keys were seized as contraband under facility rules.

Staff subsequently arranged for a canine drug detection unit to conduct an "external sniff" search of the car. The drug dog "hit" on the trunk of the car suggesting the presence of illegal drugs. Police officers, citing this information as supporting probable cause, obtained a warrant to search the car for illegal drugs.

After obtaining the search warrant, the car was opened with the keys seized from Pearson's room. Police found a tupperware container containing methamphetamine, cocaine, and marijuana in the car's trunk. Fingerprints found on the tupperware container were later identified as Pearson's. A search of the interior of the car revealed it was registered to a "Tim Pearson." Authorities were unable to locate a Tim Pearson at the address listed on the registration. No one claimed ownership of the car.

Pearson was charged with possession of a controlled substance with intent to deliver and as a habitual offender. Prior to trial, Pearson moved to suppress the evidence seized from the car citing deficiencies in the search warrant application

submitted by police officers. The district court found Pearson had standing to challenge the search warrant but nevertheless denied Pearson's suppression motion. Pearson was convicted as charged and was sentenced as a habitual offender to an indeterminate fifteen-year term of incarceration and fined \$1000.

On appeal, Pearson argues any evidence seized from the car should be suppressed because the application for the search warrant contained inaccurate information. He argues the drug dog was not shown to be sufficiently reliable to support the magistrate's findings of probable cause to issue the warrant. Pearson further contends the court lacked the authority to impose a fine under the habitual offender statute. Additionally, Pearson contends counsel's failure to timely file the motion to suppress or show good cause for its untimely filing denied him effective assistance of counsel.

II. Standard of Review.

Our review of challenges to the legality of a sentence is for errors at law. *State v. Davis*, 544 N.W.2d 453, 455 (Iowa 1996). We may correct an illegal sentence at any time. *Id.* Because Pearson's motion to suppress raises constitutional issues, we review the district court's denial of the motion de novo. *State v. Weir*, 414 N.W.2d 327, 329 (Iowa 1987). To the extent Pearson's ineffective assistance of counsel claim implicates constitutional rights, we review it de novo. *State v. Howes*, 525 N.W.2d 874, 876 (Iowa App. 1994).

III. Search Warrant.

In *State v. Halliburton*, 539 N.W.2d 339, the supreme court summarized the analysis appropriate to Pearson's Fourth Amendment search and seizure claim:

First, the defendant must show that he had a legitimate expectation of privacy in the area searched. Second, if the defendant had a legitimate expectation of privacy, we must then decide whether the State unreasonably invaded the protected interest.

State v. Halliburton, 539 N.W.2d at 342 (citations omitted).

Terry Pearson was not the registered owner of the car. In the absence of evidence of a possessory interest or something more than recent use of the vehicle, we hold Pearson's possession of the car's keys is insufficient to afford him standing to challenge the search warrant issued in this case. *Id.* at 343-344. Although the district court rested its decision on a different ground, we will uphold a ruling on the admissibility of evidence on any ground appearing in the record. *See State v. O'Malley*, ___ N.W.2d ___, ___ (Iowa 1999). We need not adopt the trial court's premise in order to sustain its conclusion. *State ex rel. Turner v. United-Buckingham Freight Lines, Inc.*, 211 N.W.2d 288, 290 (Iowa 1973). We accordingly affirm on this issue.

IV. The Fine.

Pearson contends a fine cannot be imposed on a person sentenced as a habitual offender under Iowa Code section 902.9(2) because the statute does not provide for a fine. Our supreme court has resolved this issue against a defendant making a similar claim. In *State v. Carstens*, ___ N.W.2d ___ (Iowa 1999), the court stated "we hold

section 909.9(2) does not have any effect on a fine imposed for a felony conviction under another statute.” Pearson was convicted for violation of Iowa Code section 124.401(1)(c), the same provision at issue in the *Carstens* decision. We find the decision in *Carstens* is dispositive and affirm on this issue.

Our determination that Pearson lacks standing to challenge the search warrant renders the remaining issues moot. The judgment of the district court is affirmed.

AFFIRMED.

No. 978-0882. [9-258] STATE v. PEARSON

Appeal from the Iowa District Court for Linn County, Van D. Zimmer, Judge.
AFFIRMED. Heard by Huitink, P.J., and Streit and Mahan, JJ. Opinion by Huitink,
P.J. Sackett, C.J., takes no part. (8 pages \$3.20)

In 1997, Terry Pearson resided at a residential treatment facility. During his stay, the staff of the facility learned Pearson was selling drugs out of a car parked on a vacant lot near the facility. In a random, but unrelated, search of all residential quarters at this facility, police discovered a set of car keys in Pearson's room. The keys were seized as contraband under facility rules. Staff subsequently arranged for a canine drug detection unit to conduct an "external sniff" search of the car. The drug dog "hit" on the trunk of the car suggesting the presence of illegal drugs. Police officers, citing this information as supporting probable cause, obtained a warrant to search the car for illegal drugs. Police found a tupperware container containing methamphetamine, cocaine, and marijuana in the car's trunk. Fingerprints found on the tupperware container were later identified as Pearson's. A search of the interior of the car revealed it was registered to a "Tim Pearson." Authorities were unable to locate the Tim Pearson listed on the registration and no one claimed ownership of the car. Pearson was charged with possession of a controlled substance with intent to deliver and as a habitual offender. Pearson moved to suppress the evidence seized from the car citing deficiencies in the search warrant application. The district court found Pearson had standing to challenge the search warrant but nevertheless denied Pearson's suppression motion. **Search Warrant.** Terry Pearson was not the registered owner of the car. In the absence of evidence of a possessory interest or something more than recent use of the vehicle, we hold Pearson's possession of the car's keys is insufficient to afford him standing to challenge the search warrant issued in this case. Although the district court rested its decision on a different ground, we will uphold a ruling on the admissibility of evidence on any ground appearing in the record. **The Fine.** Pearson contends a fine cannot be imposed on a person sentenced as a habitual offender under Iowa Code section 902.9(2) because the statute does not provide for a fine. Our supreme court has resolved this issue against a defendant making a similar claim. In *State v. Carstens*, ___ N.W.2d ___ (Iowa 1999), the court stated "we hold section 909.9(2) does not have any effect on a fine imposed for a felony conviction under another statute." We find the decision in *Carstens* is dispositive and affirm on this issue.