

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

BOBBY GENE SYKES,)

Defendant-Appellant.)

8-420
87-854

FILED

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CLERK SUPREME COURT

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Appeal from the Iowa District Court for Black Hawk
County (No. D7X007474), James C. Bauch, Judge.

The defendant appeals from his conviction and sentence
for possession with intent to deliver marijuana, second
offense. **AFFIRMED.**

John W. Ackerman of Waterloo for defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes,
Assistant Attorney General; and Thomas Ferguson, Assistant
County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

Defendant Bobby Gene Sykes appeals from his conviction and sentence for possession with intent to deliver marijuana, second offense. Defendant contends that the district court erred by denying his evidentiary suppression motion in that (1) the investigating officer did not have reasonable cause to stop the defendant's car; (2) the officer did not have probable cause to make an arrest; (3) the search warrant was not supported by probable cause. The defendant also urges that an enhanced punishment cannot be based on a prior conviction pending appeal for which he has not yet been imprisoned. Finally, the defendant submits that the fine assessed against him is excessive. We affirm.

When confronted with an alleged constitutional violation, we resolve the issue by making our own independent evaluation of the totality of the circumstances. State v. Johnson, 395 N.W.2d 661, 663 (Iowa App. 1986); State v. Conger, 375 N.W.2d 278, 279 (Iowa App. 1985). Our review is de novo. State v. Harlan, 301 N.W.2d 717, 718 (Iowa 1981).

On May 2, 1986, a Waterloo police officer observed Bobby Sykes, a suspected drug dealer, performing what he perceived to be a drug transaction from his car. The officer stopped Sykes' car a few blocks away from where the transaction occurred and arrested Sykes. The officer then

impounded the car and secured a search warrant. A subsequent search revealed money and marijuana inside the car. The court denied Sykes' attempts to suppress this evidence. The trial court found Sykes guilty of possession with intent to deliver marijuana in violation of Iowa Code section 204.401(1)(b)(1985). On the basis of a prior conviction the court sentenced Sykes to fifteen years imprisonment and a fine of \$22,500 plus a 15% surcharge under Iowa Code section 204.411 (1985).

I.

The defendant asserts that the officer did not have reasonable cause to stop his car. Officer Mark Meyer was familiar with the defendant and his past history of drug trafficking. Further, Officer Meyer has been trained in narcotic investigation. On May 2, 1986, the officer testified to the following:

I . . . observed the defendant hand a black male a plastic baggie containing a brownish-greenish substance which appeared to me to be marijuana. He handed it to the black male. The black male then handed him some unknown amount of money in bills.

* * * *

. . . [A] black female approached the driver's side window of this car and the same type of transaction took place. The bag being handed from Mr. Sykes to the black female, the black female handing back Mr. Sykes money in bill It appeared to be the same type of greenish-brownish substance which appeared to me to be marijuana.

The police officer further testified that he viewed both of these transactions from approximately three and one-half car lengths away.

[R]easonable cause exists when an officer observes unusual conduct leading the officer to conclude that criminal activity may be afoot. State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982) (citing State v. Ponnell, 239 N.W.2d 575, 577 (Iowa 1976)). We find the officer's observations to indicate to him that criminal activity may be afoot. Therefore, we find reasonable cause existed to stop the defendant's car.

The defendant next asserts that the officer lacked the requisite probable cause to arrest him. Probable cause must be determined on the particular facts in each case. State v. Harvey, 242 N.W.2d 330, 340 (Iowa 1976). We look to the facts within the officer's knowledge at the time the arrest was made. Children v. Burton, 331 N.W.2d 673, 680 (Iowa 1983).

The police officer testified that he observed two exchanges of what he believed to be marijuana for cash between the defendant and other persons. He also observed the defendant lean down while driving and apparently place something underneath the front seat of the car. During a consent search, the officer seized several small plastic bags from inside the defendant's car. It was then that the defendant objected to any further searching.

We find these observations combined with all other information in the officer's possession and fair inferences therefore to support a finding of 'probable cause' to make the arrest.

Finally the defendant contends that the search warrant was issued without a finding of probable cause. The application for a search warrant contained the observations of the arresting officer who witnessed two transactions involving what was believed to be a controlled substance and money. The application also contained observations by an investigator of the same nature. Further, it contained information concerning the defendant's presence at drug deals where those receiving drugs were later arrested for possession of marijuana. We note that defendant failed to submit a transcript of the hearing on this matter as part of the record. However, we find information contained within the application for search warrant to be sufficient to support a finding of probable cause within which to order a search warrant.

II.

The defendant next submits that the trial court erred by invoking Iowa Code section 204.411 to impose an enhanced sentence. Prior to the defendant's arrest in this case, he had been convicted for possession a controlled substance with intent to deliver. He had not yet been imprisoned.

Section 204.411 provides in part:

1. Any person convicted of a second or subsequent offense under this chapter, may be punished by imprisonment for a period not to exceed three times the term otherwise authorized, or fined not more than three times the amount otherwise authorized, or punished by both such imprisonment and fine.

2. For purposes of this section, an offense is considered a second or subsequent offense, if, prior to the person's having been convicted of the offense, the offender has ever been convicted under this chapter or under any state or federal statute relating to narcotic drugs or cocaine, marijuana, depressant, stimulant, or hallucinogenic drugs.

Iowa Code § 204.411 (1) and (2) (1985) (emphasis added).

The defendant urges that we interpret section 204.411 to apply only after a defendant has been imprisoned. Defendant relies on cases which construe the habitual offender statute. However, we find the language of section 204.411(2) to be clear. In accordance with the plain meaning rule, we find the word "conviction" to mean "conviction" and not "convicted, sentenced and committed to prison." We find no error in the trial court's imposition of an enhanced sentence pursuant to Iowa Code section 204.411.

III.

The defendant argues that his fine is excessive and constitutes cruel and unusual punishment. Pursuant to Iowa Code section 204.411(1), the sentencing court fined the defendant \$22,500 and imposed a surcharge of \$3,375.

The defendant bears a heavy burden to successfully challenge a legislative decision. See City of Waterloo v. Seldan, 251 N.W.2d 506, 508 (Iowa 1977). All presumptions in are in favor of the constitutionality of a statute and it will not be held invalid unless it is clear, plain and palpable that such decision is required. Id. We find that the legislature reasonably could require an enhanced monetary penalty for drug traffickers as such persons are found to profit from illegal transactions. We do not find the fine which was imposed under section 204.411(1) to be cruel and unusual.

AFFIRMED.