

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 26 1987

CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed August 26, 1987

vs.

)

364

SCOTT ALLEN STEEL,

)

7-280

86-1499

Defendant-Appellant.

)

Appeal from the Iowa District Court for Marshall County (6852), M.D.
Seiser, Judge.

Defendant appeals his conviction of burglary in the second degree.
AFFIRMED.

Charles Harrington, Chief Appellate Defender, and James R. Huff, Assistant
Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Ann E. Brenden, Assistant
Attorney General, for respondent-appellee.

Considered by Oxberger, C.J., and Snell and Hayden, JJ.

PER CURIAM

On April 26, 1986, Dean Hundley and Paulette Keith returned to their Marshalltown, Iowa, apartment building and saw a man run from the side of the building and leave in a green station wagon. After Ms. Keith discovered signs of an attempted entry of her apartment, she and Hundley reported the incident to the police. When Officer Brown arrived at the scene, Hundley and Keith immediately identified a passing vehicle as the one used by the fleeing man. The officer then pursued and stopped the car.

Defendant told Officer Brown he did not have a driver's license. Brown saw a child's sweatshirt laying on the front seat of defendant's station wagon as they were talking. Officer Kelly stayed with defendant and his vehicle while Brown went to the scene to determine if a crime had been committed. He found signs of an attempted break-in. While talking with Mrs. Keith at the scene he learned she was missing her child's sweatshirt. Brown described to her the one he observed in defendant's vehicle and Mrs. Keith identified it as her child's. It had a black toy car in the pocket. After defendant was arrested for driving without a license, Officer Brown searched his vehicle but he did not seize the sweatshirt. Defendant's wife came to the police station after he was arrested. She was the record owner of the station wagon defendant was driving. Officer Brown asked Mrs. Steel if he could search the vehicle again and she gave him her consent in writing. Officer Brown then seized the sweatshirt from the station wagon and it had a black toy car in the pocket.

Defendant claims the trial court committed reversible error in overruling his motion to suppress evidence of the sweatshirt and toy car which were found in his vehicle. We affirm.

Because the issues raised on appeal challenge the constitutionality of the State's actions, we examine the evidence before the trial court de novo. State v. Cain, 400 N.W.2d 582, 583 (Iowa 1987).

Both the Constitutions of the United States and of the State of Iowa grant to all citizens the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Iowa Const. art. I, § 8. The federal guarantee also applies to the states through the due process clause of the fourteenth amendment to the United States Constitution. Mapp v. Ohio, 367 U.S. 643, 654-55, 81 S. Ct. 1684, 1691, 6 L. Ed. 2d 1081, 1089-90 (1961); U.S. Const. amend XIV, § 1.

A warrantless search is per se unreasonable unless it comes within a recognized exception to the warrant requirements, such as consent, search incident to arrest, probable cause, and exigent circumstances, or plain view. State v. Eubanks, 355 N.W.2d 57, 58 (Iowa 1984).

The recognized exceptions present in this case are:

1. Plain view. The sweatshirt was in plain view of Officer Brown. He saw it on the front seat of the station wagon defendant was driving when he was stopped.

2. Search incident to arrest. Defendant was under arrest at the time of the initial search by Officer Brown.

3. Consent. The owner of the vehicle, defendant's wife, gave her consent to Officer Brown to search it.

4. Exigent circumstances. The search was of a motor vehicle.

When a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes . . . the two justifications for the vehicle come into play. First, the vehicle is obviously readily mobile by the turn of a switch key, if not actually moving. Second, there is a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulation inapplicable to a fixed dwelling.

California v. Carney, 471 U.S. 386, 105 S. Ct. 2066, 85 L. Ed. 2d 406, 414 (1985)

. Thus, "the exigencies attendant to ready mobility justify searches without prior recourse to the authority of a magistrate so long as the overriding standard of probable cause is met." Id.; quoted in State v. Cain, 400 N.W.2d 582, 585 (Iowa 1987).

The fact that the vehicle was positively identified as the one defendant was driving and inculpatory evidence rested in plain view in its front seat clearly satisfies the overriding standard of probable cause. See Cain, 400 N.W.2d at 585.

We hold Officer Brown's warrantless search and seizure of the sweatshirt with the black toy car in its pocket was justified.

AFFIRMED.