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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed April 26, 1983

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	3-47 68618
JACK LEON PATTERSON,	)	
Defendant-Appellant.	)	

Appeal from Scott District Court, C. H. Pelton, Judge.

The defendant appeals his conviction of possession of marijuana with the intent to deliver in violation of Iowa Code section 204.401(1)(1981). AFFIRMED.

Michael J. McCarthy, Bettendorf, for defendant-appellant.

Thomas J. Miller, Attorney General, and Michael K. Jordan, Assistant Attorney General, for plaintiff-appellee.

Considered en banc.

OXBERGER, C.J.

The defendant appeals his conviction of possession of marijuana with the intent to deliver in violation of Iowa Code section 204.401(1)(1981). The defendant claims that the trial court erred in failing to suppress as evidence marijuana which was seized on the basis of an allegedly illegal investigatory stop and arrest and in admitting the opinion testimony of two witnesses as to whether the quantity of marijuana found in the possession of the defendant was consistent with that ordinarily found in the possession of a user or seller. We affirm.

The defendant, Patterson, charged with the crime of possession of marijuana with intent to deliver, in violation of Iowa Code section 204.401(1)(1981), moved prior to trial to suppress the use of some marijuana found in his automobile as evidence on the ground that it was illegally seized. The motion was denied after the court found that Patterson had voluntarily consented to a search of his automobile after his arrest. A recasted motion to suppress the evidence on the ground that his arrest was illegal and the subsequent seizure of the marijuana in his automobile was the product of the illegal arrest was also denied on the ground that the defendant was arrested on probable cause. A jury found the defendant guilty as charged.

The police department of the city of Davenport was informed of some suspicious information given to the owner of a rental storage shed by one of his tenants. They had advised the owner that they were storing diesel parts in the storage unit, but other information they had given the owner was false or unverified. The police were independently aware of a break-in involving diesel parts in Moline, and they therefore visited the owner. While they were there, they observed someone drive up in a blue Thunderbird, open his trunk, open the storage

area, and place two fairly large boxes in the trunk and depart. After following the vehicle, detective Hardy concluded that the driver was proceeding aimlessly, and directed a squad car to stop the vehicle for identification. Officer Fossen stopped the Thunderbird and arrested Patterson when he told her that he did not have his driver's license, even though Officer Fossen was able to confirm Patterson's claim that he had a valid Illinois license.

After being taken to the police department, Patterson signed a written consent to a search of his vehicle, including the trunk. Two boxes containing plastic bags holding seventy-three pounds of marijuana were seized as a result of the search.

I. The Search and Seizure.

Citing State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982), Patterson argues that the evidence should have been suppressed because the stop was based upon a hunch at best or a subterfuge at worst. If the officer's primary purpose in stopping the motorist is not to inspect his license, he argues, the detention is a mere subterfuge or excuse for a failure to obtain a warrant. He argues that his voluntary consent is vitiated by the illegal arrest, and that the evidence seized as a result should not have been admitted at trial.

On a careful examination of the evidence, we conclude that the vehicle Patterson was driving was not stopped for a mere inspection of the driver's license. Officer Fossen stopped the vehicle at Hardy's request because Hardy reasonably believed that criminal activity might have occurred or was being committed. The circumstances were highly suspicious. Another vehicle, a station wagon, had come to the storage area, stopped briefly, left, and returned. It was observed to be driving around in circles. While Patterson was removing two boxes from the building and placing them in his car, still another car parked on the shoulder of the road, containing individuals who were watching the entire

proceeding. When the Thunderbird left, the parked car also departed. These circumstances, together with Hardy's knowledge of the theft of diesel parts in Moline, constitutes sufficient reasons for him to order the stop. The vehicle was lawfully stopped, and the subsequent discovery of evidence of another crime clearly does not render the stop an illegal one. See State v. Jackson, 315 N.W.2d 766, 767 (Iowa 1982).

II. The Expert Testimony

The supreme court has held that

> While a witness may not testify whether marijuana is held for personal use [citation], he may testify on the pattern or modus operandi of a certain offense and compare the facts of the case to it. [citations] The distinction is that, on the one hand, the witness is asked for an opinion based upon certain evidence as it relates to a well-defined modus operandi and on the other, an opinion on the guilt or innocence of the defendant. The former is proper; the latter is not.

State v. Olsen, 315 N.W.2d 1, 6-7 (Iowa 1982).

The witnesses in this case did not offer opinions as to Patterson's guilt or innocence. They simply testified that when individuals are using the marijuana that is found in their possession when they are arrested, the amount found is small and is packaged in small plastic bags. They then explained that there is a distinction between such one-ounce bags of marijuana, which they called "user's amounts" and "seller's amounts," such as the bales of marijuana introduced into evidence at Patterson's trial. We do not find that this testimony oversteps the bounds of permissible testimony concerning the modus operandi delineated in Olsen.

Having found that Patterson's arguments are without merit, we affirm.

AFFIRMED.