

**IN THE COURT OF APPEALS OF IOWA**

No. 9-915 / 09-0246  
Filed December 17, 2009

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**MICHAEL CONTRELL ROGERS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire  
(motion to suppress) and Gary D. McKenrick (trial), Judges.

Michael Contrell Rogers appeals from his conviction and sentence for  
failure to affix a drug tax stamp. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson,  
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant  
Attorney General, Michael J. Walton, County Attorney, and Julie Walton,  
Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.\*

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

**MAHAN, S.J.**

Michael Contrell Rogers appeals from the judgment and sentence entered following his conviction for failure to affix a drug tax stamp, in violation of Iowa Code section 453B.12 (2007). He contends the district court erred in denying his motion to suppress the evidence discovered following a search of his vehicle. Because this appeal implicated Rogers's constitutional rights to be free of unreasonable searches and seizures, our review is de novo. See *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001).

On August 4, 2008, police officers obtained a warrant to search a Davenport residence after receiving information from a confidential informant about a male selling marijuana from the residence. The search of the residence yielded the discovery of 65.7 grams of marijuana. Immediately before executing the warrant, a male matching the description given by the confidential informant was seen leaving the residence.

Two officers followed the male seen leaving the residence, who was later identified as Rogers. They approached him a short time later at a gas station to request identification. After witnessing Rogers stuffing something between the front seats of the vehicle, Rogers was ordered out of the vehicle and a pat down was conducted for officer safety. One of the officers observed a plastic baggie sticking up from between the seats on the floor of the vehicle. The vehicle was searched and two bags of marijuana were found, weighting 5.5 and 2.9 grams respectively.

Rogers filed a motion to suppress the evidence obtained from the search of the residence, arguing the warrant was stale. He also sought suppression of the evidence discovered during the search of the vehicle, arguing the search was warrantless as it was conducted more than five blocks from the location listed in the warrant, and that it was not based on probable cause. The district court rejected both claims. In regard to the second claim, it concluded Rogers's furtive activity gave the officers probable cause to ask him to get out of the vehicle and that the contraband was in plain view. It is from this ruling Rogers appeals.

We need not consider the propriety of the district court's ruling as we conclude any error was harmless. *See State v. Peterson*, 663 N.W.2d 417, 430 (Iowa 2002) (stating most constitutional errors do not require reversal if the error is harmless). Error is harmless where the State proves beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. *Id.* at 431. Here, we have the benefit of the district court's written ruling. In finding Rogers guilty, the court focuses solely on the evidence discovered in the residence. It states:

The Court concludes that on August 4, 2008, the Defendant was a resident of [the address in question]. Indicia of his occupancy was found at the residence, and the Defendant claimed that address as his residence in his application for court-appointed counsel.

Pursuant to search warrant, more than forty-two and one-half grams of marijuana was located in that residence. Located with the marijuana were documents indicating the Defendant's residency at that location. The location of the indicia of the Defendant's occupancy of the residence with the marijuana leads the Court to conclude beyond a reasonable doubt that the Defendant knew of the presence of the marijuana, knew that the substance was marijuana, and had the authority and opportunity to use or dispose of that marijuana. Finally, the Court determines that

no drug tax stamps had been purchased or were affixed to the packaging in which the marijuana was located.

Because the evidence found in the vehicle did not contribute to the verdict, we find any error was harmless and accordingly, we affirm.

**AFFIRMED.**