

IN THE COURT OF APPEALS OF IOWA

No. 7-151 / 96-763

000755

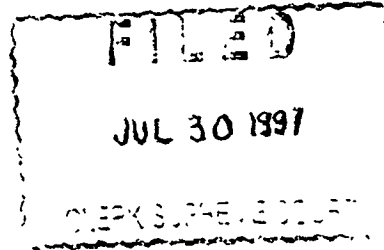
STATE OF IOWA,

Appellee,

vs.

RONNIE LEE WILLIAMS,

Appellant.



Appeal from the Iowa District Court for Boone County, David R. Danilson,
Judge.

Ronnie Williams appeals his conviction, following a bench trial, for possession
of marijuana in violation of Iowa Code section 124.401(3) (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Susan M. Crawford, Assistant Attorney
General, Steven J. Oeth, County Attorney, and Jim P. Robbins, Assistant County
Attorney, for appellee.

Considered by Habhab, C.J., and Cady and Vogel, JJ.

CADY, J.

Defendant Ronnie Williams appeals his conviction of possessing a schedule I controlled substance (marijuana), a serious misdemeanor in violation of Iowa Code section 124.401(3) (1995). Williams argues the trial court should have granted his motion to suppress evidence obtained during a traffic stop. We affirm.

On September 17, 1995, Officer Sherry Todd of the Boone Police Department entered a convenience store to make a purchase. While in the store, she observed Williams buy a pack of cigarettes and leave. A man then entered the store and told Todd, "That car, the blue car in the south end with the four males, I observed some marijuana in the car." He also said, "I was walking past it and saw it." He pointed out the car to Todd, who saw Williams enter the vehicle. When the vehicle drove away, Todd followed in her car, ran a license plate check, and stopped the vehicle.

Officer William Skare arrived at the scene as back up. Todd informed the driver of the reason for the stop. The driver claimed no drugs were in the car and gave Todd consent to search the vehicle. Todd searched the vehicle and found no drugs. Skare addressed the four men, who were now standing outside the car, and asked if they would mind emptying their pockets. They emptied their pockets, and Skare observed Williams cup his hand and place it behind his back upon removing his hand from his left front pocket. When Skare asked to see what was in his hand, Williams produced a cellophane bag containing a small amount of marijuana.

The State charged Williams with possession of a schedule I controlled substance. Williams deposed Todd and Skare, then moved to suppress all the evidence obtained as a result of the stop. Following a hearing, the trial court denied the motion holding, under the totality of the circumstances, sufficient reliable information gave Todd reasonable cause to stop the vehicle.

Williams was subsequently found guilty following a bench trial. He was sentenced to pay a fine of \$250.

Williams argues on appeal the anonymous tip was insufficiently corroborated to justify a stop of the vehicle. We do not reach the merits of this issue, however, because Williams has not preserved error. Motions to suppress evidence must be filed within forty days of arraignment. Iowa R. Crim. P. 10(4), 11(1). Absent good cause shown for a late filing, untimely motions do not preserve error for appeal. *State v. White*, 530 N.W.2d 77, 84 (Iowa App. 1994) (citing Iowa R. Crim. P. 10(3)); see *State v. See*, 532 N.W.2d 166, 168 (Iowa App. 1995) ("The Iowa Supreme Court has been firm in holding unexcused late motions constitute a rule 10(3) waiver.").

Williams did not file his motion within forty days of arraignment. He states he filed the motion only after certain facts were revealed in depositions and argues a late scheduling of depositions constitutes good cause to excuse the untimely filing. Williams' argument is identical to that made by the defendant in *See*, at *id*. In *See*, the defendant argued the desire to have available the strongest possible evidence constituted good cause to delay filing a motion to suppress. *See*, 532 N.W.2d at 168.

We held nothing in the record indicated he was not aware of the basis for the motion within the time period set by rule 10(4). *Id.* In *White*, we held the minutes of testimony placed the defendant on notice the State intended to introduce the evidence he later untimely moved to suppress. *White*, 530 N.W.2d at 84. Similarly, in this case we find nothing in the record to show William was not aware of the basis for the motion within the time provided by the rule.

Williams argues the State waived any objection to the untimely filing by not raising this issue in its resistance to his motion. Even so, we will uphold the ruling on any ground appearing in the record, whether argued at trial or not. *State v. McGowen*, 297 N.W.2d 226, 227 (Iowa 1980). We may uphold the trial court's conclusion without adopting its premise. *Id.* Because the motion was untimely and not excused, we uphold the denial of the motion to suppress.

AFFIRMED.