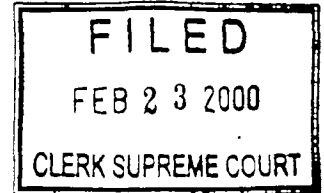


IN THE COURT OF APPEALS OF IOWA

No. 0-03 / 98-1441
Filed February 23, 2000



STATE OF IOWA,

Plaintiff-Appellee,

vs.

FRANKIE E. ARMSTRONG,

Defendant-Appellant.

Appeal from the Iowa District Court for Adams County, William J. Joy,
Judge.

Frankie Armstrong appeals from the judgments and sentences entered
upon his convictions of possession of a controlled substance and resisting arrest.

AFFIRMED.

Joseph B. Reedy, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney
General, Earl E. Hardisty, County Attorney, for appellee.

Heard by Huitink, P.J., and Streit and Miller, JJ.

HUTINK, P.J.

I. Background Facts and Proceedings.

On December 24, 1997, Coming police officer Mark Davenport stopped Armstrong's car because its license plates were registered to a different car. Davenport asked Armstrong to step back to his squad car and issued him a citation for improper registration. Davenport then asked Armstrong if he could search his car. Armstrong consented.

Prior to searching Armstrong's car, Davenport asked and Armstrong consented to a pat-down search for weapons. Armstrong became upset when Davenport tried to search his groin area. Davenport testified he felt an object below Armstrong's waistline that he thought was a weapon. When Davenport continued to explore this area, Armstrong objected and ran away from Davenport. Davenport chased Armstrong for a short distance, subdued, and arrested him. A subsequent search of Armstrong's person revealed the object of concern was not a weapon, but a cigarette pack containing three paper envelopes, known as "snow seals." These items were sent to the department of criminal investigation (D.C.I.) laboratory for appropriate testing.

The State filed a three-count trial information charging Armstrong with possession of a controlled substance (methamphetamines) with intent to deliver, failure to affix a drug tax stamp, and resisting arrest.

Armstrong pled not guilty to all charges. The drug tax stamp charge was dismissed. The jury found Armstrong guilty of the lesser-included offense of possession of a controlled substance and resisting arrest. He was sentenced to

two years in the county jail with all but forty-five days suspended and probation for one year.

On appeal Armstrong contends the trial court erred in admitting the evidence submitted to the state lab for testing because the State failed to show the chain of custody predicate to its admission. In addition, Armstrong contends the trial court erred in not granting his motion for judgment of acquittal on the resisting arrest count.

II. Evidentiary Ruling.

We review for an abuse of discretion. *State v. Ramirez*, 485 N.W.2d 857, 858 (Iowa App. 1992). The trial court has considerable discretion in determining whether the State has shown the chain of custody necessary for admission. *State v. Barger*, 511 N.W.2d 632, 636 (Iowa App. 1993). Evidence will not be admitted unless it is properly identified. However, only a prima facie showing of the identity of the physical evidence and its connection to the crime need be made. *Ramirez*, 485 N.W.2d at 858. The State has the burden to establish it is reasonably probable tampering or substitution did not occur. *State v. Mehner*, 480 N.W.2d 872, 877 (Iowa 1992). It is especially important to establish this fact when dealing with evidence such as drugs, which is highly susceptible to alteration. *Ramirez*, 485 N.W.2d at 858. The trial court must determine whether the identification of physical evidence is sufficient in light of the article's nature, the circumstances surrounding its custody, and the likelihood that an intermeddler has tampered with it. *Id.* The court may presume state agents or officials did not tamper with evidence in their custody. *State v. Lamp*, 322

N.W.2d 48, 59 (Iowa 1982). When evidence is tested at the criminalistics laboratory, the usual chain of custody need not be demonstrated. *Ramirez*, 485 N.W.2d at 859 (stating an item handled in conformity with the rules shall be presumed to be admissible in evidence as to the period in transit to and from and while in custody of the laboratory without further foundation). *Id.*

Officer Davenport testified that prior to sending the evidence to the lab he designated the separate "snow seals" as A-1, A-2, and A-3 and then sent the evidence to the D.C.I. by certified mail. The D.C.I. criminologist who received the evidence testified that the standard procedures were followed in handling the evidence. We find this testimony, fortified by the foregoing presumption, sufficient to support admission of the evidence submitted to the D.C.I. laboratory for testing. We affirm on this issue.

III. Interference with Official Acts.

We review a challenge to the sufficiency of the evidence on assigned error. *State v. McPhillips*, 580 N.W.2d 748, 753 (Iowa 1998). We will uphold the district court's denial of a motion for judgment of acquittal if there is substantial evidence in the record to support the defendant's conviction. *Id.* at 752. In deciding whether the evidence is substantial, we view the evidence in the light most favorable to the State and make all reasonable inferences that may fairly be drawn from the evidence. *State v. Romeo*, 542 N.W.2d 543, 545 (Iowa 1996).

Armstrong was charged with interfering with official acts by resisting Davenport's attempt to effectuate his arrest. Iowa Code section 719.1(1) provides:

A person who knowingly resists or obstructs anyone known by the person to be a peace officer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, in the performance of any act which is within the scope of the lawful duty or authority of that officer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, or who knowingly resists or obstructs the service or execution by any authorized person of any civil or criminal process or order of any court, commits a serious misdemeanor.

The jury in this case was instructed as follows:

Instruction No. 15

As charged in the second count, the State must prove all of the following elements of Resisting Arrest.

1. On or about the 24th day of December, 1997, the defendant knew Mark Davenport was a peace officer who was, in his official capacity, attempting to arrest the defendant.

2. The defendant knowingly resisted or obstructed Mark Davenport in the peace officer's attempt to place the defendant under arrest.

Definitions:

Resist

"Resist" means to oppose intentionally, interfere with or withstand. "Obstruct" means to hinder intentionally, retard or delay.

Verbal harassment is not resistance or obstruction unless it is a verbal threat made with the ability and apparent intention to carry out the threat.

An effective arrest does not require formal words of arrest. *State v. Harvey*, 242 N.W.2d 330, 339 (Iowa 1976). An officer making an arrest must inform the person arrested they are under arrest "except when the person to be arrested is actually engaged in the commission of or attempt to commit an offense, or escapes, so that there is no time or opportunity to do so." Iowa Code § 804.14. A person may not resist arrest reasonably effected by one whom arrestee knows or has good reason to know is a peace officer despite the legality or illegality of the arrest. *State v. Thomas*, 262 N.W.2d 607, 611 (Iowa 1978).

Armstrong argues he could not be convicted of resisting arrest because there was no evidence Davenport had grounds to make an arrest or informed him of his intent to arrest at the time Armstrong was accused of resisting arrest. We disagree.

On direct examination Davenport testified:

Q. What did happen with this pat-down search? A. When he started leaning into the car, that made me nervous, and from my training I felt he was trying to hide something. I did manage to reach around, when I reached right around approximately right here, not in his pocket but just below his belt line, I felt an object that was very hard and I thought it was a gun.

Q. And did you get that object out of there? A. Not then, no, sir.

Q. What did you do when you found an object? A. I tried to minimize it and downplay and not let him know that I knew he had something in his waistband, and I attempted—was just—he kept reaching, he had his billfold out, I kept telling him to put your hand back on the truck, Frank, Frank, put your hands on the trunk. I kept telling him what to do, keep your hands up there, quit leaning on the car. Finally, when I felt this object I felt it was some type of weapon, I began to give him instructions to leave his billfold on the car, and what I was trying to tell him to do was give me your hand so I can put handcuffs on behind his back, but he bolted and took off running on me.

On cross examination by Armstrong's attorney, Davenport testified:

Q. Was Frank under arrest for anything? A. Well, at that point he wasn't under arrest I don't believe.

Q. When did you place him under arrest? A. When he ran from me.

Q. Okay. He was not under arrest until he ran? A. That would be correct.

Q. So he had a right to leave, didn't he? A. Sir if he would have taken off, had that been a pistol in his pocket and I had not chased him, I could have been dead.

Q. Officer, if he wasn't under arrest he has the right to go, isn't that a concept of law you were taught at the academy? A. Yes, I believe it was.

Q. And you didn't arrest him until after he moved away from you, right? A. That's correct.

A. What is the question, sir?

Q. I will be glad to rephrase it. When you finally arrested Frank Armstrong what did you arrest him for? A. For resisting.

Q. Did you ever tell Frank prior to that arrest that he was under arrest? A. I believe I told him he was under arrest after we were on the ground.

There is no dispute concerning Davenport's status as a peace officer. See Iowa Code § 801.4(11)(b) (police officers of cities are peace officers). We believe, as in this case, a peace officer conducting a pat-down search for weapons, consensual or otherwise, is acting under the general authority of a peace officer. See *Terry v. Ohio*, 392 U.S. 1, 23-24, 88 S. Ct. 1868, 1881, 20 L. Ed. 2d 889, 907-908 (1968); *State v. Peck*, 329 N.W.2d 680, 685 (Iowa App. 1982). Accordingly, any person knowingly resisting or obstructing a peace officer in the performance of a pat-down search would be interfering with an official act as proscribed by section 719.1(1). We conclude Armstrong's resistance to Davenport's pat-down search after discovery of a suspected weapon provided grounds for his warrantless arrest. See Iowa Code § 804.7(2) (public offense committed or attempted in the peace officer's presence). Because Armstrong fled before Davenport could effectuate an arrest, there was no need to inform him that he was under arrest. See Iowa Code § 804.14. We also find the testimony concerning Armstrong's flight and subsequent resistance to Davenport's efforts to subdue and arrest him provide sufficient evidentiary support for his resulting conviction of interference with official acts by resisting arrest. The judgment of the district court is therefore affirmed.

AFFIRMED.