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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed February 26, 1980

vs.)

ROBERT B. JEFFRIES, JR.,) 361
63219

Defendant-Appellant.)

Appeal from Polk District Court - Dale S. Missildine, Judge.

Defendant appeals conviction and sentence for carrying a concealed weapon in violation of section 724.4, supplement to the Code 1977, alleging trial court erred in overruling his pretrial motion to suppress evidence obtained during a warrantless search. AFFIRMED.

Martha Shepard of Polk County Offender Advocate Office, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General; Richard L. Cleland, Assistant Attorney General; and Dan Johnston, Polk County Attorney; for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Robert B. Jeffries, Jr., appeals his conviction and sentence for carrying a concealed weapon in violation of section 724.4, supplement to the Code 1977. He alleges trial court erred in overruling his pretrial motion to suppress evidence obtained during a warrantless search. We affirm.

I. **Background Facts and Procedure.** On November 21, 1978, at approximately 7:20 p.m., Officer Simmer of the Des Moines Police Department was routinely patrolling Grandview Park when he noticed a car, with the interior lights operating, parked in a secluded area. He stopped his vehicle about 20 feet from the car to determine if the occupants were in need of assistance. From this location, which he maintained approximately 3-4 minutes, he observed four males in the auto. The windows were closed and the interior of the car was filled with smoke. One of the front seat occupants passed a glass pipe, similar to those frequently used in smoking marijuana, to one of the back seat occupants.

Officer Simmer then radioed headquarters and requested back-up assistance before walking to the car and tapping on the window. When the driver rolled down the window, Officer Simmer smelled marijuana and saw a glass pipe sitting on the floor in the back seat of the auto. He asked all four occupants to step out of the car. He thereafter retrieved the pipe from the car, proceeded to the passenger side of the car, and observed a plastic bag of marijuana protruding from underneath the front seat on the driver's side. He placed the driver under arrest for possession of a controlled substance and began questioning defendant and the other two occupants.

At this time, Officer Roth arrived at the scene. Officer Roth conducted a pat-down search of defendant. As he was patting defendant's waist area, he felt a hard object. Defendant indicated it was a gun and that he had no permit to carry it. Officer Roth removed the gun, as well as a clip containing seven .25 caliber shells from defendant's right front pocket. Defendant was placed under arrest for carrying a concealed weapon.

Defendant was formally charged with the crime on December 22, 1978. On January 22, 1979, defendant filed a pretrial motion to suppress evidence of the gun obtained as a result of an unconstitutional seizure. After a hearing, trial court overruled defendant's motion and allowed the evidence to be admitted. Upon trial to the court, defendant was found guilty of the charge on February 16, 1979, and sentenced to a term of two years.

II. The Motion to Suppress. Defendant contends trial court erred in denying his pretrial motion to suppress evidence of the seized gun. He argues no reasonable grounds existed to conduct the investigatory search and, since the officers had no warrant, seizure of the gun was unconstitutional. Relying on the "investigatory stop" cases, defendant argues Officer Simmer possessed no objective facts to give him cause to reasonably believe criminal activity was afoot when he approached the parked vehicle.

Generally, instrusions upon an individual's constitutional rights must be based on probable cause pursuant to a valid warrant. Terry v. Ohio, 392 U.S. 1, 20, 88 S.Ct. 1868, 1879, 20 L.Ed.2d 889, 905 (1968). Searches which intrude on these rights, however, may be conducted without a warrant where the search is either incident to a lawful arrest or subsequent to a valid investigatory stop made by officers who had specific and articulable facts which afforded reasonable ground to believe criminal activity was afoot. State v. Reese, 259 N.W.2d 793, 796 (Iowa 1977). In Reese, and State v. Cooley,[1] the court held warrantless searches to be invalid because the record in each case failed to establish specific and articulable facts which afforded reasonable grounds for the investigatory stop. The officers thus had no right to be in the place where they initially observed the seized evidence and, as a result, the search fell outside the plain view exception to the warrant requirement for searches.

In the instant case, the vehicle was parked; thus, the question of the officer's right to stop the car is not in issue. We then must address the question whether, once the officer approached the parked vehicle, he had specific and articulable facts reasonably suggestive of possible involvement of the occupants in criminal conduct to warrant making a limited self-protective "pat-down" search of the vehicle occupants for weapons. Terry, 292 U.S. at 25, 88 S.Ct. at 1182, 20 L.Ed.2d at 908; State v. Dixon, 241 N.W.2d 21, 24 (Iowa 1976) (McCormick, J., concurring specially).

A review of the record reveals the following articulable facts: (1) the vehicle was parked in a relatively secluded area of a park at approximately 7:20 p.m. on November 21, 1978; (2) there were four males, who appeared to be of adult age, in the vehicle; (3) the vehicle was filled with smoke; (4) a front seat passenger passed a glass pipe to somebody in the back seat; (5) the recognizable odor of marijuana emanated

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[1] 229 N.W.2d 755 (Iowa 1975).

from the vehicle once the driver voluntarily rolled the window down; (6) a glass pipe was observed on the floor of the vehicle.

On the basis of these specific and articulable facts, we conclude the officers had reasonable cause to believe a specific crime was being committed, possession of marijuana. Evidence in plain view in the automobile thus was properly seized. Likewise, because of the secluded location of the car, the state of darkness due to the time, and the presence of four males who appeared to be of adult-age, the officers were warranted in making the limited pat-down search of defendant. Trial court properly overruled defendant's motion to suppress. Judgment of trial court is affirmed.

AFFIRMED.