IN THE COURT OF APPEALS OF IOWA

No. 1-164 / 00-0572
Filed May 9, 2001

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHERROME MARCUS DAVIS,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve (motion to suppress), Bobbi M. Alpers (trial and sentencing), Judges.

Defendant appeals from the judgment and sentence entered upon a jury verdict finding him guilty of possession of cocaine base with intent to deliver in violation of Iowa Code section 124.401(1)(c) (1999) and possession of marijuana in violation of section 124.401(5). He contends the district court erred in denying his motion to suppress challenging the constitutionality of his seizure and subsequent pat down and search. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, William E. Davis, County Attorney, and Robert Weinberg, Assistant County Attorney, for appellee.

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

SACKETT, C.J.

Defendant-Appellant Sherrome Marcus Davis appeals his conviction for possession of cocaine base with intent to deliver in violation of Iowa Code section 124.401(1)(c) (1999) and possession of marijuana in violation of Iowa Code section 124.401(5) (1999). Defendant challenged a search of his person that yielded two rocks of crack cocaine and $210 in United States currency. Defendant contends the district court erred in denying his motion to suppress items found on his person after the car in which he was a passenger was stopped. We affirm.

At about midnight on September 11, 1999, a Davenport police officer was patrolling an area in Davenport identified as a high crime area. The officer saw an empty black two-door Chevrolet Lumina parked near the curb with the engine running and the headlights on. The car did not have license plates. A paper plate in its back window had expired. The car was kept under observation and an officer saw a small group of people come from across the street and get in the car. The first officer called for back up and the car was stopped a short time later. The officer stopping the car testified when his light went on he saw a passenger in the back seat later identified as a defendant look around and then appear to be putting something on the floor or reaching for something between his legs. Following the stop the driver of the car was asked for identification and showed a driver's license. The others in the car were asked for identification and apparently all but defendant produced identification. The driver was asked to get out of the car and exited though the driver's door. Defendant was sitting in

the back seat. Defendant was asked his name and gave a false name. An officer said defendant was nervous and not willing to give much information. Defendant was told to get out of the car and keep his hands away from his pockets. An officer saw defendant reach towards the left rear pocket of his jeans. The officer grabbed defendant's arm and pulled him through the same door the driver had exited, then pushed defendant against the side of the car and handcuffed him. After defendant was placed in handcuffs another officer saw two white rocks wrapped in plastic on the street near the driver's side door of the Chevrolet where defendant and the driver exited the car. The officer pulled defendant's left rear jean pocket open, shined his flashlight in the open pocket and saw two white rocks wrapped in plastic similar to the ones found on the ground. The office found $190 in defendant's other back pocket. The officer looked in defendant's wallet where he found a card bearing defendant's name and $210. A pat down search followed where the officer pulled up the left leg of defendant's pants and a bag of what appeared to be marijuana fell out.

Defendant filed a motion in district court to suppress the drugs and cash, contending (1) the stop of the car was pretextual and there was no nexus between the fact he was a passenger in the car and the reason for stopping it; (2) the police officer's order for him to get out of the car was improper; and (3) the officer exceeded the scope of an allowable weapons search.

The district court found the traffic stop was not pretextual, though it further found it unnecessary to address this challenge. The court found that the officers were justified in requiring defendant to get out of the car while the traffic stop was

in progress. The court denied defendant's third argument, finding that discovery of crack cocaine on the street near where defendant got out of the car, when considered with the facts surrounding the stop, together with the questioning of defendant and the weapons search, justified the search as incident to an arrest even though the search preceded the defendant's arrest.

The defendant on appeal argues that the district court erred in denying his motion to suppress challenging the constitutionality of the seizure and the pat-down search. The State contends that the evidence seized from the defendant was discovered and seized during a lawful search incident to arrest and that the marijuana was admissible because it was found during a lawful weapons pat down.

We review de novo the ultimate conclusion a district court reaches on a motion to suppress concerning Fourth Amendment issues. *See State v. Heminover*, ___ N.W.2d ___, ___ (Iowa 2000). A district court's fact-findings on such a motion are binding on the appellate courts if those findings are supported by substantial evidence. *See id.*

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . ." The Fourth Amendment is made applicable to the states under the Fourteenth Amendment to the Federal Constitution. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691, 6 L. Ed. 2d 1081, 1090 (1961); *State v. Ceron*, 573 N.W.2d 587, 592 (Iowa 1997). Regardless of its relevancy or

probative value, evidence obtained in violation of this provision is inadmissible. *State v. Predka*, 555 N.W.2d 202, 205 (Iowa 1996).

When the police stop a car and temporarily detain an occupant of the vehicle, the temporary detention is a "seizure" within the meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89, 95 (1996); *Predka*, 555 N.W.2d at 205. The detention is such a seizure even though the detention is only for a brief period of time and for a limited purpose. *Whren*, 517 U.S. at 809, 116 S. Ct. at 1772, 135 L. Ed. 2d at 95; *Predka*, 555 N.W.2d at 205. For this reason, "[a]n automobile stop is . . . subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." *Whren*, 517 U.S. at 810, 116 S. Ct. at 1772, 135 L. Ed. 2d at 95; *accord Predka*, 555 N.W.2d at 205. Any evidence obtained in violation of the Fourth Amendment is generally inadmissible, no matter how relevant or probative the evidence may be. *Predka*, 555 N.W.2d at 205.

The officers had a reason to stop the car. They had observed that the vehicle did not display registration plates in violation of Iowa Code section 321.37 (1999). *See State v. Jackson*, 315 N.W.2d 766, 767 (Iowa 1982) (nothing prohibits a stop when there are reasonable grounds to believe a vehicle is not properly registered.) Whether the stop was pretextual or not is a non-issue. *See Whren*, 517 U.S. at 810, 813, 116 S. Ct. at 1772, 1774, 135 L. Ed. 2d at 95, 97 (1996) (holding that the decision to stop an automobile is reasonable for Fourth Amendment purposes "where the police have probable cause to believe a traffic

violation has occurred" regardless of the actual motivation of the officer); *Predka*, 555 N.W.2d at 205.

The question then becomes whether the officer in ordering defendant out of the car and helping him out was acting, as defendant claims, on a generalized, unfocused and unspecific suspicion. The stopping officer testified that after the lights were activated he saw defendant look around and then bend over like he was putting something on the floor or reaching for something between his legs on the floor. The officer's observation of defendant's actions in the back seat was sufficient for the officer to be concerned that defendant might be in possession of a weapon.

We next address defendant's challenge to the search of his person. Once the officer observed the rocks of crack cocaine that had fallen at defendant's feet there was probable cause to arrest him. *State v. Meyer*, 543 N.W.2d 876 (Iowa 1996), and *State v. Hofmann*, 537 N.W.2d 767 (Iowa 1995), cert. denied, 518 U.S. 1007, 116 S. Ct. 2528, 135 L. Ed. 2d 1052 (1996), establish that the "search incident to an arrest" doctrine applied in Fourth Amendment jurisprudence is dependent on facts that provide a legal basis for making a custodial arrest rather than the act of arrest itself. *State v. Doran*, 563 N.W.2d 620, 622 (Iowa 1997). A search incident to lawful arrest is legal even if the arresting officer had an ulterior motive for the arrest or had no independent probable cause to conduct the search. *Meyer*, 543 N.W. 2d at 879. It is an objective or "could" assessment of the arresting officer's conduct in making the arrest "so long as the officer is legally permitted and objectively authorized to do so, an arrest is constitutional."

Id. It is only necessary that probable cause to arrest precede the search. *See Doran*, 563 N.W.2d at 622. The district court correctly denied defendant's motion to suppress.

AFFRIMED.