

IN THE COURT OF APPEALS OF IOWA

No. 0-115 / 09-0590
Filed March 24, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LEE LORENZO ROBERTS,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve,
Judge.

Defendant Lee Lorenzo Roberts appeals from the judgment and sentence
entered upon his conviction for possession with intent to deliver. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney
General, Michael J. Walton, County Attorney, and Amy K. Devine, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., Eisenhauer, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

EISENHAUER, J.

Defendant Lee Lorenzo Roberts appeals from the judgment and sentence entered upon his conviction for possession of cocaine with intent to deliver. The sole issue is whether the district court properly overruled his pretrial motion to suppress incriminating evidence seized during the search of a vehicle in which Roberts was a passenger. The motion to suppress was heard simultaneously with a bench trial. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

Detective Morel is a narcotics detective with the Davenport Tactical Operations Bureau (TOB). The members of TOB communicate with each other over a secured frequency. Using this channel during surveillance operations allows TOB members to know what other members are seeing and doing.

On August 28, 2008, detective Morel was assigned to provide peripheral surveillance in his undercover vehicle on a controlled buy at 10:00 p.m. at 11th and Pershing Streets. A controlled buy is a drug purchase made by a confidential informant using identifiable money. Detective Morel did not witness the actual exchange made by the confidential informant.

Detective Morel was told the confidential informant had purchased the drugs and was given the license plate number of the vehicle involved in the sale. This car was being driven by its registered owner, Tychika Walker, and Roberts was riding in the front passenger seat and was the only passenger. Detective Morel was assigned to follow the vehicle as it left the 11th Street area. While

following Walker's car, detective Morel observed it park in a well-lit area on 14th and Harrison Streets and turn off its lights. Morel again set up surveillance.

Narcotics detective Westbay was also in an undercover surveillance vehicle parked near the 11th Street area. After the controlled buy, detective Westbay was told to follow a tan Buick. Detective Westbay followed the tan Buick, Walker's car, directly to 14th and Harrison Streets and again set up surveillance.

Next, detective Morel observed Linda Williams walk out of an alley and up to the driver's side of the vehicle. Detective Morel saw something exchanged between Walker and Williams and then saw Walker hand something to Williams. Williams left immediately by walking through the alley. Detective Morel relayed his observations to the other members of TOB. Detective Morel explained:

Based on the fact that we had just conducted a controlled buy with this vehicle, and now they are parked in an area and have a female walk up, through my training and experience, it immediately looked to me as another controlled transaction between a dealer and someone purchasing narcotics.

After Morrel relayed his observations, detective Westbay requested a marked patrol squad car stop the Walker car. The officers also decided to stop Williams.

Detective Lansing was also in a surveillance vehicle that evening. At 10:20 p.m., Detective Lansing was in the 14th Street area and stopped Williams. During a consent search, detective Lansing found a small rock of crack cocaine in her pockets.

At trial, testimony from Williams matched the TOB's observations. Williams testified she and her husband decided to purchase crack cocaine on August 28, 2008, and called "Little Man" to obtain the drugs. "Little Man" is Roberts and Williams knew him by sight. Subsequently, Williams walked to 14th and Harrison Streets as instructed and recognized "Little Man"/Roberts as a passenger in a parked car. Williams walked up to the driver's side of the car because Walker rolled down her window. Williams handed twenty dollars to Walker, who then gave Williams crack cocaine in a clear baggie. When Williams was stopped by the police after she walked away, she consented to a search and told them where she got the drugs. The district court specifically found Williams to be a credible witness.

Meanwhile Officer Antle, a patrol officer, responded to detective Westbay's radio request for assistance in stopping a vehicle. Officer Antle was given Walker's license plate number and stopped her vehicle. During officer Antle's pat down of Roberts, he discovered \$123 in a pocket. One hundred dollars of this money was later identified as the police money used in the earlier confidential informant drug buy.

When detective Morel arrived at the traffic stop scene, both Roberts and Walker had been taken out of the vehicle. Walker was arrested for driving under suspension. Detective Morel assisted in searching the vehicle, and saw, in plain view, .4 grams of crack cocaine in a plastic baggie in the open ashtray.

Detective Westbay assisted with the search and also saw the crack cocaine in the ashtray. Detective Westbay explained the search was both a

search incident to arrest and a search due to the police observations during the confidential informant purchase/Williams purchase.

Detective Smull helped with the surveillance of the car involved in the controlled buy and identified Walker's car by its license plate. After the traffic stop, detective Smull questioned Roberts in the back of officer Antle's vehicle. Roberts admitted he sold two rocks of crack cocaine earlier in the day at 13th and Arlington Streets.

Roberts was charged with possession with intent to deliver and conspiracy to commit a non-forcible felony. On January 7, 2009, Roberts filed a motion to suppress evidence arguing the search of Walker's car was conducted without probable cause and without consent. The parties agreed to simultaneously hear the motion with the bench trial on January 12, 2009. The court first ruled the search was appropriate as incident to Walker's arrest for having a suspended Iowa driver's license. Alternatively, the court determined:

[E]vidence of use of the car in the controlled buy at 11th and Pershing Streets along with observations of the apparent hand-to-hand drug transactions at 14th and Harrison Streets almost immediately thereafter, provided the officers with probable cause to search the passenger compartment of the vehicle.

The court denied Roberts's motion to suppress, found him guilty of the possession charge, and acquitted him on the conspiracy charge. Roberts appeals arguing the vehicle search violated constitutional principles.

II. SCOPE AND STANDARDS OF REVIEW.

Where the State is alleged to have violated Roberts's constitutional rights against unreasonable searches and seizures, our review of the district court's

ruling is de novo. *State v. Carter*, 696 N.W.2d 31, 36 (Iowa 2005). We independently evaluate the totality of the circumstances as shown by the record. *State v. Reinders*, 690 N.W.2d 78, 82 (Iowa 2004). We give deference to the district court's fact findings because of its ability to assess the credibility of the witnesses, but we are not bound by those findings. *State v. Crawford*, 659 N.W.2d 537, 541 (Iowa 2003).

III. MERITS.

Roberts argues the warrantless vehicle search violated his rights under both the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution.¹ More specifically, he contends none of the officers who testified observed the confidential informant drug exchange and the officers only followed Walker's vehicle because they were instructed to do so. Additionally, while detective Morel believed he had observed a drug transaction, he did not see the items exchanged. Roberts contends, therefore, the information available did not establish probable cause to search Walker's vehicle.

"A search conducted without a valid search warrant is per se unreasonable unless [an exception] to the warrant requirement applies." *State v. McGrane*, 733 N.W.2d 671, 676 (Iowa 2007). We recognize an automobile exception to the warrant requirement. *State v. Maddox*, 670 N.W.2d 168, 171 (Iowa 2003). Under this exception, police may search a vehicle without a warrant

¹ The language of the state and federal constitutions protecting citizens against unreasonable search and seizure is substantially identical and we have consistently interpreted the scope and purpose of article I, section 8, of the Iowa Constitution to track with federal interpretations of the Fourth Amendment. *State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998).

if probable cause and exigent circumstances exist. *State v. Edgington*, 487 N.W.2d 675, 678 (Iowa 1992). “The State has the burden of proving by a preponderance of the evidence that a warrantless search falls within” the automobile exception. *McGrane*, 733 N.W.2d at 676.

Roberts does not challenge the exigency requirement on appeal, therefore, we discuss only the probable cause requirement. Probable cause exists when the totality of the circumstances would lead a reasonably prudent person “to believe a crime, or evidence thereof, may be found within the vehicle.” *Maddox*, 670 N.W.2d at 171. We additionally recognize the knowledge of one police officer, acting in concert with other police officers, is presumed to be shared by all. *State v. Satern*, 516 N.W.2d 839, 841 (Iowa 1994); *State v. Owens*, 418 N.W.2d 340, 342 (Iowa 1988); *State v. Thornton*, 300 N.W.2d 94, 97 (Iowa 1981). Therefore, the facts to be considered in making the probable cause determination are not limited to those observed by the searching officer separately. Rather, where there is at least some minimal communication between officers, the shared or collective knowledge doctrine is applied. *Thornton*, 300 N.W.2d at 97 (holding the shared or collective knowledge doctrine allows the knowledge of one police officer to be presumed to be shared by all).

There is no dispute the officers were communicating with each other over the TOB secured frequency on August 28. Accordingly, detectives Morel and Westbay shared the collective knowledge of the other TOB members when they conducted a warrantless search of Walker’s vehicle. The fact Morel and

Westbay did not witness the actual exchange involving the confidential informant is not of consequence.

Additionally, we recognize the police draw upon their experience and specialized training to make inferences from the cumulative information available to them. *Maddox*, 670 N.W.2d at 171-72. “Seemingly innocent activities may combine with other factors to give an experienced police officer reasonable grounds to suspect wrongdoing.” *Id.* at 173-74. The fact detective Morel did not see drugs as a part of the hand to hand exchange is not of consequence. Detective Morel’s experience as a narcotics detective caused him to conclude the hand to hand exchange was another drug transaction.

Accordingly, we conclude probable cause to search Walker’s vehicle is provided by the collective knowledge of a confidential informant drug transaction utilizing Walker’s vehicle followed by a hand to hand exchange likely to involve drugs/money from the same vehicle.² The totality of the circumstances would lead a reasonably prudent person to believe the vehicle contained evidence of a crime or contraband.

AFFIRMED.

² Because we conclude probable cause to search the vehicle existed, we need not discuss the additional challenges raised by Roberts.