FILED
FEB 26 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-446 / 89-1670

STATE OF IOWA,

Plaintiff-Appellee,

425

vs.

GRANT ALAN GLIDEWELL,

Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Defendant appeals his conviction, following a bench trial, for possession of marijuana with intent to deliver. **AFFIRMED.**

Leslie Knock of Reed-Merner and Mershon, Snow & Knock, Cedar Falls, for appellant.

Bonnie J. Campbell, Attorney General, Ann E. Brenden, Assistant Attorney General, James Metcalf, County Attorney, and Ray Walton, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

PER CURIAM

We consider the legality of a warrantless search. Defendant-appellant Grant Alan Glidewell appeals his conviction for possession of marijuana with intent to deliver. We affirm.

On the basis of information provided by a confidential informant, police officers formed the suspicion defendant was carrying marijuana in his car. The officers stopped defendant's car. They observed an open beer can and an odor of alcohol. A pat-down search of defendant yielded a small amount of marijuana and a marijuana pipe. The officers placed defendant under arrest. They then searched the trunk of his car, where they found about three-fourths of a pound of marijuana.

Defendant was charged with possession of marijuana with intent to deliver. He was tried to the court, which found him guilty of that charge. He has appealed from the resulting conviction. Glidewell contends the district court should have suppressed the evidence found in the trunk of his car. He contends there were no exigent circumstances to justify the warrantless search of the trunk.

A warrantless search is presumptively unreasonable unless it comes within a recognized exception to the warrant requirement. State v. Cullor, 315 N.W.2d 808, 811 (Iowa 1982); State v. Folkens, 281 N.W.2d 1, 3 (Iowa 1979). There was probable cause for the search.

Items in plain view within a car, viewed by police officers standing outside the car where they have a right to be, can furnish probable cause for a subsequent search of the car. See State v. Olsen, 293 N.W.2d 216, 220 (Iowa), cert. denied 449 U.S. 993, 101 S. Ct. 530, 66 L. Ed. 2d 290 (1980); 2 W. LaFave, Search and Seizure § 7.5, at 590-91 (1978). We find exigent circumstances to justify the warrantless search of the trunk.

A vehicle presents exigent circumstances when it appears the vehicle will shortly be moved, or when police are aware that others with access to the vehicle are nearby to remove it. The police need not respond to the exigency of mobility by posting a guard with the vehicle until a warrant is obtained. Id.

AFFIRMED.

Schlegel and Sackett, JJ., concur; Oxberger, C.J., specially concurs.

OXBERGER, C.J. (specially concurring)

I concur in the result only.