

IN THE COURT OF APPEALS OF IOWA

No. 0-79 / 89-363

FILED

APR 24 1990

CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

TERRY R. MABRY,

Appellant.

308

Appeal from the Iowa District Court for Black Hawk County, Leonard D. Lybbert, Judge.

The defendant appeals his conviction, following a jury trial, for possession of cocaine with intent to deliver.

AFFIRMED.

Robert W. Thompson, Reinbeck, for appellant.

Thomas J. Miller, Attorney General; Richard J. Bennett, Assistant Attorney General; James M. Metcalf, County Attorney; and D. Raymond Walton, Assistant County Attorney; for appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

Defendant Mabry appeals his conviction, following a jury trial, of possession with intent to deliver or manufacture a controlled substance, in violation of Iowa Code section 204.401(1)(a). Specifically, Mabry appeals an adverse ruling on his motion to suppress and motion for severance. We affirm.

Waterloo police officers had information that three or four young black males, plus an older black male called "Bishop," had arrived from Minneapolis and were selling crack cocaine in Waterloo. With this background, Officer Meyer saw a Cadillac with Minnesota license plates in a high-crime section of Waterloo. Meyer did a check on the car's license number and discovered (1) that the car's registered owner was Bishop Hence, and (2) that Hence's Minnesota driver's license had been suspended.

Officer Meyer and other officers then stopped the Cadillac, ostensibly because the driver's license of its registered owner was suspended. Bishop Hence proved to be the driver and he was, in fact, arrested for driving without a valid license. While making that arrest Officer Meyer observed a plastic bag and a film canister in the car. Subsequent searches yielded crack cocaine in the car and on the persons of some of the five occupants. The occupants, including Terry Mabry, were arrested for possession of drugs.

Mabry was tried at a joint jury trial with two of the car's other occupants. (Another occupant was tried separately, and the fifth occupant was not tried because he was a juvenile.) After this joint trial, Mabry was convicted of possession of cocaine with intent to deliver. He has appealed that conviction.

Mabry contends that the police had no reasonable cause to stop the Cadillac in which he was riding. Therefore, he contends the district court should have suppressed the drug evidence found during the searches of the car and its occupants following the investigatory stop.

Mabry also contends the district court should have severed his trial from the trials of the car's other occupants. He argues the car's occupants had potentially inconsistent defenses because each might wish to claim that he was unaware of the drugs in the car and that the drugs must have been placed there by other occupants. (The record shows that the three codefendants each denied any knowledge of the drugs, but that none of the three codefendants expressly tried to implicate other car occupants.)

When a defendant is alleging error involving a constitutional right, such as here, we make an independent evaluation of the totality of the relevant circumstances to determine if such an error was made. Rinehart v. State, 234 N.W.2d 649, 658 (Iowa 1975); State v. Jeffries, 417 N.W.2d 237, 239. (Iowa App. 1987).

Defendant is challenging the initial stop of the car and the evidence obtained in a subsequent search thereof. The governing constitutional principles are well settled. The law, as outlined in State v. Aschenbrenner, 289 N.W.2d 618, 619 (Iowa 1980), provides:

An officer must have reasonable cause to stop a vehicle. In order to establish reasonable cause when the grounds are challenged, the State must show that the officer had specific and articulable cause to support a reasonable belief that criminal activity may have occurred. Officers are bound by their true reason for making the stop. They may not rely on reasons they could have had but did not actually have. If the State fails in its burden, evidence taken as a result of the stop must be suppressed. (Citations omitted.)

Circumstances giving rise to mere suspicion or curiosity will not suffice. State v. Dixon, 241 N.W.2d 21, 23 (Iowa 1976).

The United States Supreme Court has held it is reasonable for officers to stop a car and detain the driver to check the driver's license if the officers have "at least articulable and reasonable suspicion that a motorist is unlicensed" Delaware v. Prouse, 440 U.S. 648, 663, 99 S. Ct. 1391, 1401, 59 L. Ed. 2d 660, 673 (1979). We find the officers here had such a suspicion. Once the officers determined the vehicle's owner had a suspended driver's license, they had a reasonable suspicion sufficient to justify a stop. State v. Jackson, 315 N.W.2d 766, 767 (Iowa 1982). It was reasonable to infer the vehicle was being driven by its owner given the absence of evidence to the contrary. The district court did not err in denying defendant's motion to suppress.

Defendant's claim that the arrest was a mere pretext, therefore rendering the search invalid, is without merit. A pretextual arrest occurs when police employ an arrest based on probable cause as a device to investigate or search for evidence of an unrelated offense for which probable cause is lacking. United States v. Trigg, 878 F.2d 1512, 1515 (10th Cir. 1988). The evidence in the record does not show any attempt by the officers to circumvent proper procedures. The officer had a legitimate reason to stop the car driven by Bishop. Once the car was stopped, the officer did not immediately search it, and may not have searched the car except for the objects he observed which are usually associated with the presence of drugs. The officer searched based on what he observed inside the car, not based on the arrest alone as an excuse to find possible drugs.

Defendant also contends the trial court erred in failing to sever his case from that of his codefendants. The general rule is that defendants who are indicted together are tried together. State v. Sauls, 356 N.W.2d 516, 517 (Iowa 1984). When an indictment or information jointly charges two or more defendants, those defendants may be tried jointly if, in the discretion of the court, a joint trial will not result in prejudice to one or more of the parties. Id. When a trial court denies severance in the exercise of its discretion, the ruling will be reversed on appeal only if the defendant demonstrates an abuse of

discretion. State v. Snodgrass, 346 N.W.2d 472, 475 (Iowa 1984). To establish an abuse of discretion, the defendant must show sufficient prejudice to constitute denial of a fair trial. Id. To cause the type of prejudice that prevents codefendants from obtaining a fair trial, the defenses must be more than merely antagonistic; they must conflict to the point of being irreconcilable and mutually exclusive. Id. The facts in this case do not support the conclusion that the trial court abused its discretion in denying defendant's motion to sever his trial. The defenses in this case did not conflict to the point of being irreconcilable. None of the other defendants accused Mabry of any crime, thereby requiring the jury to believe one of the defendants over the others. In fact, the testimony reflected the other defendants' beliefs that Mabry had no knowledge of the drugs in the car. The trial court did not abuse its discretion in refusing to sever Mabry's trial from the other defendants.

AFFIRMED.