IN THE COURT OF APPEALS OF IOWA

No. 0-542 / 00-0096
Filed October 13, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

THOMAS PAUL WATTS,
Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, District Associate Judge.

On appeal from his conviction for possession of a controlled substance, methamphetamine, defendant contends the court erred in denying his motion to suppress based on the absence of probable cause for police to pull over his automobile. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, Richard Crowl, County Attorney, and Troyce Wheeler, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

SACKETT, C.J.

Defendant-Appellant, Thomas Paul Watts was convicted after a stipulated bench trial of possession of a controlled substance, methamphetamine, in violation of Iowa Code section 124.401(5) (1999). Defendant appeals contending the district court erred in denying his motion to suppress because the state trooper did not have probable cause to pull over his vehicle. We affirm.

On August 3, 1999, an Iowa state trooper observed a vehicle being driven by the defendant with a broken taillight. The trooper pulled the vehicle over and explained to the defendant why he was being stopped. The defendant did not have a driver's license in his possession. The trooper asked the defendant if he had any weapons in his possession. Defendant turned over two knives to the trooper. The trooper then patted defendant down for officer safety. The trooper discovered a hard glasses case in defendant's back pocket. The trooper removed the case from defendant's pocket and shook the case. The trooper asked what was inside the case to which the defendant admitted "a rig" (drug paraphernalia). Inside the case were syringes, tissue and a baggie of off-white powder. A field test indicated the powder was methamphetamine.

On September 9, 1999 defendant filed a motion to suppress "the fruits of any stop, search and seizure made without a warrant". Defendant alleged the stop, search and seizure violated his right against an unreasonable search and seizure under the under the state and federal constitutions.

Defendant's counsel argued at the suppression hearing there was no basis for the pat down of the defendant. Defendant's counsel did not argue at the suppression hearing the trooper lacked probable cause to pull over

defendant's vehicle. The district court denied defendant's motion to suppress finding (1) it was reasonable for the trooper to search the glasses case for officer safety and (2) defendant admitted he used drugs also providing probable cause to search the glasses case. The district court did not address whether probable cause existed for the vehicle stop. The defendant appeals contending the district court erred in failing to grant defendant's motion to suppress because probable cause did not exist to stop defendant's vehicle.

A challenge to the district court's ruling on a motion to suppress implicates the Fourth and Fourteenth Amendments of the United States Constitution. *State v. Otto*, 566 N.W.2d 509, 510 (Iowa 1997). We review constitutional issues de novo. *Id.*

The State contends defendant failed to preserve error on the issue of whether probable cause existed to justify stopping defendant's vehicle. Defendant did raise the reasonableness of the stop in his written motion to suppress however did not raise the issue at the suppression hearing. The district court only addressed the issue of the pat down search in its suppression ruling. Although the district court did not specifically address the stop issue in its suppression ruling, we assume without deciding error was preserved.

Generally, "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v. United States*, 517 U.S. 806, 809, 116 S. Ct. 1769, 1772, 135 L. Ed.2d 89, 95 (1996); *State v. Predka*, 555 N.W.2d 202, 205 (Iowa 1996). The trooper testified at the suppression hearing he stopped the vehicle defendant was driving because of a broken taillight on the driver's side. The trooper testified there was

a small hole in the tail lense emitting white light from the area. Iowa Code section 321.387 (1999) requires the rear lamps exhibit a red light. The defendant even told the trooper he had been recently stopped for the same taillight violation. In essence, the defendant acknowledged he had a broken taillight by his assertion he had been recently stopped for the same equipment violation.

Our de novo review of the record provided us the opportunity to review the videotape taken by a camera mounted on the dashboard of the trooper's patrol car. The videotape provided both an audio and visual account of the defendant's vehicle stop. Due to glare from the trooper's headlights, the videotape did not allow us to determine whether the defendant's taillight was broken. However, based upon the uncontradicted testimony of the trooper at the suppression hearing and the defendant's statements made at the time of the vehicle stop we conclude the trooper did have probable cause to stop the defendant. The credibility of the trooper's testimony and the videotape were unchallenged. Accordingly, the district court was correct in denying Mitchell's motion to suppress, and his conviction is affirmed.

AFFIRMED.