FILED
JAN 23 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-533 / 94-302

STATE OF IOWA,

Appellee,

vs.

DANA PAUL CAVANAUGH,

Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Carlynn D. Grupp, District Associate Judge.

Dana Cavanaugh appeals his conviction, following a bench trial, for possession of methamphetamine. **AFFIRMED.**

Russell Schroeder, Jr. of Schroeder Law Office, Charles City, for appellant.

Thomas J. Miller, Attorney General, Ann E. Brenden, Assistant Attorney General, and Paul L. Martin, County Attorney, for appellee.

Considered by Hayden, P.J., and Sackett and Huitink, JJ.

HAYDEN, P.J.

Dana Cavanaugh was stopped by Officer Fellin for speeding. Cavanaugh stated he was not carrying his driver's license and Fellin asked if he had identification in what appeared to be a wallet in his back pocket. Cavanaugh pulled out a large wad of money which had an outer $100 bill. When Fellin asked Cavanaugh why he was carrying such a large amount of cash, Cavanaugh immediately put the money back into his pocket without comment.

Inside the squad car, Fellin issued Cavanaugh citations for speeding and no driver's license. Fellin then allegedly requested and received a consent to search Cavanaugh's car. Cavanaugh disputes this. Cavanaugh left the squad car and placed the tickets in his car and was about to leave when Fellin asked if he could see the cash again. Cavanaugh handed Fellin the money, stating it was $3500. Fellin counted the cash and noted it was more than $3500. Fellin asked Cavanaugh if he was carrying any weapons, and Cavanaugh produced a small knife from his pocket which was returned to him. Fellin then moved to pat down Cavanaugh's pockets when Cavanaugh jumped onto the hood of his car and began shouting. Finally, Cavanaugh was forcibly pulled off the car and, after a struggle, was arrested and handcuffed. A search of Cavanaugh revealed a plastic bag of methamphetamine.

Cavanaugh was charged with possession of methamphetamine in violation of Iowa Code sections

124.401(3) and 124.206(4)(b) (1993). He moved to suppress the methamphetamine based on an allegedly illegal search and seizure. The trial court overruled the motion. Following a bench trial, Cavanaugh was found guilty as charged and sentenced to 180 days in jail with all but fifteen days suspended, ordered to pay a $250 fine, and put on probation for one year.

Cavanaugh appeals, claiming the methamphetamine should have been suppressed. He contends he was unlawfully stopped and frisked because Fellin had no reasonable and articulable suspicion criminal activity was afoot or that he was armed and dangerous. Cavanaugh claims he was free to go after the citations were issued and Fellin had no right to then stop him and conduct a pat down.

Cavanaugh's motion to suppress raises a Fourth-Amendment challenge under the federal constitution to the admissibility of evidence seized from Cavanaugh's pocket. Our review of constitutional issues is de novo. State v. Scott, 518 N.W.2d 347, 349 (Iowa 1994) (Terry stop); State v. Riley, 501 N.W.2d 487, 488 (Iowa 1993) (same).

The United States Supreme Court has held, consistent with the Fourth Amendment, police may stop persons to investigate based on a reasonable suspicion "criminal activity may be afoot . . . ." Terry v. Ohio, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884, 20 L. Ed. 2d 889, 906-07 (1968). Officer Fellin clocked defendant's car traveling

seventy-two miles per hour in a forty-five-miles-per-hour zone. Obviously, the officer had a reasonable and articulable suspicion defendant was speeding.

Defendant claims he was free to go upon receiving a citation. Defendant cites no authority for the proposition upon receiving a citation, defendant is free to go regardless of an officer's manifest attempt to conduct further investigation. On the contrary, if circumstances during an investigatory stop give rise to suspicions unrelated to the original purpose of the stop, the officer may broaden the inquiry to satisfy those suspicions. United States v. Barahona, 990 F.2d 412, 416 (8th Cir. 1993); State v. Scott, 518 N.W.2d 347, 350 (Iowa 1994).

Defendant disputes the search of his car and the pat-down search. However, these are moot issues. The officers discovered no evidence in the pat-down search or the search of the car. The evidence defendant is seeking to suppress, the methamphetamine, was in fact discovered during a search which took place after defendant had been arrested, handcuffed, and placed under police custody for resisting arrest. As the trial court properly held, the admissibility of the methamphetamine turns on the constitutionality of that search.

It is well-settled a search incident to an arrest requires no additional justification. United States v. Robinson, 414 U.S. 218, 235, 94 S. Ct. 467, 476-77, 38 L. Ed. 2d 427, 441 (1973); State v. Peterson, 515 N.W.2d 23, 24 (Iowa 1994). As the Court said in Robinson:

> A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under that Amendment.

414 U.S. at 235, 94 S. Ct. at 477, 38 L. Ed. 2d at 440-41.

Thus, the legality of the search hinges on the legality of the arrest. In the instant case, defendant was arrested without a warrant. An arrest without a warrant is lawful if an officer has probable cause to believe a crime has been committed or attempted in the officer's presence. Iowa Code § 804.7(1) (1993). Probable cause exists where circumstances lead a reasonable person to believe defendant committed or attempted to commit a crime. State v. Evans, 193 N.W.2d 515, 517 (Iowa 1972) (quotation and citation omitted). The officers observed Cavanaugh as he retreated from Officer Fellin, leaped onto the hood of his car, and refused their entreaties to cooperate. Cavanaugh also broke away, attempted to flee into a cafe, and struggled as the officers tried to handcuff him. The officers had probable cause to believe defendant was committing the crime of interference with official acts in violation of Iowa Code section 719.1(1) (1993).

Under this record, the trial court was correct in denying defendant's motion to suppress evidence. Judgment of the trial court affirmed.

AFFIRMED.