IN THE COURT OF APPEALS OF IOWA

No. 7-013 / 95-2116

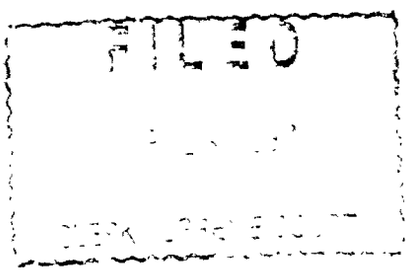
STATE OF IOWA,

Appellee,

vs.

WILLIAM MAURICE KNOPP,

Appellant.



Appeal from the Iowa District Court for Lee County, William L. Dowell, Judge.

Defendant appeals the judgment and sentence entered following his conviction for possession with intent to deliver a controlled substance in violation of Iowa Code sections 124.401(1)(c) and 124.413 (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Ahmet S. Gonlubol and Tricia A. Johnston, Assistant State Appellate Defenders, for appellant.

Thomas J. Miller, Attorney General, and Mary Tabor, Assistant Attorney General, and Michael P. Short, County Attorney, for appellee.

Heard by Sackett, P.J., Cady, and Streit, JJ.

CADY, J.

William Knopp appeals his convictions on numerous drug and drug-related offenses following a jury trial. We affirm.

Knopp was arrested on April 22, 1995, after the Mercury Cougar automobile he was driving was stopped by a Keokuk police officer. The officer stopped the vehicle after he observed the front seat occupants were not wearing shoulder harnesses. After the officer approached the vehicle, he observed the occupants were wearing lap belts. The vehicle was not equipped with shoulder harnesses. A juvenile occupied the back seat. The stop eventually led to a search of the vehicle, which produced a large quantity of methamphetamine, a cutting agent, and more than $5,700 in cash. The charges filed against Knopp included possession with intent to deliver methamphetamine, distribution to a minor, failure to affix a drug tax stamp, using a juvenile to commit a crime, possession of a firearm by a felon, and perjury. The perjury involved the filing of a false financial affidavit for the appointment of counsel at public expense.

Knopp was found guilty following a jury trial. He was sentenced to concurrent terms of imprisonment.

Knopp raises two issues on appeal. First, he argues the district court erred in admitting his 1984 arrest report into evidence. The report was offered to establish Knopp's age, which was an essential element of the offense of using a juvenile to commit a crime. Second, Knopp claims his trial counsel was ineffective for failing

to challenge the stop, failing to challenge sufficiency of the evidence to support the offense of using a juvenile to commit a crime, and failing to challenge the perjury conviction.

I. Arrest Report

A trial court's ruling on the admissibility of evidence is discretionary. *State v. Hubka*, 480 N.W.2d 867, 868 (Iowa 1992). We will reverse only when the trial court has abused its discretion in balancing the probative force of the challenged evidence against the danger of undue prejudice or influence. *Id.*

The reasons to exclude the arrest report from evidence are compelling. Its probative value, especially in light of the other testimony establishing Knopp was over eighteen years old, was minimal. On the other hand, the prejudicial effect of the arrest report was greatly diminished by the previous admission into evidence of the criminal judgment entry which resulted from the arrest documented in the report. The judgment was admitted, without objection, to establish Knopp's status as a felon. This was an element of the crime of possession of a firearm as a felon. Furthermore, the trial court gave the jury a cautionary instruction.

We cannot conclude the district court abused its discretion under all the circumstances.

II. Ineffective Assistance of Counsel

Knopp's trial counsel was not ineffective for failing to file a motion to suppress the vehicle search. This is because there were insufficient grounds to

support the motion. The officer clearly had reasonable cause to stop the vehicle based on his reasonable belief, from his vantage point, the occupants were not wearing a safety harness as required by law. A traffic offense provides sufficient grounds for stopping a vehicle. *State v. Mitchell*, 498 N.W.2d 691, 693 (Iowa 1993). Furthermore, it makes no difference Knopp and the passenger were actually wearing lap belts at the time of the stop. We determine reasonable cause from the facts and circumstances as seen by a reasonable officer at the time of the stop. Moreover, the reasonableness of an investigatory stop does not depend on the actual motivation of the particular officer making the stop. *Whren v. United States*, ____ U.S. ____, ___, 116 S. Ct. 1769, 1774, 135 L. Ed. 2d 89, 97 (1996). We look only to determine if the officer can articulate a valid investigatory reason to stop the vehicle. *Id.*

Knopp's trial counsel was also not ineffective for failing to challenge the sufficiency of the evidence charging Knopp with using a juvenile to commit a crime. This is because a rational trier of fact could have found the essential elements of the offense of using a juvenile to commit a crime were established beyond a reasonable doubt. *See State v. Turner*, 345 N.W.2d 552 (Iowa 1983). In particular, proof that Knopp profited from using a juvenile was supported by several pieces of evidence, including the financial gains derived by Knopp from using a cutting agent and the direct sales of drugs to the juvenile.

Finally, Knopp's counsel was not ineffective for failing to challenge the perjury conviction. The perjury statute is not inconsistent with the fraudulent practice

statute prohibiting the submission of a false financial statement for purposes of obtaining legal assistance. *See* Iowa Code §§ 720.2, 13B.10(3). Although both statutes may prohibit conduct which is essentially the same, they have different elements. The adoption of one statute does not implicitly repeal another statute simply because an offender's conduct might violate both statutes. *State v. Perry*, 440 N.W.2d 389, 391 (Iowa 1989). Trial counsel had no duty to challenge the decision by the prosecutor to charge Knopp under the perjury statute.

We also reject the notion Knopp should have had the benefit of counsel to advise him of his fifth amendment privilege against self-incrimination prior to completing the financial affidavit. The financial affidavit does not require an applicant to reveal the source of his or her assets. We also find the certification on the affidavit was sufficient to satisfy the oath and affirmation element of the offense.

III. Conclusion

We affirm the convictions. We also reject the claims of ineffective assistance of counsel.

AFFIRMED.