

IN THE COURT OF APPEALS OF IOWA

No. 6-914 / 05-2014
Filed January 31, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHARLES WILLIAM McMANEMY,
Defendant-Appellant.

Appeal from the Iowa District Court for Franklin County, John. S. Mackey (suppression hearing), and Stephen P. Carroll (bench trial), Judges.

Charles William McManemy appeals his conviction following a stipulated trial on the minutes for possession of methamphetamine with the intent to deliver.

AFFIRMED.

Patricia Reynolds, Acting State Appellate Defender, and Robert Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, Brent Symens, County Attorney, and Milan Dalal, Student Legal Intern, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

ZIMMER, J.

Charles William McManemy appeals his conviction following a stipulated trial on the minutes of testimony for possession of methamphetamine with the intent to deliver in violation of Iowa Code section 124.401(1)(b)(7) (2005). He contends the district court erred in denying his motion to suppress. We affirm.

I. Background Facts and Proceedings

On January 6, 2005, Iowa Department of Natural Resources Conservation Officer Greg Woodley was in Franklin County driving west on road C13 responding to a report of a snowmobile accident. While en route, he noticed a man step out of a Suburban parked on the side of the road. The man was holding an uncased firearm as he exited the vehicle. Because it is against the law to have an uncased firearm in a vehicle, Officer Woodley pulled over to investigate.

After Officer Woodley stopped his vehicle, he realized the man he had observed was Charles McManemy. The officer was familiar with McManemy from having prior dealings with him and believed he was on probation. Officer Woodley also noticed a second person, Jesse Callan, was sitting in the driver's seat of the Suburban.

The officer asked McManemy for his gun. After unloading five rounds from the weapon, Officer Woodley went over to the Suburban to look inside at Callan. From outside the vehicle, the officer observed a number of cased weapons lying on the back seat. He also observed one unzipped gun case with an exposed weapon on the vehicle's console between the driver's seat and the passenger's seat. After determining that the gun in the unzipped case belonged

to Callan, Officer Woodley issued citations to McManemy and Callan for having uncased weapons in the vehicle in violation of Iowa Code section 483A.36.

Officer Woodley confiscated nine long guns from the Suburban, and he told McManemy he would have to retrieve the weapons from the Butler County Sheriff. While conversing with Woodley, McManemy mentioned "something about a pistol." At that point, Officer Woodley asked McManemy if he had a handgun in the vehicle. McManemy denied that he did. Because he was concerned for his safety, the officer went over to the vehicle and looked under the passenger seat for a weapon. While doing so, he saw a green canvas bag that was large enough to contain a pistol. Officer Woodley also noticed a tank filled with butane fuel, which McManemy said was "shit for my kids."

The officer gave the canvas bag to McManemy and asked him to open it so he could see what was inside. At the time, the officer was standing just outside the passenger side of the vehicle, and McManemy was seated on the passenger side of the vehicle with the door open.¹ When McManemy turned his back to the officer and started leaning over the bag, Woodley became concerned and said, "Chuck, what are you doing?" Woodley feared McManemy might pull out a gun, and he started to order McManemy out of the vehicle. As he did so, McManemy dove headfirst into a snow bank in the ditch next to the vehicle and began stuffing items into the snow.

After the officer observed McManemy engage in this behavior, he saw a "baggie with a substance in it laying to the side." Woodley picked the bag up,

¹ The record does not make clear whether McManemy was seated in the front seat or the back seat.

realized the substance inside might be narcotics, and radioed for backup. Meanwhile, McManemy claimed he was “just trying to take a leak” in the ditch.

After McManemy climbed out of the ditch, Officer Woodley told him he was under arrest and handcuffed him. Officer Woodley retrieved a black glasses container from the snow bank. When he opened the container, he discovered drug paraphernalia. A narcotics dog later arrived to search the ditch, and officers recovered another black glasses container, a scale, and a box. The officers recovered more than nineteen grams of methamphetamine and discovered a pistol under the driver’s seat of the Suburban.

The State filed a trial information charging McManemy with possession of methamphetamine with intent to deliver, carrying weapons, and failure to affix a drug tax stamp. McManemy filed a motion to suppress, alleging a violation of his constitutional right to be free from unwarranted searches. The district court denied the defendant’s motion.

McManemy waived jury trial and stipulated to a trial on the minutes of testimony on the charge of possession of methamphetamine with the intent to deliver amended from a class “B” felony to a class “C” felony. The State dismissed the remaining two counts, and the district court found McManemy guilty. The court sentenced the defendant to a term of imprisonment not to exceed ten years and a fine of \$1000. The court then suspended the term of imprisonment, suspended the fine, and placed McManemy on three years of probation. McManemy now appeals.

II. Scope and Standards of Review

Because McManemy asserts his constitutional rights under the Fourth Amendment were violated, our review is *de novo*. *State v. Heminover*, 619 N.W.2d 353, 356 (Iowa 2000) *reversed in part on other grounds by State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). We independently evaluate McManemy's claim under the totality of the circumstances. *State v. Kinkead*, 570 N.W.2d 97, 99 (Iowa 1997). We give deference to the district court's assessments of credibility and findings of fact, but we are not bound by those findings. *Turner*, 630 N.W.2d at 606. Any evidence obtained in violation of the defendant's Fourth Amendment rights is inadmissible and must be suppressed regardless of its probative value or relevance. *State v. Schrier*, 283 N.W.2d 338, 342 (Iowa 1979).

III. Discussion

McManemy contends the district court erred in failing to grant his motion to suppress because probable cause and exigent circumstances failed to justify the warrantless search of his vehicle. Upon our review, we disagree.

The vehicle exception to the Fourth Amendment requirement of a search warrant is applicable if probable cause and exigent circumstances exist. *State v. Edgington*, 487 N.W.2d 675, 678 (Iowa 1992). Probable cause for a vehicle search exists when the facts and circumstances would lead a reasonably prudent person to believe the vehicle contains contraband. *Id.* The exigency requirement is satisfied "when the car is movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained." *State v. Holderness*, 301 N.W.2d 733, 737 (Iowa 1981) (citation omitted).

Officer Woodley's initial observations while riding in his patrol car gave him reason to believe McManemy was violating weapons laws and posed a risk to public safety. After stopping his patrol vehicle to investigate, Woodley determined McManemy was carrying a loaded weapon. He took the weapon from the defendant and unloaded it. Woodley then observed a number of cased guns in the vehicle. He also observed an uncased weapon in the vehicle and cited both McManemy and Callan for violating weapons laws. After McManemy mentioned something about a pistol, the officer became concerned there might still be a handgun in the vehicle McManemy had exited. Officer Woodley was reasonably concerned for his safety. We conclude the facts just mentioned gave Officer Woodley probable cause to search the Suburban for further weapons.

McManemy claims the court erred in relying in part on his bizarre behavior of diving into the ditch with the green bag to justify overruling his motion to suppress. We find this contention is irrelevant to our consideration of the legality of the search. The probable cause requirement was satisfied by Officer Woodley's observation of an uncased weapon inside the vehicle and statements made by the defendant indicating another weapon might be found in the vehicle. These facts gave Officer Woodley probable cause to search the vehicle before the defendant dove into the snow bank in an attempt to hide his drugs.

We further find the exigency requirement is satisfied because the vehicle was mobile, and the contents might never be found again if the officer had to first obtain a warrant. *Holderness*, 301 N.W.2d at 737.

IV. Conclusion

We find the district court did not err in overruling McManemy's motion to suppress. We affirm his conviction and sentence for possession of methamphetamine with the intent to deliver.

AFFIRMED.