IN THE COURT OF APPEALS OF IOWA

No. 2-273 / 91-504

FILED
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CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

MICHAEL J. CAMPBELL,

Appellant.

Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson and Leo F. Connolly, Judges.

Michael Campbell appeals his conviction, following a jury trial, of robbery in the first degree. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds Lapointe, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Amy M. Anderson, Assistant Attorney General, Richard Crowl, County Attorney, and Timothy O'Grady, Assistant County Attorney, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

Defendant appeals his conviction, following a jury trial, of robbery in the first degree for his involvement in the holdup of a filling station. We affirm.

At approximately 3:20 a.m. on September 21, 1990, two white males robbed a filling station attendant. The attendant watched the men flee on foot and then called police. Within minutes, an officer approaching the filling station saw a car containing two white males. The car was traveling away from the station. The officer later testified the area had few intersecting streets and usually had little traffic at that hour of night. The officer noted the car was traveling quite slowly at twenty-five miles per hour in a fifty miles per hour zone, the occupants repeatedly looked back at him as he began to follow the car, and the passenger kept bending over the seat. The officer also noted the car had a burned out taillight and no license plates.

Based upon this information, the officer stopped the car. Before exiting his vehicle, the officer had a radio conversation in which he learned the general kind of clothing worn by the robbers. The officer could see the men in the stopped car were wearing similar clothing.

By this time back-up officers had arrived. Several officers approached the stopped car. The car's two occupants, who proved to be Jon Kirlin and Michael Campbell, were removed from the car, searched, and

handcuffed. It seems to be unclear whether they were formally arrested at that time. The officers searched the interior of the car and seized a gun and $622 in cash.

Campbell was charged with robbery in the first degree and theft in the third degree. At trial, Campbell testified he and Kirlin went to the filling station to get some cupcakes. He maintained he had no idea Kirlin intended to rob the attendant. The attendant, however, testified Campbell stood near the door and said "Come on. Come on." and "Let's go."

The jury found Campbell guilty of first-degree robbery and concluded a firearm was involved. The jury acquitted Campbell on the theft charge. On March 26, 1991, Campbell was sentenced to a period of incarceration not to exceed twenty-five years with a five-year minimum. The defendant appeals this decision.

I. **Reasonable cause to stop the vehicle.**

Campbell first contends the district court should have suppressed all evidence resulting from the vehicle stop. He contends the officer lacked reasonable cause to stop the car. This claim raises a constitutional issue, and our review is de novo. State v. Bumpus, 459 N.W.2d 619, 622 (Iowa), cert. denied, 111 S. Ct. 563, 112 L. Ed. 2d 570 (1990). We must independently evaluate the totality of the circumstances and determine if the district court erred. Rinehart v. State, 234 N.W.2d 649, 658 (1975); State v. Jeffries, 417 N.W.2d 237, 239 (Iowa App. 1987).

Police officers are permitted to make investigatory stops when, in light of their experience, they reasonably believe criminal activity may be afoot and the suspect involved may be armed and dangerous. Terry v. Ohio, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884, 20 L. Ed. 2d 889 (1968); State v. Rosenstiel, 473 N.W.2d 59, 61 (Iowa 1991). Reasonable cause is defined as a good cause belief based on specific and articulable facts taken together with rational inferences from facts which lead to a reasonable belief criminal activity is afoot. See State v. Stevens, 394 N.W.2d 388, 391 (Iowa 1986), cert. denied, 470 U.S. 1057, 107 S. Ct. 935, 93 L. Ed. 2d 986 (1987). The test for reasonable cause for an investigatory stop is not the officer's subjective theory, but whether "articulable objective facts were available to the officer to justify the stop." State v. Donnell, 239 N.W.2d 575, 578 (Iowa 1976). Mere suspicion does not justify an investigatory stop. State v. Varvel, 436 N.W.2d 649, 651 (Iowa App. 1988) (citing State v. Dixon, 241 N.W.2d 21, 23 (Iowa 1976)). If the State fails to establish such facts, the evidence seized as a result of the stop must be suppressed. State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982).

In State v. Lamp the Iowa Supreme Court set forth factors considered in determining whether a stop was founded on reasonable cause:

> (1) [the officer] was investigating a specific crime; (2) [the officer] had been given a description of the assailant . . .; and (3) the perpetration of the crime

> was reasonably close in time (approximately four and one-half hours) and distance (approximately five miles to the investigatory stop)

Id. In the present case, the officer was investigating a specific crime when the vehicle was stopped. Campbell fit the description of the criminal, he was in close proximity to the location of the robbery, and he was stopped within ten minutes after the robbery. The officer also observed unusual conduct which led him to believe criminal activity was afoot. The car in which the defendant was a passenger was traveling unusually slow. The defendant kept bending over the front seat, and kept looking back. Another significant fact was the car had a taillight which was burned out and no license plates. Although evidence shows there were in-transit stickers in the upper left hand corner of the front windshield and on the left side of the rear fender, the officer who stopped the vehicle testified neither was observable by a vehicle approaching from the rear nor was a sticker properly affixed in the rear window. These factors, taken together, established the investigating officers had the "reasonable and articulable suspicion" necessary to justify the stop. We hold the State satisfied its burden of showing the officers had reasonable cause for stopping the defendant. We affirm on this issue.

II. Warrantless search of interior of vehicle.

Campbell separately contends the district court should have suppressed the evidence resulting from the warrantless

search of the car's interior. Campbell argues the search is not justified by any exception to the warrant requirement. In particular, he argues the search was not incident to a lawful arrest because the time of the arrest in relation to the search was not established. This claim raises a constitutional issue, and our review is de novo. State v. Bumpus, 459 N.W.2d 619, 622 (Iowa), cert. denied, 111 S. Ct. 563, 112 L. Ed. 2d 570 (1990). We must make an independent evaluation of the totality of the relevant circumstances to determine if the district court made an error. Rinehart, 234 N.W.2d at 658; Jeffries, 417 N.W.2d at 239.

Defendant argues the search cannot fall under the search incident to arrest exception because the search may have preceded the arrest. The fact a search occurs a few minutes before an arrest does not per se invalidate the search. State v. Harvey, 242 N.W.2d 330, 338 (Iowa 1976). "The search is valid whether it took place moments before or moments after the arresting officer took the suspect into actual custody or announced his intention of doing so." Id. (quoting United States v. Skinner, 412 F.2d 98 (8th Cir.), cert. denied, 396 U.S. 967, 90 S. Ct. 448, 24 L. Ed. 2d 433 (1969)). The actions of the officer effectively restricted Campbell's liberty of movement. "An arrest to be effective does not require formal words of arrest or stationhouse bookkeeping." Harvey, 242 N.W.2d at 339 (United States v. Hensley, 374 F.2d 341, 348 (6th

Cir.), cert. denied, 388 U.S. 923, 87 S. Ct. 2139, 18 L. Ed. 2d 1373 (1967)). The question then becomes whether probable cause existed before the search. The State argued the officers had probable cause to arrest as soon as they learned the suspects' clothing matched the robbers' clothing. We agree. The existence of probable cause prior to a search justifies a search incident to arrest. We determine probable cause existed prior to the search to justify the arrest and therefore justify a search incident to arrest.

Another exception to the warrant requirement also supports a conclusion the search was not illegal in its scope. When a police officer has lawfully stopped a vehicle on a public way, an observation of items in plain view in the interior of the vehicle does not constitute a search. Lamp, 322 N.W.2d at 52 (citation omitted). In this case, the defendant was lawfully stopped for investigatory purposes, and the officer was able to view the butt of a gun protruding from under the car seat. This observation occurred at a place where the officer had a right to be. A plain view discovery no longer needs to be inadvertent. Horton v. California, 495 U.S. 128, 130, 110 S. Ct. 2301, 2304, 110 L. Ed. 2d 112, 118-19 (1990). The fact artificial light was used to illuminate an area which would be visible in daylight does not affect the validity of the observation. Lamp, 322 N.W.2d at 52.

As a second defense to this claim, the State argues a weapon search is permitted in an investigatory stop situation. We agree. "Even if the search of the defendant's automobile was not contemporaneous with his arrest, the search would nevertheless have been valid." McGee, 381 N.W.2d at 633. If an officer makes a Terry investigatory stop, but does not arrest the occupant of the automobile, the officer can still search parts of the passenger compartment in which a weapon may be hidden based upon the reasonable belief the person is dangerous and may gain access to a weapon. Id. (citing Michigan v. Long, 463 U.S. at 1049-50, 103 S. Ct. at 3480-81, 77 L. Ed. 2d at 1220-21). The rationale behind permitting such a search is to provide protection to officers when he has reason to believe the individual is armed and dangerous regardless of whether he has probable cause to arrest the individual for a crime. In this case, we hold the officers conducted a legitimate investigatory stop and had a reasonable belief the defendant possessed a weapon. An officer investigating a burglary has reasonable cause to conduct a weapons search. The district court did not err in denying the defendant's motion to suppress. We affirm on this issue.

III. Acquittal.

Finally, Campbell maintains the district court erred in denying his motion for judgment of acquittal. He argues the State failed to present sufficient evidence he had the requisite intent to commit a robbery.

Our scope of review of this issue is on assigned error only. Iowa R. App. P. 4. The standard of review in challenging the sufficiency of evidence is well established. State v. Lampman, 342 N.W.2d 77, 81 (Iowa App. 1982). We will uphold a verdict when "substantial evidence" supports it. State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981). "Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt." State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). In reviewing the record, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984); State v. Hall, 371 N.W.2d 187, 188 (Iowa App. 1985). We find substantial evidence existed from which a rational fact finder could find the defendant guilty of first-degree robbery. "Participation in criminal intent may be inferred from one's presence in and near the scene of the crime, and his conduct before or after the offense is committed." State v. Myers, 158 N.W.2d 717, 721 (Iowa 1968) (citations omitted). In the case at bar, Campbell admitted they parked the car a distance away from the filling station, and Campbell left with the other person involved in the robbery. We affirm on this issue.

AFFIRMED.