IN THE COURT OF APPEALS OF IOWA

No. 2-050 / 10-1492
Filed March 28, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WILLIAM ANTWAYN PARGO,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge.

William Pargo appeals his convictions for possession with intent to deliver as a second or subsequent offender and habitual offender and possession with intent to deliver while in immediate possession of a firearm, as well as his convictions for a drug tax stamp violation and possession of a firearm as a felon. **AFFIRMED.**

John Audlehelm of Audlehelm Law Office, Des Moines, for appellant.

William A. Pargo, Fort Dodge, pro se.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, John Sarcone, County Attorney, and Steven Bayens, Assistant County Attorney, for appellee.

Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

William Pargo challenges the constitutionality of the warranted search of his house on the east side of Des Moines, as well as the consent search of a motel room where he was staying. These searches yielded evidence used to convict him in two separate drug prosecutions.

We find the district court properly denied Pargo's motion to suppress the evidence from both searches. Contrary to Pargo's claim on appeal, the officers did not exceed the scope of his consent when looking for crack cocaine and a firearm above a ceiling tile in the motel bathroom. As for the search warrant, we reject Pargo's pro se claim that the warrant lacked probable cause because the confidential informant had not previously supplied information to assist police. The warrant application contained credible independent evidence corroborating the informant's statements. We also find no merit in Pargo's pro se claim that the State failed to offer sufficient evidence to corroborate his confessions of drug dealing.

I. Background Facts and Proceedings

A. Polk County Case No. FECR234743

Des Moines police officers executed a search warrant for a residence located at 1549 Des Moines Street on January 22, 2010. When the search team reached the house, Pargo opened the side door, leaning out to see who was approaching. Execution of the warrant was complicated by an electric company's work at the address, which had shut down the power lines to the house.

The officers entered the house, dispersing to all rooms to locate any occupants. They found two individuals, Larry Golston and William Deeds, coming up from the basement. Golston had a crack pipe, a Brillo pad—often used as a filter on the pipe—and a small plastic bag in his pocket. Officers outside the house noticed someone—later identified as a relative of Pargo—attempting to evade police by climbing out a second story window. That individual was secured by an officer on the second floor of the house.

Officers also found Chantez Thornton on the second floor. Thornton had several small rocks of crack cocaine and paraphernalia in his jeans pocket and a large rock of crack in his sock.[1] On the first floor, officers secured Pargo's girlfriend, Leareaner Austin, in the bedroom. They found cocaine and a crack pipe in the same bed as they found Austin.

Pargo spoke with Detective Chad Nicolino at the scene and agreed to give police detailed information in exchange for his arrest. Pargo said he had been residing at the address with Austin since mid-December and Thornton had been living with them for two weeks. Pargo also permitted others to stay at his house if they had nowhere else to go. Pargo paid the bills for the house.

Pargo also admitted using illegal drugs, listing his daily intake of each substance. He estimated he smoked a quarter ounce of marijuana, an eight ball

[1] Thornton was not wearing socks when the officer seized him. When he was taken outside, he asked an officer to retrieve his shoes and socks from a dresser drawer in his room. When the officer returned with Thornton's belongings, Thornton unbundled the socks, at which point the crack cocaine fell to the ground.

of crack, and ingested two ecstasy tablets per day.[2] He confessed to possessing drugs at the residence earlier that morning, but had smoked all of the marijuana and crack cocaine before the officers' arrival. Pargo said he had no more drugs in the house, but was expecting an additional delivery.

Pargo initially denied selling drugs, but subsequently called himself a middle-man in drug transactions, using his house to facilitate deals between sellers and buyers. The dealers compensated him for his services with a share of crack cocaine. Pargo also acknowledged allowing others to use drugs at his residence. Upon further questioning, he admitted selling the drugs used at his residence, as well as facilitating other sales to "support his habit."

Detective Nicolino turned the conversation to Pargo's knowledge of the drug trafficking community. Pargo listed the names of twelve dealers, many of whom the detective confirmed were active in the drug trade. The detective released Pargo, instructing him they would need to remain in contact. Because Pargo failed to return the detective's calls or meet with him at arranged times after the search, Detective Nicolino requested a warrant for his arrest.

B. Polk County Case No. FECR235500

On February 28, 2010, Des Moines Police Officers Gilmore, Crowdis, and Delaney were dispatched to a motel located at 5626 Douglas Avenue in Des Moines in response to a Polk County Crime Stoppers tip that individuals in room 209 possessed crack cocaine and a firearm. The officers spoke with the manager of the motel, who informed them "Duke" secured the room using his

[2] Detective Nicolino was suspicious as to the accuracy of Pargo's recollection of drug use, finding it to be "a pretty high number"—stating he has never come across anyone who used as much as Pargo claimed in a day.

driver's license. The officers checked the name for warrants, asked if there had been any suspicious activity coming from the room, and proceeded toward the room to perform a "knock and talk."

Officer Gilmore knocked on the outer door of room 209 and identified himself as a police officer. The three officers waited two to four minutes, knocking several times, and could hear movement inside the room. Officer Gilmore described the sounds as "somebody [who] had gone to the bathroom, just shuffling around, people either getting dressed or moving things around."[3] When Pargo opened the door, Officer Gilmore advised him they were responding to a report of narcotics and a firearm in the room and asked for Pargo's consent to search the motel room. Pargo responded: "This isn't my room. I've been here for two or three days. This is all of my stuff. You are more than welcome to search." Pargo then stepped back and held the door open for the officers.

The three officers entered the room, and Officer Gilmore again asked if they "could take a look around." When Pargo said "yes," Officer Crowdis entered the bathroom, while Officer Gilmore asked Pargo for his wallet or I.D., which Pargo denied having with him. At the same time, Officer Delaney tried to identify the woman also present in room 209. Both occupants gave false identities, as determined when officers entered the names in their database. While they were speaking with the occupants, Officer Crowdis advised the other two officers he located a wallet, handgun, and a large quantity of crack cocaine. Officer Crowdis found the contraband and Pargo's wallet within two feet of each other above the tile panel of the bathroom's drop-ceiling.

[3] Officer Crowdis heard no movement.

Officer Delaney handcuffed Pargo and read him his *Miranda* rights; Pargo agreed to talk, admitting the wallet was his, but denying ownership of the gun and drugs. He asked to speak with Detective Nicolino, who had not heard from Pargo since the raid on Pargo's house. At the station, Pargo again was very willing to provide details of other drug activity to Detective Nicolino in exchange for his release. But officers ultimately arrested him on his outstanding warrants and in connection with the contraband found in the motel room. Pargo told Nicolino the department's previous search of his house failed to recover ten "eight balls"[4] of crack cocaine, a rifle, and a handgun, all of which were hidden in the rafters of his basement.

C. Proceedings

On March 24, 2010, in connection with the warrant executed on his house, the State charged Pargo with one count of possession of crack cocaine with intent to deliver and one count of conspiracy to deliver a controlled substance, charging him as a second or subsequent offender and as a habitual offender on both counts. *See* Iowa Code §§ 124.401(1)(c)(3), 124.411, 902.8 (2009). On March 31, 2010, the State filed a second trial information charging Pargo with crimes based on the items found in the motel room. The State charged him with possession of cocaine base with intent to deliver while in the immediate possession or control of a firearm, as a subsequent offender; failure to possess a drug tax stamp; and felon in possession of a firearm, designating him as a habitual offender on all three counts. *See* Iowa Code §§ 124.401(1)(c)(3), 124.401(1)(e), 453B.3, 453B.12, 724.26, 902.8.

[4] An "eight ball" is a measurement of crack weighing approximately 3.5 grams.

In each case, Pargo filed a motion to suppress evidence obtained through the searches. The district court held a combined hearing on June 10–11, 2010, and denied both motions to suppress. In case FECR234742—tried from June 28–30—the jury convicted Pargo of possession of crack cocaine with intent to deliver. In case FECR235500—tried from July 12–13—the jury found him guilty of possession of a controlled substance with intent to deliver; failure to possess a tax stamp; and possession, receipt, transportation, or dominion of control over a firearm as a convicted felon. The jury found by special interrogatory that Pargo was in the immediate possession or control of a firearm, for purposes of the first count in the case.

On August 31, 2010, Pargo stipulated to being a second or subsequent offender under section 124.411 and a habitual offender under section 902.8. Based on the convictions and enhancements, the court sentenced Pargo to thirty years imprisonment and a $1000 fine for his conviction in FECR234743. With respect to his three-count conviction in the second case, the court sentenced Pargo to thirty years imprisonment and a $1000 fine for possession with intent to deliver, and an indeterminate fifteen-year term of incarceration and $750 fine for his tax stamp and firearm violations, with both fines suspended. The court ordered the sentences from the three counts to run concurrently, but consecutive to his thirty-year sentence in FECR234743. Pargo appeals both convictions.

II. Scope and Standards of Review

Pargo challenges the searches under the Fourth Amendment to the federal constitution. We review claimed constitutional violations "de novo in light

of the totality of the circumstances." *State v. McConnelee*, 690 N.W.2d 27, 30 (Iowa 2004). This review requires assessing the entire record, including stipulations and evidence presented during the suppression hearing. *State v. Lovig*, 675 N.W.2d 557, 562 (Iowa 2004). Because of its opportunity to assess witness credibility, we defer to the district court's findings of fact, though we are not bound by them. *McConnelee*, 690 N.W.2d at 30.

When reviewing whether probable cause exists to issue a warrant, we are precluded from making an independent finding of probable cause; rather we decide whether the court had a substantial basis for determining the existence of probable cause. *State v. Davis*, 679 N.W.2d 651, 655–56 (Iowa 2004). In ascertaining whether a substantial basis exists to find probable cause, we may consider only the information, reduced to writing, presented to the court at the time of the applicant's request for the warrant. *Id.* at 656. On review, "we draw all reasonable inferences to support a court's finding of probable cause." *Id.*

We review sufficiency-of-the-evidence challenges for correction of errors of law. *State v. Hagedorn*, 679 N.W.2d 666, 668 (Iowa 2004). We will uphold a finding of guilt if it is supported by substantial evidence. *Id.*

III. Analysis

A. Officers Had Probable Cause to Conduct a Warranted Search of Pargo's Residence

In his pro se supplemental brief, Pargo challenges whether a substantial basis existed for the district court to find probable cause to issue the search warrant for Pargo's residence. He argues the confidential informant was unreliable. He also alleges the affidavit contained false statements made

knowingly by the affiant or with reckless disregard for the truth,and he was wrongfully deprived of a *Franks* hearing to prove this. He concludes without the unreliable informant and false information, no probable cause existed to issue the warrant.

The State discounts Pargo's allegation of false statements, noting he has failed to specify which statements are false. After listing several facts relayed by the informant to lend to the informant's credibility, the State argues the affidavit contains ample evidence—apart from that supplied by the informant—that probable cause nevertheless existed to issue the warrant.

The Fourth Amendment assures "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. Const. amend. IV. The Fourteenth Amendment of the United States Constitution extends this right to protect individuals from state action as well. *State v. Freeman*, 705 N.W.2d 293, 297 (Iowa 2005). The Fourth Amendment imposes a standard of reasonableness relating to government officials' discretion "to safeguard the privacy and security of individuals against arbitrary invasion." *Lovig*, 675 N.W.2d at 562 (quotations omitted). Accordingly, if a search does not fall into one of the enumerated exceptions, a search and seizure is not reasonable without a valid warrant. *Freeman*, 705 N.W.2d at 297.

This constitutional safeguard permits a judge to issue a search warrant only upon a finding of probable cause. *State v. Skola*, 634 N.W.2d 687, 689 (Iowa Ct. App. 2001). A judge is charged with making a practical, common-

sense determination whether, given the totality of the circumstances within the affidavit before the court, a fair probability exists that law enforcement will find evidence of a crime in the identified place. *Davis*, 679 N.W.2d at (observing the question of probable cause depends on "a nexus between criminal activity, the things to be seized and the place to be searched").

Detective Nicolino applied for the search warrant in question. In Attachment "A" to the application, he describes his contact with a confidential informant regarding an individual known as "Sosa," who was selling crack cocaine from 1549 Des Moines Street. "Sosa" drove a white Cadillac, usually parked in front of the residence. The informant's description of the suspect's physical build, height, age, and race matched Pargo's characteristics. Detective Nicolino surveilled the residence and noted a high volume of short-term vehicle and foot traffic, consistent with the sale of controlled substances.[5]

On the basis of his observations, Detective Nicolino arranged with the same confidential informant to purchase crack cocaine from "Sosa." The detective saw the informant meet with an individual the informant knew as "Sosa," driving a white Cadillac, from whom the informant was able to purchase crack cocaine. The car was registered in Pargo's name. Over the next few days,

[5] In Attachment "A," Detective Nicolino described the characteristics of visitors of Pargo's residence:

> I observed a high volume of short term vehicle and foot traffic to 1549 Des Moines Street. . . . I observed vehicles parking in the street in front of the house. I then observed occupants from the vehicle approach the side door on the east side of 1549 Des Moines Street. A short time after entering the side door, I would observe the individuals exiting the side door before leaving the area in their vehicle. I recognized the short term vehicle and foot traffic to 1549 Des Moines Street from my training and experience, as being consistent with street level drug dealing from a residence.

officers followed the Cadillac, confirming the driver's description as that of Pargo. Sergeant Edwards made contact with the vehicle and identified Pargo as the driver. A criminal history check revealed Pargo had several arrests for controlled substance violations from 1989 to 2008 in Minnesota and an arrest in April 2009 for possession of a controlled substance and drug paraphernalia in Arkansas.

Detective Nicolino recovered and sorted the contents of two trash containers placed on the curb at 1549 Des Moines Street for weekly pickup. Pargo's Cadillac was parked in front of the house during Detective Nicolino's retrieval. Along with mail addressed to Pargo, Detective Nicolino recovered three bags with trace amounts of marijuana and several parts of plastic baggies. One of the baggies tested positive for marijuana, and one for cocaine.

Attachment "B" to Detective Nicolino's warrant related to the confidential informant, and is the basis for Pargo's claim of unreliability. Specifically, Pargo directs our attention to the following statements within attachment B:

> [x] The informant has supplied information in the past on 0 occasions that has proven reliable, as to confidential informant.
> [x] The informant's past information has helped supply the basis for 0 search warrant, as to confidential informant.
> [x] The informant's past information has led to the making of 0 arrests, as to confidential informant

Attachment B also asserts the information provided by the participating officers, as well as the confidential informant "has been corroborated by law enforcement personnel," and the informant has not previously provided false information to the department.

A warrant based upon facts supplied by a confidential informant is sufficient if it is supported by the totality of the circumstances. *Illinois v. Gates*,

462 U.S. 213, 238, 103 S. Ct. 2317, 2332 76 L. Ed. 2d 527, 548 (1983). In this case, the investigation by Detective Nicolino and other members of the Des Moines Police Department supported the confidential informant's statement that Pargo was selling illicit substances. Most notably, Detective Nicolino's observation of the controlled buy from an individual other officers later confirmed to be Pargo bolsters the credibility of the other information presented by the confidential informant. *State v. Sykes*, 412 N.W.2d 578, 583 (Iowa 1987).

Even when the evidence provided through the confidential informant is stripped from the affidavit, probable cause still exists to grant a search warrant of Pargo's house. As discussed above, Detective Nicolino—who has been an officer for ten years, five of which he has spent specializing in narcotics investigations—observed suspicious behavior at Pargo's residence consistent with drug sales, and recovered discarded paraphernalia in Pargo's trash receptacle, which tested positive for illicit substances. Whether the informant's initial statements were credible has no bearing on the fact the informant successfully purchased narcotics from Pargo—an event orchestrated and witnessed by Detective Nicolino. Because these circumstances could compel a reasonable person to believe further evidence of a crime could be found at the house, probable cause existed to issue the search warrant, even if the informant's initial statements were excised from the application.

Pargo also offers a bare assertion that the affidavit contains false statements, alleging the district court improperly deprived him of a *Franks* hearing to show as much. When attacking the statements within an affidavit, a

defendant is entitled to a *Franks* hearing upon making a substantial preliminary showing that (1) the affiant included a knowingly and intentionally false statement, or one made with reckless disregard for its truth, and (2) without the statement, probable cause would not exist. *Franks v. Delaware*, 438 U.S. 154, 155–56, 98 S. Ct. 2674, 2676, 57 L. Ed. 2d 667, 672 (1978). Because Pargo has not met either prerequisite, the district court properly denied his request for a *Franks* hearing.

B. Sufficient Evidence Exists to Support Pargo's Conviction in Case No. FECR234743

In another pro se claim, Pargo contends the State offered insufficient evidence to support his conviction for possession of a controlled substance with intent to deliver. Whether the evidence presented is sufficient to support a verdict turns upon whether the evidence is substantial. *Hagedorn*, 679 N.W.2d at 668. "'Substantial evidence' is that upon which a rational trier of fact could find the defendant guilty beyond a reasonable doubt," viewed in the light most favorable to the State. *Id.* Because questions as to witness credibility are within the province of the jury, it is not the role of the court to resolve conflicts in the evidence. *State v. Williams*, 695 N.W.2d 23, 28 (Iowa 2005).

Pargo's confessions to Detective Nicolino following the search of his house laid the groundwork for the evidence presented at trial. Pargo admitted daily usage of crack cocaine, among other drugs, and that he had smoked earlier in the morning, before execution of the warrant. Although initially denying he sold drugs, he eventually admitted to acting as a "middle man" in transactions at his house and to receiving a portion of the cocaine sold. He also admitted selling

crack cocaine to support his own drug use. During his visit with Detective Nicolino after the motel arrest, he recounted the hidden drugs stashed in the basement officers missed due to the power outage.

Pargo correctly asserts his convictions cannot stand solely on the basis of these uncorroborated extrajudicial confessions. *See* Iowa R. Crim. P. 2.21(4) ("The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the defendant committed the offense."). The policy supporting this rule is to ensure a conviction is not based upon coerced or untrue confessions. *State v. Meyers*, 799 N.W.2d 132, 139 (Iowa 2011). Admissions may constitute a confession if they "amount to an acknowledgement of the guilt of the offense charged," and therefore are owed the same evidentiary precautions as confessions. *Id.* (quotation omitted). As our supreme court explains:

> Corroboration need not be strong nor need it go to the whole case so long as it confirms some material fact connecting the defendant with the crime. The State must offer evidence to show the crime has been committed and which as a whole proves [the defendant] is guilty beyond a reasonable doubt. However, the "other proof" itself does not have to prove the offense beyond a reasonable doubt or even by a preponderance. Other independent evidence merely fortifies the truth of the confession, without independently establishing the crime charged. "Other proof" must support the essential facts admitted sufficiently to justify a jury inference of their truth.

State v. Polly, 657 N.W.2d 462, 466 (Iowa 2003) (citations and quotations omitted). Corroboration can be through direct or circumstantial evidence. *Meyers*, 799 N.W.2d at 139.

The State's evidence need not prove Pargo was acting as a principal to sustain his convictions. An aider and abettor may be found to be guilty just as a principal under Iowa Code section 703.1. *State v. Allen*, 633 N.W.2d 752, 754 (Iowa 2001). To prove aiding and abetting, the State must present substantial evidence that Pargo "assented to or lent countenance and approval to the criminal act . . . either by active participation or by some manner encouraging it." *See id.* at 756–57.

Jury Instruction No. 13 provided the jury with the theory of aiding and abetting. Additionally, the jury heard closing arguments from the State alleging Pargo acted both as a principal and an aider and abettor, specifically relating to Chantez Thornton. Officers found paraphernalia and crack cocaine packaged in ten separate baggies on Thornton, who had been living in the house for two weeks prior to the arrest. The small bags of crack cocaine found on Thornton were individually wrapped in roughly equal amounts.

In addition, Larry Golston, one of the two residents found ascending the basement stairs at the time of the warrant's execution, had a crack pipe, Brillo pad, and a plastic baggie in his pocket. Austin, Pargo's live-in girlfriend, was found lying in a bed on the first floor with cocaine and a crack pipe. Officers Walters, Mathis, and Donahue each testified the house bore attributes consistent with a crack house, where individuals visit to buy, sell, or use controlled substances. Officer Steinkamp noted the house was not furnished for everyday living—lacking amenities such as furniture, clothing, food, and hangers—and

instead had an arrangement consistent with other crack houses he has come across in his nineteen years on the force.

These facts corroborate Pargo's statements that he was the middle man for drug transactions, bringing buyers and sellers together in his house. Brokering sales between a tenant and other individuals is consistent with encouraging the possession and distribution of narcotics. Combined with additional officer testimony relating to the search, the record contains substantial evidence Pargo aided and abetted the possession and distribution of narcotics.

C. The Search of Room 209 Did Not Excede the Scope of Pargo's Consent

Pargo alleges the search of the motel room where he was staying violated his rights under the Fourth Amendment. In its suppression ruling, the court held because Pargo knowingly and voluntarily consented to a search of the room, all evidence found was admissible. Pargo contends his consent authorized the officers to search only his personal effects in room 209. He continues that even if his consent extended to the entire room, the officer's search above the bathroom ceiling tiles exceeded Pargo's consent.

Pargo also argues pro se that because no evidence directed the officers to look above the ceiling tiles, the search was unreasonably broad. He alleges his counsel was ineffective for failing to raise or preserve this argument for appeal.

The State contends because Pargo knew the officers would be searching for crack cocaine and a weapon, his consent included searching areas where one could hide such contraband, including the space above a drop-panel ceiling.

The State also addresses Pargo's pro se argument, asserting trial counsel had no duty to raise a futile argument.

Warrantless searches and seizures are unreasonable and therefore invalid unless the search falls within one of the recognized exceptions. *See Freeman*, 705 N.W.2d at 297 (including searches based on plain view, consent, probable cause coupled with exigent circumstances, emergency aid, and searches incident to arrest as recognized exceptions). Whether a government action was unreasonable and in contravention of the Fourth Amendment depends upon a two-step analysis. *State v. Fleming*, 790 N.W.2d 590, 564 (Iowa 2010). First we determine whether the individual challenging the search has a legitimate expectation of privacy in the area searched. *Id.* If such an expectation exists, we then consider if the government unreasonably invaded that protected interest or properly conducted the search under a recognized exception. *Id.*

In its suppression ruling, the district court "[a]ssum[ed] without conceding that the Defendant had a legitimate expectation of privacy." We opt to do the same, focusing our analysis on whether the officers unreasonably invaded Pargo's protected interest.

While warrantless searches are considered unreasonably invasive, consent is among the permissible exceptions. *State v. Lowe*, ___ N.W.2d ___, ___ (Iowa 2012). The validity of an individual's consent to search depends on whether a party had the authority to consent, and whether the consent was voluntary. *State v. Folkens*, 281 N.W.2d 1, 3 (Iowa 1979).

Pargo does not contest whether his consent was voluntary, and at oral argument, his attorney conceded Pargo had the requisite authority to consent to the search. But he argues the police exceeded the scope of consent by searching above the ceiling tiles in the bathroom.

We derive the scope of an individual's consent by considering what a "typical reasonable person [would] have understood by the exchange between the officer and the suspect." *McConnelee*, 690 N.W.2d at 31 (quoting *Florida v. Jimeno*, 500 U.S. 248, 251, 111 S. Ct. 1801, 1803–04, 114 L. Ed. 2d 297, 302 (1991)). This determination is based on the totality of the circumstances and includes not only the language authorizing consent, but also any gestures and other non-verbal conduct displayed. *Id.* at 30. At any time before the search is completed, the person who initially gave consent may limit, withdraw, or revoke the same. *Cf. State v. Stanford*, 474 N.W.2d 573, 575 (Iowa 1991) (provision of urine sample). But to do so, he or she "must clearly inform the appropriate official that the initial consent has been limited, withdrawn or revoked." *Id.*

Pargo argues his statements, as reported by the officers, could be interpreted as consenting only to a search of his luggage. But when placed in context of the entire conversation with the officers, Pargo's statement would lead a reasonable person to believe his agreement contained no such limitation.

After advising Pargo they were investigating a tip that there were narcotics and a weapon in room 209, Officer Gilmore asked Pargo "for consent to search the room." Pargo replied:

> This isn't my room. I've been here for two or three days. This is all of my stuff. You are more than welcome to search.

Pargo also stepped back and held the door open for the officers to enter the room. Once inside the room, Officer Gilmore repeated his request to "take a look around," and Pargo again agreed. Pargo's consent was unequivocal. Any ambiguity created by Pargo's initial reference to his "stuff" was resolved once the officers entered and repeated their request to search the room. The record presents no further cues, verbal or non-verbal, to suggest Pargo limited the permission to search.

Satisfied that no words or conduct curtailed the officer's search, we next address whether Pargo's consent to search the motel room extends to the space above the ceiling tiles in the bathroom. The State identifies a similar factual scenario before the Tenth Circuit in *United States v. Pena*, 143 F.3d 1363, 1365 (10th Cir. 1998), where law enforcement received a tip that two individuals were selling drugs from a hotel room. Officers knocked on the door, informed Pena they had received complaints about the room and that they could smell marijuana. *Id.* After Pena admitted to smoking marijuana, one officer asked if they could have "a look in the room," to which Pena responded "yeah, go ahead." *Id.* The officers found two marijuana cigarettes floating in the toilet, at which point they searched the ceiling tiles and found a bag of marijuana.[6] *Id.* The court initially held that a bathroom is included within consent to search a hotel room because it is part of the room's accommodations. *Id.* at 1368. In reiterating the standard for determining what a reasonable person would believe consent encompassed, the circuit court noted that because the officer asked for consent

[6] Although discovering the contraband could trigger other exceptions to the warrantless search, the *Pena* court continued its analysis through the scope-of-consent lens.

immediately after the defendant admitted to smoking marijuana, the defendant knew the purpose of the search was to find illegal narcotics. *Id*. The court found the ceiling to be within the scope of Pena's consent, reasoning:

> Consent to an officer's request to search for drugs would reasonably include areas in which one would be expected to hide drugs[, and because the defendant] consented to a search for drugs, he consented to a search of any area in the motel room where one might hide drugs.

Id.

Pargo refutes the State's outside authority with the *McConnelee* case, where our supreme court found an officer's search of the defendant's vehicle exceeded his consent to search. 690 N.W.2d at 32. In that case, the officer and defendant were discussing the identity of a green, leafy substance on the dash when the defendant said the officer could "check it." *Id.* at 31. The officer "did not directly ask the defendant for permission to search the entire car." *Id.* The failure to do so, coupled with the context of the conversation, resulted in the court's finding that the full search of the vehicle exceeded the scope of the defendant's consent. *Id.*

McConnellee is distinguishable because Pargo's conversation with the officers did not imply any limitation to the consent. In addition to telling the officers "you are welcome to search," once the officers were inside the room, Pargo acquiesced to Officer Gilmore's request to "take a look around."

Given its factual symmetry, the *Pena* rationale is more persuasive on the present facts. Notably, Pargo did not admit using or possessing drugs in the motel room. But he was on the same notice as *Pena* when he consented to the

search: specifically, that the officers were looking for drugs in the motel room. We agree with the Tenth Circuit's conclusion that a person who is aware of law enforcement's intent to discover contraband is reasonably consenting to a search of any area where the item may be hidden. Therefore, the search above the bathroom ceiling tiles did not exceed the scope of Pargo's consent.

We recognize Pargo had the right to withdraw or limit his consent at any time before the completion of the search. *See State v. Myer*, 441 N.W.2d 762, 765 (Iowa 1989). He also had an opportunity to exercise that right—he was in the motel room with the officers as they conducted their search. But the record does not suggest any revocation occurred before Officer Crowdis discovered the inculpatory evidence. *See id.* (holding once incriminating evidence is found, subsequent revocation of consent is ineffective). Because there is no evidence of Pargo's withdrawal of his initial consent, the officers conducted a proper search of room 209. *See United States v. Alfaro*, 935 F.2d 64, 67 (5th Cir. 1991) (holding any conduct falling "short of an unequivocal act or statement of withdrawal" fails to revoke consent).

Pargo argues pro se that because no evidence in the motel room suggested the weapon or narcotics would be found above the ceiling tiles, the search was improper. He argues his counsel was ineffective for failing to argue this at trial and on appeal.

A search premised on the defendant's consent allows police to search absent probable cause. *Schneckloth v. Bustamonte*, 412 U.S. 218, 227, 93 S. Ct. 2041, 2048, 36 L. Ed. 2d 854, 863 (1973) ("In situations where the police

have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence."). The crime stoppers tip did not have to generate probable cause because the officers obtained valid consent to search the motel room. Because counsel is not expected to raise a meritless issue, Pargo's claim fails on the breach-of-duty prong. *See State v. Scalise*, 660 N.W.2d 58, 61–62 (Iowa 2003).

AFFIRMED.