IN THE COURT OF APPEALS OF IOWA

FILED
JUN 25 1986
CLERK SUPREME COURT

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STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

ARNOLD TERRILL BALDWIN, JR.,)

Defendant-Appellant.

Filed June 25, 1986
6-105
85-449

Appeal from the Iowa District Court for Jasper County (R 595), M.C. Herrick, Michael J. Streit, and Thomas S. Bown, Judges.

Defendant appeals from judgment and sentence entered on a jury verdict finding him guilty of second-degree burglary in violation of Iowa Code section 713.5. **REVERSED AND REMANDED.**

Deborah A. Goins, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; David Dorff; Assistant Attorney General; and Charles G. Neighbor, County Attorney, and Christopher Cogley, Assistant County Attorney, for plaintiff-appellee.

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

OXBERGER, C.J. 155

Defendant appeals his conviction of second-degree burglary. Defendant contends that the trial court erred in denying his motion to suppress the physical evidence obtained as a result of the impoundment and inventory search of defendant's vehicle. We find that the impoundment and subsequent inventory were not reasonable, according to the fourth amendment, and any evidence resulting therefrom should have been suppressed. We reverse and remand.

On May 18, 1984, at about 3:00 a.m., two Bondurant police officers on routine patrol observed a Chevy van with no front license plate drive into the Union 76 truck stop. The officers watched the van pull around to the "dark" side of the building and followed it to its parking place. As the officers drove past the van they observed the driver and a passenger get out of the van and "run" into the truck stop, through the restaurant, and up to the cashier.

After watching the men's activities inside the truck stop for a short time, the officers returned to the van to check its registration. The officers observed that the paper registration card did not contain the vehicle identification number or the year of manufacture and one officer concluded the vehicle was illegally licensed. Upon looking into the van through a side window, the officers observed a John Deere garden tractor in the rear of the van.

After waiting in vain for about twenty minutes for the occupants of the van to return, the officers unsuccessfully attempted to locate them. The officers then impounded the van, conducted an inventory search, and found a garden tractor along with other items inside the van. The officers also seized the paper registration card bearing the defendant's name.

Later the same day several garden tractors were reported missing from the Farmer's Supply Store in Colfax, Iowa, stolen sometime between 5:30 p.m.

on May 17 and 7:52 a.m. on May 18. The DCI agent assigned to investigate the case received information that the Bondurant police had found a garden tractor during a search of an impounded van in the early hours of May 18. The DCI agent obtained a search warrant and retrieved the tractor from the van. The tractor was found to bear the same serial number as one stolen from the Colfax store. The agent subsequently interviewed the defendant in the course of his investigation. The defendant was arrested and charged with second-degree burglary.

Prior to trial, defense counsel filed a motion to suppress the physical evidence seized during the inventory search. An evidentiary hearing on the motion was held and testimony was taken from the Bondurant police officers who had impounded and searched the defendant's van. After hearing the evidence, Judge Streit denied the motion.

The case proceeded to trial. The jury found the defendant guilty of second-degree burglary. Defendant's amended motion for a new trial on the ground that the trial court erred by failing to suppress evidence obtained as a result of the impoundment and inventory search of defendant's vehicle was denied. The defendant was sentenced to a term of imprisonment not to exceed ten years.

On appeal, defendant contends that the impoundment and the inventory search of his vehicle violated his fourth amendment rights and, therefore, any evidence seized should have been suppressed.

Because we are confronted with an alleged constitutional violation, we resolve the issue by making our own independent evaluation of the totality of the circumstances. State v. Conger, 375 N.W.2d 278, 279 (Iowa Ct. App. 1985); State v. Losee, 353 N.W.2d 876, 878 (Iowa Ct. App. 1984). Our scope of review is de novo. State v. Hilleshiem, 291 N.W.2d 314, 316 (Iowa 1980).

I. 157

The question at issue here is whether the impoundment and subsequent inventory search were "reasonable" under the fourth amendment. It is undisputed that the inventory search of the defendant's van was performed without a warrant. The fourth amendment to the United States Constitution provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Thus, according to the fourth amendment, unreasonable searches and seizures are prohibited, and warrantless searches are per se unreasonable unless they fall within carefully drawn exceptions to the warrant requirement. State v. Roth, 305 N.W.2d 501, 504 (Iowa), cert. denied, 454 U.S. 870, 102 S. Ct. 338, 70 L. Ed. 2d 174 (1981).

One exception to the warrant requirement is a police inventory. Courts have consistently held that it is reasonable for police to inventory the contents of motor vehicles that have been legally impounded. South Dakota v. Opperman, 428 U.S. 364, 369-73, 96 S. Ct. 3092, 3097-99, 49 L. Ed. 2d 1000, 1005-07 (1976). This inventory is aimed at the protection of the owner's property while in police custody, the protection of the police against claims of lost or stolen property, and protection of police from potential danger. Id. at 369, 96 S. Ct. at 3097, 49 L. Ed. 2d at 1005.

The legal validity of a police inventory depends upon the lawfulness of the underlying impoundment. State v. Kuster, 353 N.W.2d 428, 431 (Iowa 1984); Roth, 305 N.W.2d at 504. The Iowa Supreme Court has explained the test for when impoundment is justified: "In the absence of statute or ordinance, there must be reasonable cause for the impoundment. (citations omitted). The burden of demonstrating the need to impound is on the State. (citations omitted). Kuster,

353 N.W.2d at 431. The State made three contentions why there was reasonable cause to impound the van: (1) the suspicious nature of the temporary registration card; (2) the van appeared to have been abandoned; and (3) the van contained valuable property in plain view which required safekeeping.

In regard to the first claim, Iowa Code § 321.25 (1983) provides in part that:

> A vehicle may be operated upon the highways of this state without registration plates for a period of thirty days after the date of delivery of the vehicle to the purchaser from a dealer if a card bearing the words "registration applied for" is attached to the rear of the vehicle. The card shall have plainly stamped or stenciled the registration number of the dealer from whom the vehicle was purchased and the date of delivery of the vehicle.

The van's temporary registration card contained the dealer registration number and the delivery date. Hence, the van was legally licensed according to § 321.25. However, the State contends that the legislative intent of Iowa Code § 321 was not satisfied in the absence of the vehicle's identification number and year of manufacture. Thus the State asserts the officers had reasonable cause to impound the van. We do not agree with the State's position. It is a well-established principle that "[w]here a statute is plain and the meaning clear, courts are not permitted to search for its meaning beyond its expressed terms. We are not permitted to write into the statute words which are not there." State v. Hocker, 201 N.W.2d 74 (Iowa 1972). Therefore, there was no reasonable cause to impound the vehicle on the grounds that it was illegally or improperly licensed because the requirements of § 321.25 were clearly satisfied by the inclusion of the dealer's registration number and the date of delivery of the vehicle on the temporary registration card.

The State's second contention for showing there was reasonable cause to impound the van was the vehicle appeared to have been abandoned. Abandonment requires an actual act of relinquishment accompanied by an intention to abandon.

Friedman v. United States, 347 F.2d 697, 704 (8th Cir.), cert. denied., 382 U.S. 946 quoted in Hunt v. Commonwealth, 488 S.W.2d 692, 694 (Ky. 1972); Sioux City v. Johnson, 165 N.W.2d 762, 767 (Iowa 1969)(abandoment of real property):

> Abandoned property is that property to which an owner has voluntarily relinquished all right, title, claim, and possession, with the intention of terminating his ownership thereof but without vesting it in any other person and with the intention of not reclaiming future possession thereof or resuming its ownership, possession, or enjoyment.

C.J.S. Abandonment § 2 (1985).

The State's contention that the van was abandoned is based on these occurrences: first, after pulling into the parking lot, the officers saw two men leave a van and run into a truck stop at 3:00 a.m.; second, the officers were informed by a waitress at the truck stop that the two men had left the area; third, the officers themselves were unsuccessful in their limited efforts to locate the occupants of the van; and finally, they saw a garden tractor in the back of the van. We hold that these occurrences do not constitute an abandonment of a vehicle.

The record shows that two men legally parked the van at a truck stop, took the keys with them, then left the area for twenty to thirty minutes. Even taking into consideration that these acts were accomplished during the early morning hours, these acts do not manifest the required intent nor the required act of relinquishment necessary to constitute an abandonment. Therefore, we disagree with the State's contention that the van was abandoned as a reason to impound the vehicle.

The State's third contention there was reasonable cause to impound the vehicle was based, in part, on the fact that the van appeared to contain a valuable item which needed safekeeping. Upon a visual inspection from outside the van, the officers noticed a John Deere garden tractor in the back of the van. The State asserts it was reasonable to impound the vehicle as a means of ensuring

the safety of the tractor from theft or other loss. The State relied on South Dakota v. Opperman to show that the safekeeping of a vehicle's contents from theft was a legitimate reason for impounding the vehicle. However, Opperman dealt only with the safeguarding of the contents of vehicle after the vehicle was legally impounded. Opperman, 428 U.S. at 369, 96 S. Ct. at 3097, 49 L. Ed. 2d at 1005. Thus the safekeeping of valuable items would not be a sufficient reason, even considering the circumstances that were present here, to impound the van.

Therefore, we conclude that the impoundment was unreasonable. The van should have been left in the truck stop parking lot because the State could not show reasonable cause for impounding the vehicle. Hence, the subsequent inventory search was in violation of the fourth amendment and evidence obtained as a result of that search should have been suppressed.

II.

The State argues in the alternative that if the impoundment of the van did constitute an unreasonable seizure, the evidence obtained was harmless thus not requiring a new trial. To deny a defendant a new trial, we must say that the error allowing the evidence to be admitted was harmless beyond a reasonable doubt. State v. Freeman, 297 N.W.2d 363, 367 (Iowa 1980). Without mentioning the van, the only evidence the State would have against the defendant was that he was seen at the Union 76 truck stop at approximately 3 a.m. on the night of the burglary, that the defendant appeared to be very greasy or grimy, that a van registered to the defendant was parked in the truck stop parking lot containing a garden tractor and that a vehicle registered to the defendant was seen at the site of the burglary three to four weeks prior to the burglary. This evidence alone would not be sufficient to prove, beyond a reasonable doubt, that

the defendant was guilty of the second-degree burglary. However, with the evidence obtained through the inventory and the defendant's statements about the van's contents, the defendant could be proven guilty beyond a reasonable doubt. Therefore, the error was not harmless because the evidence obtained from the inventory was critical to the State's ability to obtain a conviction.

We reverse the trial court's denial of the motion to suppress the physical evidence seized during the inventory search and remand for a new trial consistent with this opinion.

REVERSED AND REMANDED.

Schlegel, J., concurs; Donielson, J., dissents.

DONIELSON, J. (dissenting)

I respectfully dissent. Applying the reasonableness standard of the fourth amendment, I believe the police officers in this case had probable cause to impound the van, and I would therefore affirm the trial court's ruling.

The majority applies the "reasonableness" standard of the fourth amendment concerning searches and seizures. Initially, I question whether the "reasonableness" standard should be applied to this case. While unquestionably automobiles are "effects" within the ambits of the fourth amendment, the expectation of privacy as to automobiles is diminished due to the nature of the automobile as a mode of transportation, "where both its occupants and its contents are in plain view." Cardwell v. Lewis, 417 U.S. 583, 590, 94 S. Ct. 2464, 2469, 41 L. Ed. 2d 325, 335 (1974). Due to the great mobility of automobiles and due to the police's responsibility in ensuring public safety, the police and other law enforcement officials are brought into frequent contact with motor vehicles. South Dakota v. Opperman, 428 U.S. 364, 368, 96 S. Ct. 3092, 3096, 49 L. Ed. 2d 1000, 1004 (1976). Much of the contact is noncriminal in nature, and extends not from a pretext for criminal investigation, but from more benign purposes such as enforcement of state and local traffic codes. Cady v. Dombrowski, 413 U.S. 433, 441-42, 93 S. Ct. 2523, 2528-29, 37 L. Ed. 2d 706, 714-15 (1973).

In the present case, the police officers' interests were initially piqued not because they suspected criminal activity, but because they observed the defendant's van enter the truck stop without a front license plate at a faster-than-normal rate. The officers noted that the occupants of the van parked on the dark side of the truck stop. As the officers pulled around the van, one of the officers noted that the occupants ran from the van into the truck stop cafeteria. The officers proceeded to the van, at which time they discovered the incomplete paper plate, which was missing the VIN number and model year.

Both officers testified that they perceived the paper plate to be improperly or illegally filled out. As the officers examined the paper plate, they saw through a back window, in plain view, a John Deere garden tractor.

After waiting approximately twenty to thirty minutes, the officers, noting that the occupants had not returned, went into the truck stop and asked the waitress if she knew the whereabouts of the occupants. The waitress told them the occupants had left the area. At this time, the officers were faced with three choices: (1) to leave the van where it was, (2) to wait for the occupants to return, which was not certain, or (3) to impound the vehicle. Faced with the possibility of waiting a long period of time for the occupants' return, the waitress's statement that the occupants had left the area, the incompleteness of the paper plate, and the knowledge of the garden tractor in the van, the officers determined that it was in the public interest that the van be impounded and its contents inspected for safekeeping.

Based upon the totality of the circumstances, I cannot agree that the search was illegal. As the majority notes, courts have consistently upheld police inventories of vehicles that have been legally impounded. Opperman, 413 U.S. at 369-73, 96 S. Ct. at 3097-99, 49 L. Ed. 2d at 1005-07; State v. Kuster, 353 N.W.2d 428, 431 (Iowa 1984). Faced with what the officers in good faith believed to be a vehicle registration violation, the fact that the occupants had apparently left the van with intent not to return, and the protection of the police against claims of lost or stolen property, I believe the officers were correct in impounding the van.

Assuming, however, that the reasonableness standard of the fourth amendment is applicable to this case, I believe the officers had sufficient probable cause to impound the van.

In evaluating alleged violations of the fourth amendment, we must first undertake an objective assessment of an officer's actions in light of the facts and circumstances then known to him. Scott v. United States, 436 U.S. 128, 137, 98 S. Ct. 1717, 1723, 56 L. Ed. 2d 168, 177 (1978). The United States Supreme Court, in Terry v. Ohio, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968), aptly set forth the objective aspect of reasonableness:

> And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard; would the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate?

Applying this objective standard, I believe the officers in the present case had probable cause to take action. The officers first noticed the van pull into the parking lot at a faster-than-usual rate of speed, at which time the officers observed the van was without a front license plate. The occupants of the van parked it in the darkest section of the lot. The officers observed the paper plate in the window, and one officer noted the two occupants, one apparently covered with grease, running from the van into the truck stop after the squad car pulled around. The officers then examined the exterior of the van and found what they in good faith believed to be a registration violation and observed the garden tractor inside in plain view. Waiting approximately twenty to thirty minutes, the officers proceeded inside the restaurant. Unable to locate the occupants, they asked the waitress of the occupants' whereabouts, at which point the waitress stated the occupants had been seen leaving the

area. Faced with the choices mentioned earlier, the police officers decided to impound the van and inventory its contents for safekeeping.

I believe that these facts, taken together with rational inferences from those facts, warranted the police officers' actions. The facts available to the officers at the moment of the impoundment, I believe, would cause a man of reasonable caution in belief to take similar appropriate action. The law enforcement officers today are faced with incalculable difficult situations. It is their duty to see that the lives and property of our citizens are protected to the best of their ability. Many situations, while they may appear to be normal to the untrained eye, may not be so in the trained eye of a police officer. If acting upon a good-faith belief, they should not be handcuffed in their efforts. I would therefore affirm the trial court decision.