

IN THE COURT OF APPEALS OF IOWA

No. 3-223 / 12-1261
Filed April 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DONALD R. HUNT,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson (motion to suppress) and Michael D. Huppert (trial), Judges.

Donald Hunt appeals from his convictions for possession of cocaine with intent to deliver and possession of heroin with intent to deliver. **AFFIRMED.**

Gary W. Kendell of Kendell Law Firm, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, John Sarcone, County Attorney, and Mark Taylor, Assistant County Attorney, for appellee.

Heard by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

Donald Hunt appeals from his convictions for possession of cocaine with intent to deliver and possession of heroin with intent to deliver. He argues the district court improperly denied his motion to suppress. We affirm, finding Hunt voluntarily gave implied consent for the officers to enter his hotel room, and therefore, the district court properly denied his motion to suppress.

I. Facts and Proceedings.

On December 10, 2010, Donald Hunt was staying in a hotel room in Des Moines, Iowa. Responding to two reports of suspected drug activity in that hotel room, four Des Moines police officers approached the room to investigate, one of whom knocked on the door. Hunt opened the door. The police officers entered the room, saw drug paraphernalia in plain view, and requested permission to search the room. Hunt did not consent, and the officers obtained a search warrant for the room. During the search, illegal substances and paraphernalia were found. Hunt was arrested and charged with possession of a controlled substance, cocaine base crack, with intent to deliver, possession of a controlled substance, heroin, with intent to deliver, failure to process a tax stamp, and possession of marijuana with intent to deliver.

Hunt filed a motion to suppress the evidence, arguing he did not consent to the officers' entry into the hotel room. At a hearing on the motion, the court received testimony from four officers, Hunt, and Hunt's friend who was visiting his hotel room. The officers testified they knocked on the hotel room door, announced who they were, and Hunt then opened the door. After the first two officers displayed their police badges and said something about coming in to

investigate complaints of drug activity, Hunt stepped to the side and the officers entered the room.¹ Hunt and his friend testified the officers pushed him backwards into the room and entered over his objection. The court denied Hunt's motion to suppress based on the warrantless entry, ruling:

The court, as the finder of fact, must evaluate the credibility of witnesses when making its ruling. Hunt is a convicted felon who has every reason to avoid another felony conviction. His testimony—that the officers forced their way into his room over his vehement objections—is contradicted by four officers. [Hunt's friend] testified that she heard Hunt inquire as to why the officers were entering the room. [Hunt's friend] also admitted, however, to having a close relationship with the defendant. Her factually inaccurate testimony about marked police cars being present calls into question whether she was even at the [hotel] on December 10th. The testimony of the officers, therefore, establishes by a preponderance of the evidence that Hunt did indeed consent to the search of his room.

Trial proceeded on the minutes of testimony, and Hunt was convicted of possession of controlled substances, heroin and cocaine base crack, with intent to deliver. The remaining charges were dismissed. He appeals, contending the district court should have granted his motion to suppress.

II. Analysis.

Hunt's claim is constitutional; our review is therefore *de novo*. *State v. Reinier*, 628 N.W.2d 460, 464 (Iowa 2001). Though our review is *de novo*, we give deference to the trial court due to its opportunity to evaluate the credibility of the witnesses. *Id.*

¹ The officers' testimonies differ slightly. Officer Steinkamp stated he engaged Hunt at the door, he stated he was a police officer, he had received a complaint of narcotic activity, and asked if he could come inside. He reported Hunt stepped to the side in response. Officer Mathis reported Steinkamp introduced himself and the others as police officers, asked to enter, and Hunt stepped to the side to allow them in. Officer Nicolino recalled Steinkamp having a conversation at the door and following Steinkamp and Mathis inside but could not recall the details. Officer Fisher recalled Steinkamp identifying himself as an officer and telling Hunt they were investigating reported drug activity.

Our supreme court considered a similar “knock and talk” encounter at a residence in *Reinier*:

In this case, we begin our analysis of the surrounding circumstances by considering the general investigative procedure utilized by the police which culminated in the consent given by Reinier to search her house. This procedure was characterized by police as a “knock and talk” investigation, which involves officers knocking on the door of a house, identifying themselves as officers, asking to talk to the occupant about a criminal complaint, and eventually requesting permission to search the house. If successful, it allows police officers who lack probable cause to gain access to a house and conduct a search.

Id. at 466 (internal citation omitted). The Fourth Amendment and article I, section 8 of the Iowa Constitution are implicated when police intrude upon a person’s legitimate expectation of privacy. *Id.* Neither party argues Hunt lacked an expectation of privacy in his hotel room. “Thus, entry into the area by police constituted a search under the Fourth Amendment, and we must determine if consent was given to enter the [hotel room] based on the manner [Hunt] opened the door after the officers knocked on it.” *See id.* at 467.

Consent may be given by non-verbal conduct, which can include opening a door under certain circumstances. *Id.* We look to the specific circumstances surrounding the “knock and talk” procedure when evaluating the totality of the circumstances surrounding the consent. *Id.* In *Reinier*, our supreme court found no consent for entry into a suspect’s porch where police were unable to recall whether they identified themselves or announced their purpose before stepping into the porch area. *Id.*

At the hearing on Hunt’s motion to suppress, the court was presented with two different versions of the facts. The first, presented by the State’s witnesses,

was that the officers announced themselves and their business, and that Hunt opened the door and stepped to the side, giving the officers implied consent to enter the hotel room. The second version, presented by the defendant and his friend, was that Hunt did not hear the officers announce themselves and their purpose, and that the officers pushed him back into his room. Both versions have points of weakness which were explored during the cross-examination of the witnesses. Ultimately, the court deemed the four officers' testimony more credible. We give deference to this determination, based on the trial court's opportunity to observe the witnesses as they testified.² *Id.* at 464; see also *State v. Hatter*, 342 N.W.2d 851, 854 (Iowa 1983) ("In recognition of the trial court's ability to observe the witnesses while they were testifying and thus better judge their credibility, we will in this case grant the trial courts' findings of fact considerable deference."). The officers testified they knocked and announced both who they were and their purpose, and in response Hunt opened the door, stepped to the side, and allowed the officers to enter. In *Reinier*, the court noted:

The officers in this case could not recall if they actually engaged in any conversation with Reinier before they stepped onto the porch, but felt she invited them into the porch because it was cold outside and she opened the door wide in response to their knock. The officers acknowledged they did not identify themselves as police officers or announce their business before stepping onto the porch.

The act of opening a door in response to a knock could under certain circumstances constitute consent. *United States v. Griffin*, 530 F.2d 739, 743 (7th Cir. 1976) (leaving door open and

² The district court did not explicitly base its credibility finding on the witnesses' demeanor and manner of testimony, but also on implausible aspects of the defense witnesses' testimony. Hunt's other witness, his friend, reported seeing police cars with lights in the parking lot of the hotel, though the police cars were unmarked. In addition, Hunt testified he did not hear the officers knock on the door of his hotel room at all and opened the door to go out for a pop, coincidentally at the same time the officers arrived at the hotel room door, and despite having his shower water running—a fact which Officer Nicolino corroborated.

stepping back was invitation for officers to enter); *United States v. Turbyfill*, 525 F.2d 57, 59 (8th Cir. 1975) (opening door and stepping back constitutes implied invitation to enter); *State v. Dawson*, 761 P.2d 352, 356–57 (Mont. 1988) (same). *But see State v. Harris*, 642 A.2d 1242, 1246–47 (shrugging of shoulders insufficient gesture of consent). However, the officers in this case were unable to recall the specific details of the event that would support a finding of consent. The State carried the burden of proof on this issue, and the evidence was insufficient to objectively show Reinier consented by opening the door. In fact, the officers acknowledged Reinier appeared surprised when they entered the porch without an oral request. This reaction was understandable and does not support consent.

628 N.W.2d at 467. Here, the more credible evidence was that the officers identified themselves and their purpose before Hunt stepped to the side and allowed them in the room. In contrast to the situation in *Reinier*, he allowed the officers in after they announced who they were and what they were investigating. *See id.* We find Hunt communicated consent to the entry of officers into his room.

Whether consent is voluntary is a question of fact determined from the totality of the circumstances. *State v. Lane*, 726 N.W.2d 371, 378 (Iowa 2007). We look to the personal characteristics of the consenter and the context of the consent. *Id.* Hunt argues his consent fails the test for voluntariness as applied by our supreme court in *State v. Pals*, 805 N.W.2d 767, 782–83 (Iowa 2011). In that case, Pals verbally consented to the search of his vehicle; however, the court found the consent was not voluntary. *Pals*, 805 N.W.2d at 783. The court applied a totality of the circumstances test, noting that the officer subjected Pals to a pat-down search before detaining him in a police cruiser, which projected authority over him, that he was detained in the cruiser at the time of consent, that traffic stops are inherently coercive, that he was never advised he was free to

leave or could refuse a search, and that the officer did not advise Pals he had concluded the purpose of the traffic stop before asking Pals for consent. *Id.* at 782–83. The *Pals* court noted detention in a police vehicle was not a voluntary encounter in a public area or an encounter “on the familiar surroundings of the threshold of one’s own home.” *Id.* at 782.

We agree with Hunt that four officers standing outside his door is somewhat coercive. However, he was not detained in an unfamiliar place, was not patted down, and was at the door of a familiar space—his hotel room where he apparently was residing—at the time of the knock on his door. Further, Hunt later refused consent to search his hotel room, which coupled with his prior history with police shows he had some understanding he could refuse the officers’ requests.

Looking to the totality of the circumstances, we find Hunt voluntarily consented to the entry of the officers into his hotel room. *See Lane*, 726 N.W.2d at 467. We therefore affirm the district court.

AFFIRMED.