IN THE COURT OF APPEALS OF IOWA

No. 6-246 / 05-1181
Filed August 9, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

STEVEN LEE VANHECKE,
Defendant-Appellant.

Appeal from the Iowa District Court for Jackson County, Nancy S. Tabor (suppression hearing and ruling), J. Hobart Darbyshire (trial), and Bobbi M. Alpers (sentencing), Judges.

Steven Lee VanHecke appeals his conviction for possession of methamphetamine. **REVERSED AND REMANDED.**

Brian Farrell, Georgia, for appellant.

Thomas J. Miller, Attorney General, Richard Bennett, Assistant Attorney General, and John Kies, County Attorney, and David A. Coldwell, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Huitink and Miller, JJ.

MILLER, J.

Steven Lee VanHecke appeals his conviction for possession of methamphetamine. He contends the district court erred in denying his motion to suppress. We reverse and remand.

I. BACKGROUND FACTS AND PROCEEDINGS.

The record reveals the following facts. On September 10, 2004, Maquoketa police sergeant Robert Simonson, a member of the Bear Creek Narcotics Task Force (BCNTF), made application for a search warrant of VanHecke's residence based on purchases made by VanHecke and statements made by a confidential informant. The application stated that on September 10, 2004, Wal-Mart employees observed VanHecke with another man who was identified in the warrant application as a known user and distributor of methamphetamine. At Wal-Mart VanHecke purchased about 100 pills of pseudoephedrine and returned later the same evening to purchase additional items often used in the manufacture of methamphetamines, including paper towels, iodized salt, coffee filters, a funnel, and two large jars. Later that same evening a peace officer observed VanHecke's Wal-Mart companion enter VanHecke's residence. In addition, a confidential informant had given a statement as part of a proffered agreement with the United States government. The informant indicated he had received methamphetamine from VanHecke on numerous occasions and had observed him manufacturing methamphetamine between twenty and thirty times.

The application was approved by a magistrate and authorized search of VanHecke's residence and outbuildings, including the garage, barns, stable and

curtilage. VanHecke resided at the location specified in the warrant with his parents who owned the property. The warrant authorized the officers to look for drugs and other related items. The warrant did not provide for any search or seizure of VanHecke's person nor was there an arrest warrant for VanHecke.

On September 11, 2004, members of the BCNTF executed the search warrant at the specified residence. The residence is located on a large farm. Deputy Brian Eckhardt, who was assisting with the execution of the search warrant, knocked on the door and VanHecke's father answered the door. The officers advised him they were there to execute a search warrant. They secured the house and determined no one in the house presented a threat.

Eckhardt asked VanHecke's father where VanHecke was. He informed Eckhardt that VanHecke was out in the hay field. Deputy Eckhardt and another BCNTF member proceeded to the hay field in a marked patrol car. The officers located VanHecke and two other individuals in trucks in the open field approximately 400 yards south of the residence. There were two trucks in the field, on top of a small knoll. A truck facing west had a male and a female in it. VanHecke was in the driver's side of his truck, which was facing northwest. It appeared to Eckhardt that the occupants were having a conversation. Upon arriving the officers did not observe any criminal activity in the field, and to their knowledge no evidence of criminal activity had been discovered at the residence at that point.

Upon arriving where VanHecke was located Eckhardt identified himself, stated they had a search warrant, and stated they were there to conduct a search for methamphetamine. The officers separated the three individuals. VanHecke

initially started to walk away, but Eckhardt told him to stop and he did so. Deputy Eckhardt approached and detained VanHecke but did not place him under arrest. However, Eckhardt testified at the suppression hearing that VanHecke definitely was not free to leave at that point.

Deputy Eckhardt then conducted what he characterized as a "*Terry* patdown"[1] of VanHecke, to determine if he had any weapons on his person. Eckhardt did not detect any weapons, but could feel some other items in VanHecke's pockets. Eckhardt testified he "asked [VanHecke] if he had anything in his pockets or what was in his pockets or something to that effect," and that VanHecke then just started to take stuff out of his pockets. Among the items he removed was a small pill bottle. Eckhardt asked VanHecke what was in it and he responded "that's what you're looking for." At some point while still out in the field Eckhardt examined the contents of the pill bottle and believed what he saw was "at least some residue or something that appeared to be methamphetamine." It was later determined the pill bottle did in fact contain methamphetamine.

The officers executing the search warrant also found a methamphetamine lab in the back of a pickup that VanHecke had driven to his parents' home that morning. Although the record is not entirely clear on the point, it appears VanHecke was arrested only after the contents of the pill bottle were examined by the officers and the lab in the truck was found. It also appears from the record VanHecke was arrested and charged only for possession of the methamphetamine found on his person.

[1]Deputy Eckhardt was presumably referring to a patdown based on *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889, 906 (1968).

On September 24, 2004, the State charged VanHecke, by trial information, with possession of methamphetamine, in violation of Iowa Code section 124.401(5) (2003). He filed a motion to suppress, contending the drug evidence had been obtained as a result of an illegal seizure and search of his person in violation of his federal and state constitutional rights to be free from unreasonable search and seizure. A hearing was held on the motion to suppress. VanHecke testified on his own behalf at the hearing. He testified Eckhardt told him to empty his pockets, that "He said, empty your pockets."

The district court denied the motion, concluding the facts of the case together with the officers' knowledge at the time of the execution of the warrant justified "the investigatory stop and seizure of [VanHecke's] person." The court also concluded the *Terry* patdown was reasonable due to the officers' "need to secure the premises not only for officer safety but to prevent destruction of possible evidence." Finally, the court found Eckhardt's "request" for VanHecke to empty his pockets was reasonable "once an object was felt in the defendant's pocket."

VanHecke subsequently waived his right to trial by jury and following a bench trial was found guilty as charged. The court imposed a thirty-day suspended sentence, one year unsupervised probation, and payment of a fine, surcharges, costs and fees.

VanHecke appeals his conviction, contending the district court erred in denying his motion to suppress. More specifically, he first contends the warrantless seizure of his person was not justified under any exception to the warrant requirement. Second, he claims that even if the seizure of his person

was valid the subsequent patdown and order to empty his pockets were illegal searches. Finally, he contends that even if both the seizure of his person and the searches were valid then the subsequent warrantless search of the pill bottle was not justified by any exception to the warrant requirement.

II. SCOPE AND STANDARDS OF REVIEW.

VanHecke's challenge is based on his constitutional right to be free from unreasonable search and seizure, as guaranteed by the Fourth Amendment to the United States Constitution[2] and article I, section 8 of the Iowa Constitution. These federal and state provisions are usually deemed to be identical in scope, import, and purpose. *State v. Beckett*, 532 N.W.2d 751, 755 (Iowa 1995). We review this alleged constitutional violation de novo in light of the totality of the circumstances as shown by the entire record. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). "We give deference to the district court's fact findings due to its opportunity to assess the credibility of witnesses, but we are not bound by those findings." *Id*. The adverse ruling on VanHecke's motion to suppress preserved error for our review. *See State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998).

III. MERITS.

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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[2] The rights guaranteed in the Fourth Amendment apply to the states through the Fourteenth Amendment. *Mapp v. Ohio,* 367 U.S. 643, 655-81 S. Ct. 1684, 1694, 6 L. Ed. 2d 1081, 1090 (1961).

U.S. Const. amend. IV. Evidence obtained in violation of this provision is inadmissible in a prosecution, no matter how relevant or probative the evidence may be. *State v. Manna*, 534 N.W.2d 642, 643-44 (Iowa 1995). Warrantless searches and seizures are per se unreasonable unless they fall within one of the carefully drawn exceptions to the warrant requirement. *State v. Cadotte*, 542 N.W.2d 834, 836 (Iowa 1996).

Deputy Eckhardt's detention of VanHecke in the field was unquestionably a warrantless seizure within the meaning of the Fourth Amendment, as the warrant in this case did not specifically authorize the search or seizure of VanHecke. However, the United States Supreme Court has previously held "a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." *Michgan v. Summers,* 452 U.S. 692, 705, 101 S. Ct. 2587, 2595, 69 L. Ed. 2d 340, 351 (1981). The justifications for such detentions are to minimize the risk of harm to officers, prevent flight of suspects if incriminating evidence is found, and facilitate the orderly completion of the search. *Id.* at 702-03, 101 S. Ct. at 2594, 69 L. Ed. 2d at 349-50. Thus, the initial question on appeal is whether the seizure of VanHecke was constitutionally permitted based on the justifications set forth in *Summers*.

As set forth above, in *Summers* the Supreme Court approved of the detention of "occupants of the premises while a proper search is conducted." *Id.* at 705, 101 Sup. Ct. at 2595, 69 L. Ed. 2d at 351. The detention approved of by the Supreme Court in *Summers* occurred when officers encountered the defendant descending the front steps of the house as they were entering to

execute a search warrant and requested he re-enter the house with them and detained him while they searched. *Id.* at 693, 101 Sup. Ct. at 2589, 69 L. Ed. 2d at 343-44. Based on *Summers* this court has also approved of detaining an occupant who was leaving an apartment and attempting to alert the occupants of the officers' presence as the officers arrived to execute a search warrant. *State v. Phipps,* 528 N.W.2d 665, 667-68 (Iowa 1995).

However, as noted in *Phipps,* the United States Court of Appeals for the Eighth Circuit has declined to extend *Summers* to encompass the seizure of a person who had driven a block away from the home which was about to be searched, *United States v. Sherrill,* 27 F.3d 344, 346 (8th Cir. 1994), or to the detention of a person who was stopped three to five miles away from the home which was to be searched, *United States v. Hogan,* 25 F.3d 690, 693 (8th Cir. 1994). *Id.* at 668. In those cases the Eighth Circuit determined the defendant had left the premises and was far enough away so as to pose no threat to either officer safety or a successful execution of the search warrant. *Phipps,* 529 N.W.2d at 668. "[T]he officers had no interest in preventing flight or minimizing the search's risk because [the defendant] had left the area of the search and was unaware of the warrant." *Sherrill,* 27 F.3d at 346. The court in *Sherrill* also found that because the defendant had already left the premises the intrusiveness of the officers' stop and detention was much greater than the detention in *Summers*. *Id.*

Here, VanHecke was not present in or anywhere near the structures or curtilage listed in the search warrant when the officers arrived to execute the

warrant or began doing so. He was at least 400 yards away[3] in a hay field. Although the district court found VanHecke was "within [sight] of the officers while at the house," we find no evidence in the record to support such a finding. The record does not affirmatively indicate that while the officers were at the residence they could see VanHecke or that he could see them. To the contrary, although the record is not entirely clear on this point it seems to affirmatively demonstrate that VanHecke was *not* readily visible from the residence, because Deputy Eckhardt had to ask VanHecke's father where to find him. Deputy Eckhardt testified he then headed out to the hay field that VanHecke's father "had [pointed me toward," and on his "way out there, maybe 400 yards, an estimate, on the top of the knoll" is where he found a truck with VanHecke in it.

In addition, there is no evidence in the record to indicate VanHecke was aware a warrant was being executed at his residence until Deputy Eckhardt made contact with him in the field and informed him of such. As noted above, it does not appear VanHecke could see the residence or the officers present there from his location in the hay field. Nor is there any evidence he had any independent knowledge a warrant was going to be, or was being, executed at his residence.

VanHecke was not at or near the area to be searched when the officers arrived, and there is no evidence he was aware of the warrant. Thus VanHecke presented minimal, if any, risk of harm to the officers executing the warrant at the residence; there was little or no likelihood he would flee if incriminating evidence were found at the residence; and there was little or no likelihood he would

[3] On cross-examination Deputy Eckhardt acknowledged that "[a]bout a quarter mile" south of the house "would be a rough estimate" of where the officers located VanHecke.

interfere with the search. Furthermore, because VanHecke was not at or near the location to be searched when the officers arrived, the intrusiveness of Deputy Eckhardt detaining him was much greater than the detention approved in *Summers. See Sherrill,* 27 F.3d at 346.

This case does not involve requiring a citizen “to remain” at the location of a search while officers execute a warrant. We believe that to approve the seizure of VanHecke under the specific circumstances of the case before us would substantially extend the “limited authority to detain the occupants of the premises while a proper search is conducted” approved in *Summers*, 452 U.S. at 705, 101 S. Ct. at 2595, 69 L. Ed. 2d at 351. We decline to do so here. Allowing VanHecke’s seizure would substantially expand beyond prior precedent, including *Summers* and its progeny, both the distance and circumstances under which a citizen can be detained during the execution of a search warrant. Such expansion of prior precedent should be made, if at all, by our state’s highest court.

We conclude the seizure of VanHecke was not constitutionally permitted based on the justifications set forth in *Summers*. Any evidence obtained as a result of that unlawful seizure is "fruit of the poisonous tree." *See Wong Sun v. United States,* 371 U.S. 471, 488, 83 S. Ct. 407, 417, 9 L. Ed. 2d 441, 455 (1963). The methamphetamine obtained from VanHecke’s person was obtained through a violation of his rights to be free from unreasonable seizure. It therefore should have been suppressed.

In view of our resolution of this first issue raised by VanHecke, we need not and do not reach the two additional issues he has raised on appeal.

III. CONCLUSION.

Based on our de novo review, and for the reasons set forth above, we conclude the district court erred in denying VanHecke's motion to suppress. We reverse VanHecke's conviction and remand to the district court for further proceedings.

REVERSED AND REMANDED.