

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 31 1988

CLERK SUPREME COURT

303

STATE OF IOWA,

Plaintiff-Appellant,

vs.

LARRY DEAN TINNES, THOMAS M.
THOMPSON, and THOMAS PROVENZANO,

Defendants-Appellees.

Filed May 31, 1988

8-152
87-999

Appeal from the Iowa District Court for Johnson County (No. 18880) -
John R. Sladek, Judge.

The State appeals trial court's orders sustaining the defendants' pretrial motions to suppress evidence. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General; David L. Dorff, Assistant Attorney General; J. Patrick White, County Attorney; and Tammy B. Roush, Assistant County Attorney, for plaintiff-appellant.

Emmit J. George, Jr., and Constance Peschang-Stannard, Iowa City, for defendant-appellee Tinnes.

Maurine A. Braddock, of Honohan, Epley, Haymond & Braddock, Iowa City, for defendant-appellee Thompson.

Randy E. Trca, Iowa City, for defendant-appellee Provenzano.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

The issue raised in this interlocutory appeal from the trial court's orders sustaining defendants' pretrial motions to suppress is whether the officer's warrantless search comes within the plain view exception to the warrant requirement. We reverse and remand.

Shortly after midnight Officers Eyman and Johnson observed defendant Tinnes squealing the tires of a car in violation of a Coralville city ordinance. Defendants Thompson and Provenzano were passengers in the car.

Officer Eyman followed Tinnes in his squad car while Officer Johnson finished an investigation outside a Coralville bar. Officer Eyman pulled Tinnes over. Tinnes immediately got out of the car and walked back toward the squad car. Officer Eyman was speaking with Tinnes when Officer Johnson arrived as backup.

Officer Johnson got out of his car and approached the passenger side of the car Tinnes was driving. Thompson and Provenzano were seated in the passenger and rear seat of the car. As he stood near the car Officer Johnson observed the rear seat passenger furtively slide a white Frisbee containing a green, leafy substance under the front passenger seat.

Officer Johnson requested the passengers to get out of the car. He entered the car and retrieved marijuana and other items of contraband. All three defendants were charged with possession of a controlled substance.

The trial court sustained defendants' motions to suppress based on its finding Officer Johnson "had no basis to be at the location of the vehicle as defendant had already removed himself from the vehicle." The trial court concluded the warrantless search did not fall within the plain view doctrine.

Because a constitutional issue is raised on appeal our review is de novo. State v. Cain, 400 N.W.2d 582, 583 (Iowa 1987). There is no question the car had been lawfully stopped for violation of the city ordinance. When a motor vehicle is stopped by a police officer, a seizure of all its occupants occurs. State v. Stevens, 394 N.W.2d 388, 390 (Iowa 1986).

Evidence observed in plain view is admissible only if (1) the observing officer had a legal right to be where he made the observation, (2) the incriminating nature of the object seized is immediately apparent, and (3) the discovery is inadvertent. State v. Davis, 228 N.W.2d 67, 70-71 (Iowa 1975).

1. We hold that Officer Johnson was on a public street where he had a right to be when he observed the marijuana in the lawfully stopped vehicle. See United States v. Story, 463 F.2d 326, 328 (8th Cir.), cert. denied, 409 U.S. 988 (1972) (defendant stopped for traffic violation walked back to officer's car; backup officer arrived, looked through window of defendant's car, and saw and seized sawed-off shot gun in plain view); State v. Lamp, 322 N.W.2d 48, 52 (Iowa 1982). See also 3 W. LaFave, Search & Seizure: A Treatise on the Fourth Amendment § 7.5(a), at 127 (2d ed. 1987).

2. We hold that the incriminating nature of the green, leafy substance Officer Johnson observed on the Frisbee was immediately apparent. Any plant-like substance precious enough to be collected and placed in plastic containers surely gives rise to as much probable cause as is needed to justify seizure of that substance. Id. § 7.5(b), at 130. And in a case which might otherwise be doubtful, it is highly relevant the suspects have engaged in conduct which makes it apparent they are trying to prevent the officer from obtaining a view of the items lying about in the vehicle. Id.; State v. Willis, 320 N.W.2d 726, 727 (Minn. 1982) (driver stopped for speeding walked back to police car, passenger observed

making furtive motions, officer approached passenger and saw face mask in plain view).

3. We hold that the discovery of the contraband was inadvertent. The car was lawfully stopped for a traffic violation and there is no evidence the discovery was anticipated or the police knew in advance the location of the evidence. See Coolidge v. New Hampshire, 403 U.S. 443, 470, 91 S.Ct. 2022, 2040, 29 L.Ed.2d 564, 585 (1971).

We reject defendants' argument the State is required to prove exigent circumstances in order to validate the warrantless plain view search of the car. The exigency requirement is always satisfied by a vehicle's inherent mobility. Cain, 400 N.W.2d at 585.

The trial court held an evidentiary hearing on defendant Tinnes' motion to suppress at which Officers Eyman and Johnson testified. The other two defendants, Thompson and Provenzano, filed motions to suppress after the trial court had ruled on Tinnes' motion. The trial court sustained their motions without a hearing in a separate order.

Defendant Thompson claims the trial court erred in sustaining his motion without a hearing. Iowa Rule of Criminal Procedure 11 states the "court shall receive evidence on any issue of fact necessary to the decision of the motion" to suppress. In its prior ruling on Tinnes' motion, the trial court addressed the "illegal search," and "plain view," issues raised in Thompson's written motion to suppress. The record does not suggest there were any remaining issues of fact necessary to the decision of the motion to suppress. The court did not err in ruling on defendant Thompson's motion to suppress without a hearing. Cf. State v. Anderson, 308 N.W.2d 42, 49 (Iowa 1981) (no violation of due process

and confrontation rights where defendant excluded from hearing only involving questions of law).

We reverse the trial court ruling on defendants' motions to suppress and remand for further proceedings.

REVERSED AND REMANDED.