IN THE COURT OF APPEALS OF IOWA

No. 7-471 / 06-0988
Filed August 8, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CARLOS DESHAWN NORMAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bruce B. Zager (motion to suppress) and James C. Bauch (conviction and sentence), Judges.

The defendant appeals following his conviction and sentencing by the district court. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad P. Walz, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

VOGEL, J.

Carlos Norman appeals the denial of his motion to suppress preceding his convictions for possession of cocaine base with intent to deliver and failure to affix a drug tax stamp, in violation of Iowa Code sections 124.401(1)(c) (2005) and 453B.12 (2005) respectively. He also asserts insufficient evidence to sustain the latter conviction. We affirm.

Norman first argues that the district court improperly denied his motion to suppress evidence against him gained as the result of a warrantless search by police officers in violation of the Fourth Amendment of the United States Constitution and article 1, section 8 of the Iowa Constitution. We review constitutional claims de novo. *State v. McGrane*, __ N.W.2d __, __ (Iowa 2007). This review requires us to "make an independent evaluation of the totality of the circumstances as shown by the entire record." *State v. Simmons*, 714 N.W.2d 264, 271 (Iowa 2006). We give deference to the factual findings of the district court due to its opportunity to evaluate the credibility of the witnesses, but we are not bound by such findings. *Id.*

A warrantless search is per se unreasonable unless it falls within a recognized exception. *State v. Carter*, 696 N.W.2d 31, 37 (Iowa 2005). Some of those exceptions exist when searches are based on consent, plain view, or probable cause coupled with exigent circumstances. *State v. Simmons*, 714 N.W.2d 264, 272 (Iowa 2006). For the plain view exception to apply, police must be rightfully in the place that allows them to make the observation. *McGrane*, __ N.W.2d at __. In addition, the State has the burden of proving (1) the item seized was in plain view and (2) its "incriminating character" was "immediately

apparent." *Horton v. California,* 496 U.S. 128, 136, 110 S. Ct. 2301, 2308, 110 L. Ed. 2d 112, 123 (1990) (quoting *Coolidge v. New Hampshire,* 403 U.S. 443, 466, 91 S. Ct. 2022, 2038, 29 L. Ed. 2d 564, 583 (1971)).

In the evening of January 10, 2006, a plainclothes police officer was attempting to serve a subpoena, unrelated to this case, which contained an erroneous address. Norman pulled into a nearby driveway and the officer approached. Norman rolled down the window slightly, and the officer identified himself, asking whether the individual he was looking for lived at that address. While speaking with Norman, the officer noticed a pile of money in different denominations on Norman's lap. He also noticed the corner of a plastic baggie protruding from under the bills. The baggie appeared to have a white substance in it. According to the officer, the dome light in the car was on, allowing him to observe the money and baggie. Through his training and experience, he suspected illegal narcotics were present. The officer called for backup and requested Norman's permission to search the vehicle. Norman consented to the search and stepped out of the vehicle, letting the money and baggie in his lap fall to the ground. The district court determined that the officer had probable cause for the search because the baggie was in plain view. It further found that Norman consented to the search. The motion to suppress was overruled.

Norman premises his argument on challenging the credibility of the officer. He contends that the officer's statement that he could see the dime-sized corner of a baggie, illuminated only by the dome light in the car, is not credible. Contrary to the officer's testimony, Norman testified that the dome light was not on in the car. By the district court's findings of fact and ruling on the motion, it is

clear that the court found the officer's testimony more credible. From the totality of the circumstances, we agree. First of all, the officer was lawfully on the driveway, and Norman voluntarily rolled down his window part way and spoke to the officer. Next, the officer saw the pile of money in Norman's lap, and the corner of a baggie that appeared to contain a white substance, suspected to be narcotics, thereby giving rise to probable cause to search Norman and the vehicle. *See also Carter*, 696 N.W.2d at 38 (noting that police observation of a plastic baggie, commonly used as a container for narcotics, in an unusual setting can tip the scales in favor of probable cause to search a vehicle.) The relatively small size of the protruding portion of the baggie did not undermine the incriminating character of the observed item. Reviewing the totality of the circumstances, we affirm the denial of the motion to suppress.

Norman also argues that sufficient evidence does not support his conviction for failure to affix a drug tax stamp, in violation of Iowa Code section 453B.12. We review sufficiency of the evidence challenges for correction of errors at law. *State v. Chang,* 587 N.W.2d 459, 461-62 (Iowa 1998). The State must produce substantial evidence on each of the essential elements of the crime charged. *State v. Limbrecht,* 600 N.W.2d 316, 317 (Iowa 1999). The elements of the drug tax stamp offense are: (1) defendant is a dealer, (2) who unlawfully possesses, distributes or offers to sell, (3) a taxable substance, (4) without affixing a stamp, label, or other official indicia evidencing that the required tax has been paid. *See State v. White,* 545 N.W.2d 552, 555 (Iowa 1996). A dealer is defined in part as someone who possesses ten (10) or more dosage units of a taxable substance that is not sold by weight. Iowa Code §

453B.1(3)(d). A "dosage unit" means the unit of measurement in which a substance is dispensed to the ultimate user, including but is not limited to, a pill, capsule or microdot. Iowa Code § 453B.1(6).

Norman contends that the State failed to prove he was a dealer because the minutes of testimony on which the charge was tried do not support ten or more dosage units. The evidence as shown by the minutes of testimony clearly show that Norman had in his possession ten or more “rocks” of crack cocaine, and the State was ready to produce testimony from the local drug task force that the “amount of cocaine base seized, its packaging, the number of rocks, the denominations and amount of cash on [Norman], and the cell phone would be consistent with distribution of cocaine base, not personal use.” In addition, the search of Norman and the vehicle did not produce any paraphernalia commonly associated with personal use of this substance. We conclude that sufficient evidence supports that Norman was a “dealer” of crack cocaine for purposes of the drug tax stamp charge and affirm his conviction.

AFFIRMED.