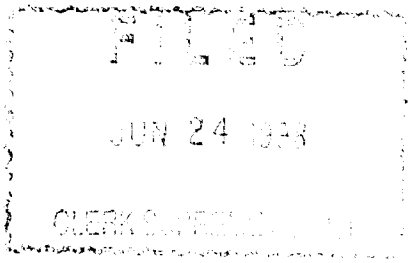
IN THE COURT OF APPEALS OF IOWA

No. 8-184 / 95-1081
Filed June 24, 1998



STATE OF IOWA,
Appellee,

vs.

DANIEL BECARRA-MADRIZ,
Appellant.

Appeal from the Iowa District Court for Muscatine County, Patrick J. Madden, Judge.

Defendant appeals from judgment and sentence entered for weapon and drug charges. **AFFIRMED.**

Anthony Jamison, Rock Island, Illinois, then Linda Del Gallo, State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Ann Brenden, Assistant Attorney General, Richard K. Phillips, County Attorney, and Kerri L. Snyder, Assistant County Attorney, for appellee.

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

STREIT, J.

Beccara-Madriz appeals his conviction, the trial court's denial of his motion to suppress evidence, and the trial court's refusal to alter the mandatory minimum sentence under Iowa Code section 124.401(1)(e). The court correctly denied defendant's motion to suppress evidence because no illegal stop or search occurred. The court did not have discretion to alter the mandatory minimum penalty under section 124.401(1)(e). For these reasons, the trial court is affirmed.

I. Background Facts & Proceedings.

On November 22, 1994, Muscatine police officers' attention was drawn to defendant by two phone calls from a confidential informant. The confidential informant described Becarra-Madriz and said he was in possession of a gun. He told police where Becarra-Madriz could be located. After locating defendant in La Rosa's bar, officers approached him and did a pat-down search. Becarra-Madriz had a fully-loaded .22 caliber handgun. Becarra-Madriz was arrested. After transporting defendant to the police department, three baggies of drugs (cocaine and methamphetamine) were found in the back seat of the squad car.

Becarra-Madriz was charged with carrying a weapon, in violation of Iowa Code section 724.4(1) (1993), possession with intent to deliver while in possession of a firearm, in violation of Iowa Code sections 124.401(1)(c) and (e), and violation of drug tax stamp, in violation of Iowa Code sections 453B.3, .7, and .12. The court

overruled defendant's motion to suppress the drugs, claiming they were illegally seized. The jury returned guilty verdicts on all counts.

The court sentenced Becarra-Madriz to an indeterminate two-year prison term on the carrying weapons charge, an indeterminate twenty-year prison term on the possession charge (ten-year term doubled for the firearms enhancement), and an indeterminate five-year term on the tax stamp charge. The court did not waive the mandatory minimum sentence. *See* Iowa Code § 901.10. Becarra-Madriz appeals his conviction, the court's denial of his motion to suppress, and his sentence.

II. Sufficiency of Evidence Supporting Convictions.

Becarra-Madriz's first challenge is the State failed to present sufficient evidence to find him guilty of possession with intent to deliver a controlled substance while in possession of a firearm. This contention was not raised by way of motion for judgment of acquittal in the trial court and cannot be urged for the first time here. Iowa R. Crim. P. 18(8); *State v. Grosvenor*, 402 N.W.2d 402, 406 (Iowa 1987). Because the issue has not been preserved, we will not address it on appeal.

III. Motion to Suppress Evidence.

Becarra-Madriz contends he was illegally stopped and searched by the officers. He argues the officers had no reasonable suspicion upon which to initiate an investigatory stop because there was no specific finding the confidential informant was credible. For these reasons, he contends the evidence seized during the search should have been suppressed. The court properly denied his motion.

When confronted with an alleged constitutional violation, we resolve the issue by making our own independent evaluation of the totality of the circumstances. *State v. Melohn*, 516 N.W.2d 24, 25 (Iowa 1994). Police may stop and briefly detain a person for investigative purposes if the officer has reasonable cause to believe a crime may have occurred. *Id.* "While circumstances giving rise to suspicion will not suffice, an officer may make an investigatory stop with considerably less than proof of wrong doing by a preponderance of the evidence." *Id.* The stopping officer must have had a "specific and articulable cause to support a reasonable belief that criminal activity may have occurred." *State v. Lamb*, 322 N.W.2d 48, 51 (Iowa 1982). The principal function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot. *State v. Melohn*, 516 N.W.2d at 25.

Generally, the court looks at several factors in determining if reasonable cause existed to make a stop: (1) whether the officer was investigating a specific crime; (2) whether the officer was given a description of the suspect; and (3) whether the crime was reasonably close in time and distance to the investigatory stop. *State v. Lamp*, 322 N.W.2d 48, 51 (Iowa 1982). A confidential informant's tip may be sufficient to provide "reasonable suspicion" to make an investigatory stop. *State v. McGee*, 381 N.W.2d 630, 632 (Iowa 1986)(citing *Adams v. Williams*, 407 U.S. 143, 147(1972)).[1]

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[1] While a confidential informant's tip is sufficient to create reasonable suspicion for an investigatory stop the same is not true when an officer is seeking a search warrant. Iowa Code section 808.3 requires written determination of the credibility of the informant's information when seeking a search warrant before a judge or magistrate. *See, i.e., State v. Gogg*, 561 N.W.2d 360, 364 (Iowa 1997).

With these principles in mind, we determine whether the officers had reasonable cause to make an investigatory stop of the defendant. The confidential informant's identity was known to the police. He had provided them with reliable information in the past. He was not providing the information in exchange for any concession by the police or for a monetary award. A specific finding of his credibility was not necessary to make an investigatory stop. *State v. McGee*, 381 N.W.2d at 632 (Iowa 1986). The officers had reasonable suspicion to stop Becarra-Madriz.

The officers had reasonable cause to believe defendant was armed. A reliable informant told the police the day before Becarra-Madriz had been seen in that neighborhood carrying a handgun. When the officers approached Becarra-Madriz, he moved both hands toward his pockets. As the officers escorted defendant to the back of the bar, one side of Becarra-Madriz's nylon jacket was drooping as though it was weighted down by something heavy. An officer touched defendant's jacket and felt a hard object in it. Weapon searches are permitted for the protection of the officer where he has a reason to believe he is dealing with an armed individual. *State v. Scott*, 405 N.W.2d 829, 832 (Iowa 1987). Under these circumstances, a search of defendant for weapons was reasonable to protect the officers' safety.

Because neither the initial stop or the investigatory search were illegal, the fruits of the search were admissible. The trial court correctly denied Becarra-Madriz's motion to suppress evidence.

IV. Failure to Use Discretion in Sentencing.

Sentencing decisions of a district court are cloaked with a strong presumption in their favor. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). The court has discretion, within the applicable statutory framework, to determine the sentence that best meets the statutory goals. *State v. Boltz*, 542 N.W.2d 9, 10 (Iowa App. 1995). When the imposed sentence is not outside the statutory limits, the sentence will be set aside only for an abuse of discretion. *Thomas*, 547 N.W.2d at 225. An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.*

Becarra-Madriz contends the district court erred in failing to exercise its discretion under section 901.10 of the Iowa Code to relieve the defendant from the penalty set out in section 124.401(1)(e) of the Code. Section 124.401(1)(e) was designed to impose a double penalty on drug offenders who participate in the offense while armed with a firearm.

Section 901.10 of the Code reads:

> a court sentencing a person for the person's first conviction under section 124.406, 124.418, or 902.7 may, at its discretion, sentence the person to a term less than provided by the statute if mitigating circumstances exist and those circumstances are stated specifically in the record.

Iowa Code § 901.10 (1995).

Section 901.10 can not be construed to give the court discretion to alter the mandatory minimum sentence imposed by section 124.401(1)(e) of the code. Courts

are not permitted to search beyond the express terms of a statute when the language is plain and its meaning is clear. *State v. Neary*, 470 N.W.2d 27, 29 (Iowa 1991). Section 901.10 explicitly gives the court discretion to sentence a person to a prison term less than provided by the statute if it is the person's first conviction under sections 124.406, 124.413, or 902.77. We see no reason why we should construe section 901.10 to mean something other than what it states. *See id.* Because the court did not have the discretion to alter the penalty under section 901.10 as argued by the defendant, the trial court could not have erred in imposing the minimum penalty.

Even if section 901.10 did apply to the sentence set out in section 124.401(1)(e), section 901.10 does not require a sentencing court to give its reasons for rejecting particular sentencing options. *State v. Russian*, 441 N.W.2d 374, 374 (Iowa 1989). The trial court did, however, state its reasons for imposing the sentence it did, as required by the criminal rules of procedure. *See* Iowa R. Crim. P. 22(3)(d) (1997). The trial court's reasons for imposing its sentence were defendant was illegally carrying a fully-loaded concealed weapon, he had no ties to this area, was unemployed, and capable of being a dangerous person. He was forty-three years old and knew the consequences of his actions. The court determined society needed protection from this person. The sentence imposed by the trial court is affirmed.

AFFIRMED.