FILED
DEC 28 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed December 28, 1977
vs.	)	
GEORGE WILLIAM MORRIS,	)	315 59971
Appellant.	)	

Appeal from Polk District Court - Thomas Bown, Judge.

Defendant urges the trial court erred in admitting evidence he contends was illegally seized pursuant to a warrantless arrest and in admitting tapes of phone conversations between a co-defendant and narcotics agents which he contends were inadmissible hearsay. - Affirmed.

Richard C. Turner, Attorney General of Iowa, Faison Sessions, Assistant Attorney General and Dan Johnston, Polk County Attorney, for Appellee.

John C. Wellman, of Des Moines, for Appellant.

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

PER CURIAM

Defendant George Morris urges two errors by the trial court require a reversal of his conviction of four counts of narcotics violations. First, he contends evidence illegally seized pursuant to a warrantless search was used to convict him. Secondly, he argues that tapes of phone conversations between co-defendant John Danielson and a narcotics agent were inadmissible hearsay.

Morris contends since he was in handcuffs with his duffel bag some five to six feet from him when the officers searched the bag and discovered the cocaine the search cannot be upheld as incident to a lawful arrest.

The initial focus in the time frame is the time of the arrest. In U.S. v. Chadwick, __U.S.__, 53 L.Ed.2d 538, 550 (1977) the Supreme Court said:

> The potential dangers lurking in all custodial arrests make warrantless searches of items within the 'immediate control' area reasonable without requiring the arresting officer to calculate the probability that weapons or destructible evidence may be involved. (citations)

The duffel bag was beside Morris at the time he was arrested—clearly within his "immediate control."

The other time frame of concern is the time of the search and seizure. In **Chadwick** the Supreme Court held that an hour and a half after the arrest a warrantless search at the federal building was too remote.

The exact sequence of events Morris complains of was recently before the supreme court. State v. Shane, 255 N.W.2d 324 (Iowa 1977). In **Shane** the search of the immediate area occurred after the defendant was arrested and handcuffed. The court said: "We hold the police may see to the safe custody and security of suspects first and then make the limited search which the circumstances of the particular case permit." Id. at 328.

The search of Morris's duffel bag was within the parameters permitted by **Chadwick** and **Shane.**

The second issue asserted by Morris is that the trial court erred in admitting the tape-recorded conversations setting up the drug sale under the co-conspirator exception to the hearsay rule. Since there is no mention of Morris by name in the conversations and since he was not in fact "in place", waiting where co-conspirator

Danielson said his supplier would be, Morris argues the state has failed to establish substantial independent evidence of a conspiracy which would support allowing in the hearsay. The record indicates otherwise. After a couple abortive attempts of the undercover agent and Danielson to complete the drug transaction, Danielson requested the agent drop him off at his house where he had indicated his supply would arrive. What ultimately turned out to be the black and blue car Morris drove to the truck stop was parked in Danielson's driveway at that time. Morris was subsequently observed by police surveillance delivering Danielson in the same black and blue car to the truck stop earmarked for the buy. Danielson gave the agent a sample of cocaine and said the rest of the supply he would get by taking the money and walking around to the back of the building. He promised to return within five minutes with the remainder of an ounce of cocaine. He then waited for the sample to be tested by the agents. Upon testing with an instrument supplied by Danielson, the agents found the sample was cocaine, Danielson was arrested immediately. It was uncontroverted that Morris stayed within the area of the buy, parking momentarily in several nearby parking lots. We cannot say that the jury was bound to countenance Morris's contention that since he was not parked out back of the truck stop, he was not the supplier. The jury may well have thought it more consistent with the activity of a drug supplier to protect himself from becoming a stationary target by moving around the scene of the "drop" to avoid detection and yet to remain available for instant delivery. When Morris was arrested a large supply of cocaine was found in his possession.

We believe this independent circumstantial evidence was sufficient to establish that Morris and Danielson conspired to sell cocaine to agent Wilbur. Morris has conceded the other requirements set forth in State v. Jennings, 195 N.W.2d 351 (Iowa 1972).

We affirm.