

IN THE COURT OF APPEALS OF IOWA

No. 1-379 / 10-1356
Filed July 27, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KEVIN EUGENE BAXTER,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bruce B. Zager, Judge.

The defendant appeals his conviction and sentence for possession of methamphetamine (third offense) as a habitual offender, claiming the district court erred in denying his motion to suppress. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Huitink, S.J.* Tabor, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VAITHESWARAN, J.

Kevin Baxter was a passenger in a vehicle that was stopped for a minor traffic violation. Following the stop, a Waterloo police officer searched Baxter and found methamphetamine in one of his pockets. Baxter was arrested and charged with possession of methamphetamine (third offense) as a habitual offender.

Baxter moved to suppress the evidence, citing the Fourth Amendment to the United States Constitution and article 1 section 8 of the Iowa Constitution. See *State v. Vance*, 790 N.W.2d 775, 780 (Iowa 2010) (noting warrantless searches and seizures are unreasonable under the federal and state constitutions, unless they come within an exception to the warrant requirement). At a hearing on the motion, the arresting officer and another officer at the scene testified that Baxter consented to the search that uncovered the methamphetamine. See *State v. Reinier*, 628 N.W.2d 460, 464–65 (Iowa 2001) (“One well-established exception to the warrant requirement is a search conducted by consent.”). Baxter responded that he consented to a pat-down search of his body, but his consent did not extend to a search of his pocket. See *State v. Reinders*, 690 N.W.2d 78, 83 (Iowa 2004) (stating consent to a search may be limited or qualified and law enforcement officials conducting the search are constrained by the limitations or qualifications).

The district court denied the suppression motion. Relying on the testimony of the officers, as well as a digital video recording that showed Baxter raising his hands above his head to facilitate the search, the court found Baxter consented to the search. The court further found “no credible evidence that the

Defendant had in any way limited, withdrawn, or revoked his consent to this search.”

Baxter subsequently agreed to a bench trial on the minutes of testimony. The court found Baxter guilty as charged and imposed sentence. This appeal followed.

The sole question on appeal is whether Baxter consented to the search of his pocket. The arresting officer unequivocally answered this question, stating in his police report, “I asked Baxter if I could search his person, he said yes.” At the suppression hearing, the prosecutor asked the officer if Baxter placed any limitations on this consent. The officer replied, “No. He said yes.” While Baxter disputed this statement, the district court did not find his testimony credible. We defer to that credibility finding. *Id.* at 84.

In sum, we agree with the district court that the scope of Baxter’s consent extended to the search of his pocket, which uncovered the methamphetamine. *See id.* As consent is a valid exception to the warrant requirement under both the federal and state constitutions, the district court appropriately denied the motion to suppress.

AFFIRMED.