FILED
AUG 26 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

525

STATE OF IOWA,)

Plaintiff-Appellee,) Filed August 26, 1980

vs.)

KRAIG A. WELLMAN,) 0-99
64014

Defendant-Appellant.)

Appeal from Black Hawk District Court - George Stigler, Judge.

Defendant appeals from judgment of conviction following trial of information charging possession of marijuana, in violation of section 204.401(3), The Code. AFFIRMED.

Stephen J. Rapp of Gottschalk & Gilliam, Cedar Falls, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Douglas F. Staskal, Assistant Attorney General; and David Correll, Black Hawk County Attorney; for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Kraig A. Wellman, appeals from judgment of conviction following trial of information charging possession of marijuana, in violation of section 204.401(3), The Code. The only issue presented is whether the trial court erred in denying defendant's motion to suppress the marijuana which sheriff's deputies found at his residence while making an arrest on an out-of-county warrant.

On April 13, 1979, at approximately 6:40 a.m., deputy John K. Myers and reserve deputy James Wheeler of the Black Hawk Sheriff's Office, went to defendant's home in Waterloo to execute a Fayette County warrant for defendant's arrest on a charge of speeding in violation of section 321.285, The Code. This warrant was admitted into evidence at the suppression hearing and the contents thereof, as stipulated by the parties, is subsequently set forth in full.

Upon reaching defendant's residence, the deputies knocked and defendant answered the door. He was then talking on the telephone to his father. The deputies identified themselves and announced that they had a warrant for defendant's arrest, whereupon he admitted them to his home. Once inside the home, deputy Myers noticed a table on the top of which was a quantity of marijuana. He then seized this substance and advised defendant that he was also under arrest for possession of marijuana.

The primary thrust of the defendant's argument is that the entry of the sheriff's deputies into his residence for purposes of his arrest was violative of the Fourth Amendment because the arrest warrant upon which such entry was obtained was, on its face, invalid. Initially, we note that the basic legal premise upon which this argument is based is sound. As a result of the decision in Payton v. New York, ___ U.S. ___, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), it is established that absent exigent circumstances, the threshold of the home may not be crossed for purposes of making an arrest absent a valid warrant. Here, there is no claim of exigent circumstances.

It is clear that the entry in the present case was obtained by invoking the authority of the warrant in the possession of the deputies. But their good faith in relying on the warrant to justify the entry would not justify the intrusion unless the procedure followed in issuing the warrant satisfied the requirements of the Fourth Amendment. See Beck v. Ohio, 379 U.S. 89, 97, 85 S.Ct. 223, 229, 13 L.Ed.2d 142, 148 (1964); Henry v. United States, 361 U.S. 98, 102, 80 S.Ct. 168, 171, 4 L.Ed.2d 134, 138 (1959). In this regard, if defendant has established that the warrant was not issued on probable cause for defendant's arrest under the laws of this state, the warrant would

have been invalid. This in turn would render the entry of defendant's home violative of the Fourth Amendment, the officers would have had no right to be where the marijuana was found, and the "frame view" doctrine relied upon by the trial court in denying defendant's motion to suppress would have been inapplicable. Unfortunately for defendant, the facts in the record are not sufficient to sustain this otherwise valid legal argument.

The warrant in question was in the following form:

IN THE IOWA DISTRICT COURT
Fayette COUNTY

STATE OF IOWA)
_____ COUNTY) ss: WARRANT OF ARREST

TO ANY PEACE OFFICER IN THE STATE OF IOWA:

Information upon oath having been this day laid before the (Magistrate) in the City of West Union, Fayette County, Iowa, that the crime of speeding in violation of (section 321.285 of the Code of Iowa) has been committed, and accusing Kraig Allen Wellman thereof.

You are hereby commanded forthwith to arrest the said defendant Kraig Allen Wellman 616 Kern Str Waterloo, Iowa and bring said defendant before said Court at West Union, Iowa, or in case of the absence of said Judge of said Court, or inability to act, before the nearest Magistrate or the Clerk of the District Court in said County. Given under may hand and the Seal of this Court at West Union, Fayette County, Iowa this 10th day of April, A.D., 1979 .

Let the defendant when arrested by admitted to bail in the amount of $ 45.00

John Hoffmeyer
(Magistrate)

We find such warrant to be fair on its face.

In 3 LaFave, Search and Seizure - A Treatise on the Fourth Amendment, § 11.2(b) (1978) at 499 is found the following:

> With respect to the issue which is usually central in a motion to suppress hearing—the reasonableness of the challenged search or seizure—most states follow the rule which is utilized in the federal courts: if the search or seizure was pursuant to a warrant, the defendant has the burden of proof . . .

One statement of the federal rule is found in United States v. Vigo, 413 F.2d 691 (5th Cir. 1969): "The [search] warrant stands cloaked with a presumption of validity both in the court below and on this appeal. The appellant had the burden of proof in challenging the validity of its execution or service." 413 F.2d at 693. See also State v. Rangel, 12

Ariz. App. 172, 468 P.2d 623 (1970); Theodor v. Superior Court of Orange County, 8 Cal.3d 77, 104 Cal. Rptr. 226, 501 P.2d 234 (1972); Malcolm v. United States, 332 A.2d 917 (D.C. 1975); People v. Stephens, 12 Ill. App.2d 215, 297 N.E.2d 224 (1973); Commonwealth v. Bond, 375 N.E.2d 1214 (Mass. 1978); State v. Guadiosi, 97 N.J. Super. 565, 235 A.2d 680 (1967); State v. Coatney, 44 Or. App. 13, 604 P.2d 1269 (1980); Davie v. State, 414 P.2d 1000 (Okla. Crim. App. 1966).

Iowa appears to follow this rule although the issue has apparently risen only in the narrow context of challenging the veracity of statements made in an application for a search warrant. In that context the Iowa court has held defendant has the burden of proving the falsity of the challenged statements. See State v. Post, 286 N.W.2d 195, 201-02 (Iowa 1979); State v. Kaufman, 265 N.W.2d 610, 617 (Iowa 1978); State v. Iowa District Court in and for Johnson County, 247 N.W.2d 241, 246 (Iowa 1976).

In light of the foregoing authorities, we conclude: (1) that the burden was on defendant to show any invalidity which may have existed in the issuance of the warrant; and (2) that the record fails to support the claims which are made by defendant in this regard. Contrary to defendant's contention, section 805.1, The Code 1979, does not preclude magistrates from issuing arrest warrants on speeding violations. That statute merely authorizes peace officers to issue a citation in lieu of arresting a violator without a warrant. Section 804.1, the Code 1979, grants to magistrates to whom proper complaint has been presented charging a misdemeanor, the choice of issuing a citation or of issuing an arrest warrant. Thus, we must reject defendant's contention that the warrant in the present case is invalid on its face as being beyond the authority of the magistrate. To the extent defendant urges that the warrant was not issued upon a proper complaint establishing probable cause as to defendant's guilt of speeding contrary to section 321.285, The Code, there is no evidence in the record to sustain such contention.[1] The burden of proof to establish such claim having been on defendant, the motion to suppress was properly denied.

We have considered all elements presented and find no ground for reversal.

AFFIRMED.

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[1] We have read the entire transcript of both the entire suppression hearing and defendant's trial. We find no evidence of any kind relating to the circumstances under which the warrant was issued by the magistrate. The passing reference made by the trial court in its ruling on the motion to facts not in the record does not serve to supply this deficiency.