

IN THE COURT OF APPEALS OF IOWA

No. 7-814 / 06-0256
Filed November 29, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRIS L. CHRISTOPHER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille (suppression hearing), and Robert J. Blink (trial), Judges.

Defendant appeals his convictions for two counts of possession of a controlled substance and driving while barred. **AFFIRMED.**

Mark C. Smith, Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, until withdrawal, and then Benjamin Bergmann, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, John P. Sarcone, County Attorney, and Celene Gogerty, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

ROBINSON, S.J.**I. Background Facts & Proceedings**

On August 9, 2005, off-duty police officer James Butler noticed a vehicle strike the curb as it was driving north on 28th Street in Des Moines. Officer Butler pulled next to the vehicle, and saw the driver was Chris Christopher, who he recognized. At a stop sign, officer Butler called out through his window to ask Christopher if he had a driver's license. Christopher replied that he did, and drove away. Officer Butler continued home.

The next day, officer Butler checked Christopher's driving status, and found he was barred from driving. Since officer Butler routinely saw Christopher during his regular duties, he decided to arrest Christopher the next time he saw him, rather than obtain a warrant for his arrest.

Officer Butler saw Christopher on September 14, 2005, and arrested him for driving while barred. Officer Butler patted Christopher down to check for weapons, and discovered marijuana and crack cocaine. After officer Butler arrested Christopher he discovered Christopher had outstanding warrants for his arrest on other charges. Christopher was charged with possession of a controlled substance, third offense, (crack cocaine), in violation of Iowa Code section 124.401(5) (2005); possession of a controlled substance, third offense, (marijuana), in violation of section 124.401(5); and driving while barred as a habitual offender, in violation of section 321.561.

Christopher filed a motion to suppress the evidence discovered during the search incident to his arrest. He claimed the arrest was not valid because it was

made without a warrant approximately five weeks after the alleged offense, which violated his Fourth Amendment rights. He also made a due process claim under the Fifth Amendment based on lack of notice. The district court denied defendant's motion. The court considered section 804.7(1) and found "[t]he officer was well within his authority to make an arrest without obtaining a warrant, despite the fact that the incident took place five weeks prior to the arrest." The court also found, "[d]ue process does not require officers to provide the Defendant with notice prior to his arrest."

The case proceeded to a trial, and Christopher was found guilty on all charges. He was sentenced to a term of imprisonment not to exceed five years on each of the two counts of possession of a controlled substance, and two years on the charge of driving while barred, all to be served concurrently. Christopher appeals the district court's ruling on his motion to suppress.

II. Standard of Review

On constitutional issues we review *de novo*, based on the totality of the circumstances. *State v. McGrane*, 733 N.W.2d 671, 675 (Iowa 2007). We give deference to the district court's factual findings based on its opportunity to assess the credibility of witnesses, but we are not bound by the court's findings. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001).

III. Merits

Christopher contends his arrest violated due process principles, and therefore there was not a valid search incident to arrest. Section 804.7 provides:

A peace officer may make an arrest in obedience to a warrant delivered to the peace officer; and without a warrant:

1. For a public offense committed or attempted in the peace officer's presence.

Thus, a police officer may make an arrest without a warrant if a public offense is committed in the officer's presence. See *Rife v. D.T. Corner, Inc.*, 641 N.W.2d 761, 770 (Iowa 2002). A "public offense" is defined as an offense "which is prohibited by statute and is punishable by fine or imprisonment." Iowa Code § 701.2. Public offenses include violations of statutes and city ordinances that include a penalty of fine or imprisonment. *State v. Ceron*, 573 N.W.2d 587, 592 (Iowa 1997).

Officer Butler observed Christopher driving, and later determined Christopher was barred from driving at that time. Under section 321.561 this is an aggravated misdemeanor. For an aggravated misdemeanor, a person may be imprisoned for a term not to exceed two years, and assessed a fine of between \$500 to \$5000. Iowa Code § 903.1(2). The evidence shows officer Butler observed Christopher committing a public offense, and under section 804.7, officer Butler could arrest Christopher without a warrant.

There is no requirement in section 804.7 that the officer make the arrest immediately upon observing a person committing a public offense. Furthermore, the United States Supreme Court has stated:

Law enforcement officers may find it wise to seek arrest warrants where practicable to do so, and their judgments about probable cause may be more readily accepted where backed by a warrant issued by a magistrate. But we decline to transform this judicial preference into a constitutional rule when the judgment of the Nation and Congress has for so long been to authorize warrantless public arrests on probable cause rather than to encumber criminal prosecutions with endless litigation with respect to the existence of

exigent circumstances, whether it was practicable to get a warrant, whether the suspect was about to flee, and the like.

United States v. Watson, 423 U.S. 411, 423-24, 96 S. Ct. 820, 828, 46 L. Ed. 2d 598, 608 (1976) (citations omitted). There is no constitutional requirement that a warrantless arrest be based on immediate or exigent circumstances. *Id.*

Although there is no right to be arrested and charged at the precise moment probable cause comes into existence, police officers could conceivably deny an accused due process if the delay intentionally gained a tactical advantage for the government. See *State v. Brown*, 656 N.W.2d 355, 363 (Iowa 2003). In order for the defendant to prevail on a due process violation claim, however, he would have to prove his defense suffered actual prejudice and the delay was unreasonable. *Id.* Defendant has made no showing whatsoever that he was prejudiced by the delay.

We conclude Christopher's constitutional rights were not violated based on the warrantless arrest made in this case. A search incident to arrest is a recognized exception to the requirement for a search warrant found in the Fourth Amendment. See *State v. Harris*, 490 N.W.2d 561, 562 (Iowa 1992). Such a search may be based on a warrantless arrest. *Id.* at 563. We conclude the district court properly denied Christopher's motion to suppress the evidence seized during the search following his arrest.

We affirm the decision of the district court.

AFFIRMED.