IN THE COURT OF APPEALS OF IOWA

No. 1999-532 (9-793) / 98-1778
Filed January 26, 2000

STATE OF IOWA,

Plaintiff-Appellee,

FILED
JAN 2 6 2000
CLERK SUPREME COURT

vs.

FREDERICK DENTIS a/k/a KEMAL JORDAN,

Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

Defendant appeals from the judgment and sentence entered upon a jury verdict finding him guilty of possession of a controlled substance in violation of Iowa Code section 124.401(5) (1997). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, John P. Sarcone, County Attorney, and Teresa A. Vens, Assistant County Attorneys, for appellee.

Heard by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

VAITHESWARAN, J.

A jury convicted Frederick Dentis of possession of crack cocaine in violation of Iowa Code section 124.401(5). He appeals, contending the district court should have suppressed certain evidence obtained following his arrest. We affirm.

I. Background Facts and Proceedings

Several neighborhood residents complained to the Des Moines Police Department of narcotic activity at the Casa Car Wash. On May 1, 1998, police set up surveillance on the second floor of a house directly across the street from the car wash. As they began their surveillance, the officers saw Dentis and another individual, later identified as Kevin Jackson, toweling down a car parked at the car wash. At 12:18 in the afternoon, Dentis got in the back seat of the car and Jackson waved a third man into the car. The officers watched the man as he briefly sat in the back seat with Dentis. The officers then saw the man get out and put something in his right front jeans pocket. Five minutes later, a woman approached the car, took a packet from Dentis, crossed the street to a position directly in front of the officers, and opened up a paper wrapping. An officer saw something white inside, in rock form. Officers arrested Dentis for drug trafficking on public property, in violation of a municipal ordinance. On searching him, they discovered crack cocaine in his sock.

The State charged Dentis with possession of a controlled substance with intent to deliver. Dentis moved to suppress the crack cocaine. The district court denied the motion. The case proceeded to trial before a jury, which convicted

Dentis of the lesser included offense of possession of a controlled substance. The court sentenced him to 117 days of jail time, with credit for time served, and revoked his driving privileges for 180 days.

II. Suppression Ruling

Dentis asserts the State obtained the crack cocaine in violation of his constitutional rights to be free of unreasonable searches and seizures. *See* U.S. Const. amend. IV, XIV; Iowa Const. art. I § 8. We review constitutional claims de novo, making an independent evaluation of the totality of the circumstances based on the entire record. *State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998).

Generally, the government must obtain a search warrant prior to conducting an unreasonable search. *Id.* at 45. A search incident to a lawful arrest is a recognized exception to the warrant requirement. *State v. Harris*, 490 N.W.2d 561, 562 (Iowa 1992). The State has the burden of proving this exception by establishing officers had probable cause for a warrantless arrest. *Id.* at 562-63. A court will find probable cause exists "when the facts and circumstances within the arresting officer's knowledge would warrant a person of reasonable caution to believe that an offense is being committed." *State v. Ceron*, 573 N.W.2d 587, 592 (Iowa 1997) (also noting the "reasonable ground for belief" standard for warrantless arrest set forth in Iowa Code section 804.7(3) is same as probable cause). The facts:

> must rise above mere suspicion but need not be strong enough to sustain a guilty conviction. All of the evidence available to the arresting officer may be considered, regardless of whether or not each component would support a finding of probable cause by itself. Seemingly innocent activities may combine with other factors to give an experienced police officer reasonable grounds to suspect wrongdoing.

Id.

The ordinance under which Dentis was arrested prohibits a person from behaving on public property "in a manner in, and under circumstances by which he or she manifests the purpose of inducing, inviting, enticing, persuading, soliciting or procuring another to conduct an illegal drug transaction." Des Moines City Ordinance § 17-47. The district court concluded:

> [P]robable cause was sufficient to justify the arrest of the Defendant. The arrest being constitutionally permissible, the search of the Defendant at the jail incident to that arrest was legal, and the seizure of the contraband at the jail was legal.

We agree. We begin as the district court did by noting that at least one of the officers conducting the surveillance had been a narcotics investigator for a year and a half and had training and experience in the area of narcotics. *See Ceron*, 573 N.W.2d at 593. The surveillance was set up only after the police department received several complaints from residents regarding drug activity at the car wash. We recognize the mere fact activities occur at a location "notorious for drug related transactions" is "insufficient, standing alone, to give rise to probable cause for an arrest." *State v. Bumpus*, 459 N.W.2d 619, 624 (Iowa 1990). However, here there was more. The officers conducted their surveillance during daytime hours, with binoculars. They first saw Jackson wave a man into the car in which Dentis was seated. When the man got out, he placed something in his jeans pocket. They then saw a woman approach the car and take a packet from Dentis. Although they did not see money exchange hands, they did see the woman open the packet, which contained a white rock substance. One of the officers testified the wrapping was consistent with packaging of crack cocaine and, based on her experience, the

white substance was consistent with crack cocaine. We readily concede the probable cause determination would have been stronger if the officers had apprehended the man or woman to verify if either indeed had crack cocaine. However, we do not find this omission mandates suppression. As the district court stated:

> Taking all of these facts as a whole, an area considered to be ripe or faced with public concern about drug trafficking, brief intervals of contact between this Defendant and two persons with the Defendant, always being in the vehicle, the presence of an individual having received a package from a Defendant after a mere 30-second contact, the packaging consistent with drugs, the color the contents of the package consistent with drugs. All of these factors taken together go beyond suspicion, beyond coincidence, and well into the range consistent with known drug trafficking.

We agree with and adopt these findings. We accordingly conclude the arrest and subsequent search of Dentis were valid and the district court correctly denied Dentis' motion to suppress. We do not address appellate counsel's contention that the officers drew impermissible racial inferences, as that assertion was withdrawn during oral arguments.

AFFIRMED.