



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Appellant,

v.

THE IOWA DISTRICT COURT
IN AND FOR LINN COUNTY,
and ANSEL CHAPMAN, JUDGE,

Appellees.

Filed October 7, 1977

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2-59920

Certiorari to Linn District Court - Ansel Chapman, Judge.

Original certiorari action to test legality of trial court's order sustaining motion to suppress evidence. Writ annulled.

Judith W. Redmond, Assistant Linn County Attorney, and Eugene J. Kopecky, County Attorney, of Cedar Rapids, for appellant.

William L. Kutmus, of Holmes, Ralph & Kutmus, of Des Moines, for appellee.

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

PER CURIAM

This is an original certiorari proceeding testing the legality of an order of the respondent trial court suppressing physical evidence in a criminal case.

The criminal prosecution from which this proceeding arose was initiated by a county attorney's information accusing one Richard Lee Davis of the public offense of possession with intent to deliver amphetamines contrary to section 204.401(1), The Code. The defendant, Davis, filed, prior to trial, a motion to suppress the fruits of a search of his luggage by police officers at the Cedar Rapids Municipal Airport on March 2, 1976. The motion was predicated upon a claimed violation of Davis's rights under Amendment IV to the federal constitution. The subject of the motion was a quantity of amphetamine tablets found in Davis's luggage as a result of the search.

On the record before us the correctness of the trial court's order sustaining Davis's motion to suppress may be decided by considering the single issue whether the officers had probable cause to make a warrantless arrest of Davis immediately prior to the challenged search.

The basis relied upon by the State to sustain the search of Davis's luggage is consent.¹ If the arrest is determined to be invalid because of want of probable cause we believe the subsequent search must be declared to be the product of the resulting violation of Davis's right under Amendment IV. This is not because there exists a per se rule against a valid consent to search following an illegal arrest. There is no such per se rule. *Brown v. Illinois*, 422 U.S. 590, 603-05 (1975); *Phelper v. Decker*, 401 F.2d 232 (5th Cir. 1968). But, on the facts of the present case, the temporal proximity of the arrest and the consent to search, and the lack of intervening circumstances compel a finding, such as that made by the respondent trial court, that the arrest, if illegal, taints the alleged consent. *Brown v. Illinois*, supra, 422 U.S. at 603-04; see *State v. Ahern*, 227 N.W.2d 164 (Iowa 1975).

In determining the validity of the warrantless arrest under Amendment IV, we start with the proposition that the requirement of Iowa law that there be a reasonable

¹ There is no basis in the record for finding that the items inside the locked luggage were within the arrestee's area of immediate control so as to invoke the "search incident" exception to Amendment IV.

ground for believing "that an indictable public offense has been committed" and that "the person to be arrested has committed it," as contained in section 755.4(3), The Code, is consistent with the "probable cause" requirement found in Amendment IV of the federal constitution. *State v. Mattingly*, 220 N.W.2d 865, 868 (Iowa 1974); *United States v. Watson*, ___ U.S. ___, 96 S.Ct. 820 (1976). In addition, since the "probable cause" standard of Amendment IV applies both to arrest and to search and seizure, cases construing probable cause in one context are persuasive authority in the other context.²

In the instant case the state depends upon information obtained from an anonymous informant to provide probable cause for Davis's arrest. But, our reading of the decisions in *State v. Boer*, 224 N.W.2d 217 (Iowa 1974) and *State v. Easter*, 241 N.W.2d 885 (Iowa 1976), both dealing with informant information, compels a holding that the arrest of Davis, prior to the search, was made without probable cause.

In *State v. Boer*, supra, the court held that probable cause cannot rest on mere conclusions regarding illegal activity and that such conclusions cannot be met by adding corroborative detail regarding "innocent seeming activity." The record in the present case reveals that the State's case suffers from all of the deficiencies in *Boer*. In describing his knowledge of Davis's suspected criminal activities the arresting officer testified as follows:

Q. Had you been provided information from any confidential source or any source that indicated that Mr. Davis might be in possession of such drug traffic? I realize that's leading.

MR. KUTMUS: That's all right.

A. Yes, I was.

Q. And was that information predicated upon or predicated upon facts which were related to you from the source of the confidential informant?

A. That's correct.

² For example, in *Spinelli v. United States*, 393 U.S. 410, 417 (1969) (footnote 5), a case involving probable cause to search, the Court relied upon *Draper v. United States*, 358 U.S. 307 (1959), a case involving probable cause to arrest. Similarly, the supreme court of this state has relied upon the *Draper* standard in search and seizure cases. *Eg.*, *State v. Easter*, 241 N.W.2d 885, 887 (Iowa 1976). We feel that we are free to apply the principles developed in search and seizure cases to this case involving arrest.

The only significant expansion upon the foregoing conclusions was the following additional testimony of the officer:

Q. Now, this confidential informant, was he a reliable informant, to the best of your knowledge?

A. In Mr. Davis' case I had several informants that had been giving me information about Mr. Davis and information about drug trafficking which started in 1972 when I first was given information about Mr. Davis all the way up to and including the 2nd day of March, the day of his arrest.

* * *

Q. Now, the informant that gave you the information, did he also reveal to you any particular details on how he acquired this information?

A. Of all the separate informants I could give you certain separate details but I couldn't give you particular details unless I knew which piece of information you are referring to.

Q. Just in a general sense you were knowledgeable about some specifics about the basis of Davis' trip to San Diego?

A. Yes, that's correct, through any number of sources. I couldn't pretend to pin one down until we talked about the particular incident.

* * *

Q. You knew he was on that flight, you gave the Number 806, I believe, and the time it was supposed to arrive in Cedar Rapids, you had a lot of particularities, didn't you?

A. That information came from the informant of Detective Hansel's that stated he had purchased a round trip ticket indicating he would be returning on that flight.

The record viewed most favorably to the State falls far short of corroborating in any way that the confidential informant or informants had knowledge of the asserted criminal activity. Moreover, because it appears from the record that the information, sketchy as it was, came from numerous sources, it cannot be maintained, as was the case in *State v. Easter*, supra, that there was corroboration as a result of verifying a series of details given from a single source.

We have also considered the State's argument that probable cause for the arrest of Davis is to be found in the nervous characteristics which he displayed while being interrogated by the police. In support of this contention the State relies upon the federal case of *United States v. Patterson*, 492 F.2d 995, 997 (9th Cir. 1974). In the cited case the suspicious circumstances which were held to support a finding of probable cause were the method and manner employed in the transportation of certain burlap

bags in the area of the Mexican border during an uninterrupted period of surveillance by federal agents for seven and one-half hours. In the present case the suspicious circumstance which is relied upon is based upon the officer's subjective conclusion, after a short face to face encounter, that Davis looked nervous and might run. There is not sufficient evidence in the record of any objective manifestations of such condition on which to base a finding of probable cause.

The trial court properly suppressed the fruits of the search. The writ of certiorari is annulled.