IN THE COURT OF APPEALS OF IOWA

No. 1-629 / 91-680

FILED
MAR 24 1992
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

KEVIN DEAN TIEFEL,

Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Joseph Moothart and Walter W. Rothschild, District Associate Judges.

Tiefel appeals from his conviction, following a bench trial on stipulated facts, for possession of marijuana. **AFFIRMED.**

Paul T. Shinkle, Cedar Falls, for appellant.

Bonnie J. Campbell, Attorney General; Douglas R. Marek, Assistant Attorney General; Thomas J. Ferguson, County Attorney; and Barbara J. Diment, Assistant County Attorney, for appellee.

Considered by Donielson, P.J., and Hayden and Habhab, JJ.

DONIELSON, P.J.

On June 30, 1990, Black Hawk County Deputy Sheriff Joseph Benhoff was off duty and camping with family and friends at Deerwood Park in Evansdale, Iowa. While on the southeast end of the park, Benhoff was approached by a family friend who had come to visit the camping party. The friend told Benhoff she had just seen individuals in separate vehicles exchange money for "a plastic bag" while parked side-by-side near the park entrance. She reported that an occupant of one vehicle had passed money to an occupant of the second and that a plastic bag was then passed back to the occupant of the first car. She said she had observed the exchange from approximately fifteen feet away. She was also able to describe the two cars and to provide a written license number for one of them.

When the friend made her report, Deputy Benhoff could see the two cars still stopped in the location described. However, the two cars soon left the area. While the cars were gone, Benhoff related the complaint to fellow Deputy Steven Petersen, who also happened to be spending his off duty time in the park. Twenty minutes later, as the deputies were talking, they saw the cars return. When the cars again parked, Petersen and Benhoff approached them, asked the occupants for identification, and began to explain the citizen complaint which had drawn the deputies' attention. At that time Deputy Petersen observed Kevin Tiefel, an occupant of one of the cars, pushing a pipe and

plastic bag into his pocket. Deputy Petersen recognized these objects as being consistent with the use of smokeable drugs. Tiefel was then searched, and marijuana was found on his person.

Tiefel was charged with possession of marijuana. After a bench trial on stipulated facts, he was convicted. He now appeals asserting his fourth amendment rights were violated. Because Tiefel's constitutional rights are implicated, our review in this case is de novo. State v. Dickerson, 313 N.W.2d 526, 530 (Iowa 1981).

Tiefel contends the officers had no probable cause to stop and detain the cars. He argues the informant's tip was insufficiently reliable to constitute probable cause, and therefore, all evidence which resulted from the search should have been suppressed. We find no fourth amendment violation and affirm Tiefel's conviction.

The deputies did not seize the defendant or the car in which he was sitting prior to observing the marijuana pipe and bag. Rather, the deputies, wearing their off-duty plain clothing, had simply parked by the cars and walked up to them. Once beside the cars, the deputies asked for identification and reiterated the substance of the complaint. This does not constitute a seizure. See Florida v. Royer, 460 U.S. 491, 497-98, 103 S. Ct. 1319, 1324, 75 L Ed. 2d 229, 236 (1983)(fourth amendment is not implicated when officers approach persons in public places and ask questions); United States v. Jensen, 689 F.2d 1361,

1364 (11th Cir. 1982)("seizure" did not result from officer requesting identification and asking whether defendant was carrying drugs). "A seizure occurs when a police officer, by means of physical force or show of authority, has in some way restrained the person's liberty." State v. Stevens, 394 N.W.2d 388, 390 (Iowa 1986). "It includes the threatening presence of officers, or the use of language or tone of voice indicating compliance might be compelled." Id. Nothing in the record before us suggests the deputies restrained Tiefel's liberty in any way before observing the contraband. While standing next to the cars, the deputies were at a place where they had a right to be.

Furthermore, the observation of items in plain view in the interior of a vehicle does not constitute a search. State v. Lamp, 322 N.W.2d 48, 52 (Iowa 1982). "[T]here is a diminished expectation of privacy in an automobile, the occupants and contents of which are exposed to the "plain view" of the public when used or parked in public places." Id. (citing United States v. Chadwick, 433 U.S. 1, 12, 97 S. Ct. 2476, 2484, 53 L. Ed. 2d 538, 549 (1977)). "Thus, a law enforcement officer who is rightfully at the location where the observation is made, stands in essentially the same position as a private citizen making the same observation." Id. The observation by Deputy Petersen of the marijuana pipe and bag did not constitute a search.

Once viewed through the car window, the contraband nature of the marijuana pipe and bag gave the deputies

probable cause to search Tiefel and the car. Accordingly, under the totality of the circumstances, the search did not violate the fourth amendment. The trial court properly denied Tiefel's suppression motion.

The costs of this appeal are taxed to Tiefel.

For all the reasons stated, the judgment of the district court is affirmed.

AFFIRMED.