IN THE COURT OF APPEALS OF IOWA

No. 0-350 / 99-1580
Filed October 13, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHAWN B. ZIMMERMAN,
Defendant-Appellant.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Grundy County, Jon C. Fister, Judge.

The plaintiff appeals his conviction and sentence, following a bench trial, for possession of methamphetamine and carrying weapons. **AFFIRMED.**

DeDra Schroeder of Schroeder Law Office, Charles City, for appellant.

Thomas J. Miller, Attorney General, Christen C. Odell, Assistant Attorney General, T.J. Heronimus, County Attorney, and Bradley K. Harris, Assistant County Attorney, for appellee.

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

VAITHESWARAN, J.

Following the stop, seizure, and search of a vehicle, the State charged Shawn Zimmerman with carrying a weapon and possessing a controlled substance with intent to deliver. The district court overruled Zimmerman's motion to suppress the results of the vehicle search and adjudged Zimmerman guilty based on stipulated minutes of testimony. On appeal, Zimmerman contends: (1) the vehicle stop was unconstitutional; (2) the vehicle seizure and subsequent retrieval of contraband was unconstitutional; and (3) his trial attorney provided ineffective assistance in allowing him to waive a jury trial and proceed with a bench trial on the minutes of testimony. We affirm.

I. Background Facts and Proceedings

A deputy sheriff stopped Zimmerman after determining the car he was driving had a broken rear license plate light and should have been at an impound lot. Following the stop, the deputy told Zimmerman to sit in his patrol car and obtained his consent to search the car. Meanwhile, the deputy learned from a dispatch that the impound hold on the car had been lifted. The deputy nevertheless proceeded with the search after telling Zimmerman's passenger to also sit in the patrol car.

The patrol car was equipped with a video camera and two microphones, one on the deputy and one in the patrol car. As the deputy was conducting his search, he heard Zimmerman and the passenger (1) discussing the presence of a knife between the front seats; (2) discussing whether the sheriff would look behind the car stereo and whether he would notice drug residue on a mirror and

(3) agreeing to explain the presence of cash and a notebook of financial information in the trunk as the winnings from a cribbage tournament.

The deputy continued his search and discovered a stiletto knife between the front seats. He also found the book of financial transactions and cash. The deputy asked Zimmerman if there were any drugs in the car. Zimmerman said no. The deputy told Zimmerman he would be "impounding" the car, but continued the search at the scene without discovering any drugs.

Zimmerman was eventually placed under arrest for carrying the stiletto. The car was taken to the police station where it was searched more thoroughly. Behind the car stereo, officers discovered a plastic baggie containing a white powder later identified as methamphetamine.

The State charged Zimmerman with possession of methamphetamine with intent to deliver, in violation of Iowa Code section 124.401(b)(7) (1997) and with carrying weapons, in violation of Iowa Code section 724.4(1). Zimmerman moved to suppress the results of the stop and the police station search of the vehicle. The district court overruled the motion. Zimmerman orally elected to waive a jury trial and the case was tried to the court on the minutes of testimony. The court adjudged Zimmerman guilty of both charged offenses and sentenced him to a prison term not to exceed ten years on the drug charge and not to exceed two years on the weapons charge, to be served concurrently. This appeal followed.

II. Suppression Ruling

Zimmerman contends the stop, search, and seizure violated his rights under the Fourth Amendment to the United States Constitution. We review

constitutional issues de novo in light of the totality of the circumstances. *State v. Canas*, 597 N.W.2d 488, 492 (Iowa 1999).

The Fourth Amendment affords people a right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The amendment protects against unreasonable government intrusion upon a person's legitimate expectation of privacy. *Minnesota v. Carter,* 525 U.S. 83, 88, 119 S. Ct. 469, 473, 142 L. Ed. 2d 373, 379 (1998). A search and seizure without a valid warrant is per se unreasonable unless it falls within a recognized exception. *Mincey v. Arizona*, 437 U.S. 385, 390, 98 S. Ct. 2408, 2412, 57 L. Ed. 2d. 290, 298 (1978). Evidence obtained in violation of the Fourth Amendment cannot be used in a criminal prosecution against the victim of the illegal search and seizure. *U.S. vs. Calandra*, 414 U.S. 338, 347, 94 S. Ct. 613, 619, 38 L. Ed. 2d 561, 571 (1974).

The record reveals four government intrusions that were potentially subject to challenge: (1) the vehicle stop; (2) the vehicle search at the scene; (3) the seizure of the vehicle; and (4) the subsequent search of the vehicle at the police station. As Zimmerman consented to the vehicle search at the scene, we need not address the constitutionality of that search and will focus only on the remaining three intrusions.

A. The Stop. A Fourth Amendment seizure takes place when a police officer stops a vehicle and detains its occupants. *Delaware v. Prouse,* 440 U.S. 648, 653, 99 S. Ct. 1391, 1396, 59 L. Ed. 2d 660, 667 (1979). The seizure is reasonable where the officer has probable cause to believe a traffic violation has occurred. *Whren v. United States,* 517 U.S. 806, 810, 116 S. Ct. 1769, 1772,

135 L. Ed. 2d 89, 95 (1996). A traffic violation, however minor, gives an officer probable cause to stop a motorist. *Id.* at 813, 116 S. Ct. at 1771, 135 L. Ed. 2d at 97.

The deputy stopped the vehicle Zimmerman was driving because he believed it was subject to an impound hold and he noticed a broken rear license plate light. The broken light alone afforded the deputy probable cause to stop the vehicle. *See* Iowa Code §§ 321.388 (illuminating plates requirement); 321.482 (failure to perform any acts required by chapter is simple misdemeanor unless otherwise specified). Accordingly, we conclude the stop was constitutional.

B. The Seizure. Zimmerman next challenges the constitutionality of the State's removal of the vehicle from the scene. Characterizing this removal as an "impoundment", he contends it was valid only if the State could prove the vehicle posed a danger to traffic, was abandoned, illegally parked, stolen or incapacitated or was in danger of theft or vandalism. The State counters that the vehicle was not "impounded" as that term is defined in the Fourth Amendment context. Instead, the State urges, the vehicle was seized pursuant to the probable cause/exigent circumstances exception to the warrant requirement. We agree with the State. [1]

We begin by examining the first of the two potentially pertinent exceptions to the warrant requirement: impoundment. A vehicle may be "impounded" without a warrant if to do so would further a community caretaking function. *South Dakota v. Opperman*, 428 U.S. 364, 369, 96 S. Ct. 3092, 3097, 49 L. Ed.

[1] The State also contends Zimmerman consented to seizure of the vehicle and the subsequent search. We disagree. The record reflects the deputy told Zimmerman he would be impounding the vehicle.

2d 1000, 1005 (1976). Police officers may remove vehicles from the streets where they "jeopardize both the public safety and the efficient movement of vehicular traffic." *Id.* (impounding vehicle for overtime parking violation). They also may remove vehicles to safeguard the operator's belongings or the safety of the custodians. *Cady v. Dumbrowski*, 413 U.S. 433, 447-448, 93 S. Ct. 2523, 2530-2531, 37 L. Ed. 2d 706, 718 (1973); *United States v. Martin*, 982 N.W.2d 1236, 1240 (8th Cir. 1993). This community caretaking function is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady*, 413 U.S. at 441, 93 S. Ct. at 2528, 37 L. Ed. 2d at 714. The test for whether the impoundment may be conducted without a warrant is "reasonableness". *Id.*

The district court concluded the impoundment exception did not apply reasoning, "[t]here was no public safety or caretaking reason to impound the vehicle." We agree. The deputy stated he had the vehicle brought to the police station because he believed the vehicle contained narcotics and he wished to further investigate evidence of criminal activity. Removal of contraband from the streets might, under some circumstances, be viewed as a sufficient caretaking function to warrant impoundment. *See United States v. Mays*, 982 F.2d 319, 321 (8th Cir. 1993); *cf.* 661 Iowa Admin. Code r. 6.2(3) (1997) (authorizing any peace officer to immediately impound "[v]ehicles which an officer has reason to believe are being used to transport contraband."). However, the record here is devoid of any evidence the car was impounded to fulfill this caretaking function. Accordingly, we conclude the removal of the vehicle from the scene of the stop

cannot be upheld on the basis of the impoundment exception to the warrant requirement.

The *Chambers* probable cause/exigent circumstances exception to the warrant requirement, however, does apply to the circumstances of this case. Under that exception, a vehicle may be "seized" without a warrant if the seizure is supported by probable cause and exigent circumstances. *Chambers v. Maroney*, 399 U.S. 42, 51, 90 S. Ct. 1975, 1981, 26 L. Ed. 2d. 419, 427 (1970). The rationale is that the alternative of following a car until a warrant can be obtained would prove impractical, as the suspect and the fruits of the crime could be taken out of the jurisdiction. *Id.* at n.9.

Zimmerman's own admissions on the videotape furnish probable cause to support the seizure. He discussed the presence of drugs in the car and concocted a story to explain the book of drug transactions. Based on this evidence, we conclude the transport of the vehicle from the scene of the stop to the police station was a constitutionally permissible seizure.

C. Search of Vehicle. Zimmerman next challenges the vehicle search at the police station. He contends this "inventory" search was valid only if conducted pursuant to standardized criteria. The State again responds that the search was constitutionally permissible under the *Chambers* exception to the warrant requirement rather than as an inventory search. We agree.

An inventory search is a well-defined exception to the Fourth Amendment's warrant requirement. *Colorado v. Bertine,* 479 U.S. 367, 370, 107 S. Ct. 738, 741, 93 L. Ed. 2d 739, 744 (1987). As with impoundments, inventory searches may be reasonable under the Fourth Amendment even if not supported

by probable cause because these searches are routine non-criminal procedures "designed to secure and protect vehicles and their contents within police custody." *Id.* These searches will comport with the Fourth Amendment as long as they are conducted in good faith, are not solely for the purpose of investigation, and are pursuant to reasonable, standardized inventory procedures. *Id.; see also State v. Huisman*, 544 N.W.2d 433, 438-39 (Iowa 1996).

The record reflects the searching officers inventoried the contents of the vehicle and maintained a list of inventoried property. The record is unclear, however, as to whether the officers acted pursuant to established criteria. For this reason, we decline to uphold the search on the basis of the inventory exception to the warrant requirement.

Under the probable cause/exigent circumstances exception, however, "police officers with probable cause to search an automobile at the scene where it was stopped could constitutionally do so later at the station house without first obtaining a warrant." *Texas v. White*, 423 U.S. 67, 68, 96 S. Ct. 304, 305, 46 L. Ed. 2d 209, 211 (1975); *see State v. Olsen*, 293 N.W.2d 216, 219 (Iowa 1980) (noting it was established as a matter of federal law that if search could have been made at scene, it could have been made at station). As the United States Supreme Court has stated, "the justification to conduct such a warrantless search does not vanish once the car has been immobilized." *Michigan v. Thomas*, 458 U.S. 259, 261, 102 S. Ct. 3079, 3082, 73 L. Ed. 2d 750, 753 (1982). Moreover, the justification does not "depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or

that its contents would have been tampered with, during the period required for the police to obtain a warrant." *Id.; see also United States v. Johns*, 469 U.S. 478, 485, 105 S. Ct. 881, 885, 80 L. Ed. 2d 381, 382 (1985) (upholding warrantless search of packages inside trucks after returning to headquarters). *Florida v. Meyers*, 466 U.S. 380, 381, 104 S. Ct. 1852, 1853, 80 L. Ed. 2d 381, 382 (1984) (upholding warrantless vehicle search approximately eight hours after vehicle was towed to a locked, secure area and after police had already executed a search incident to arrest).

We have already determined the removal of the car to the police station was supported by probable cause. Under the cited authority, that probable cause extended to a search of the vehicle at the police station. As the search was constitutionally valid, the district court was not required to suppress the drugs discovered during the search. Accordingly, we affirm the district court's ruling on Zimmerman's motion to suppress.

III. Ineffective Assistance of Counsel

Zimmerman contends his trial attorney breached an essential duty in allowing him to proceed to trial on the minutes without first (1) executing a written waiver of jury trial as required by Iowa Rule of Criminal Procedure 16[2] and (2) advising him that he would not waive his right to challenge the suppression ruling by proceeding with a jury trial. Zimmerman further maintains these omissions resulted in prejudice because, had he proceeded to trial by jury, he would have pointed out deficiencies in the minutes. *See State v. Buck*, 510 N.W.2d 830, 853 (Iowa 1994) (to establish ineffective assistance, defendant must show breach of

[2] The record reflects a written waiver was not filed until after the district court adjudged Zimmerman guilty based on the minutes of testimony.

an essential duty and prejudice). We generally preserve ineffective assistance of counsel claims for postconviction proceedings to allow trial counsel an opportunity to defend the charge. *State v. Mann*, 512 N.W.2d 814, 817 (Iowa App. 1993). We do so here.

We affirm Zimmerman's judgment and sentence and preserve for postconviction proceedings his ineffective assistance claim based on waiver of his right to a jury trial.

AFFIRMED.