IN THE COURT OF APPEALS OF IOWA

No. 3-638 / 12-1419
Filed August 21, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JASON RAY VANDERWEIDE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge.

The defendant appeals his conviction of possession of a controlled substance following the denial of his motion to suppress. **AFFIRMED.**

Jeffery A. Wright of Carr & Wright, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, John P. Sarcone, County Attorney, and Andrea Petrovich, Assistant County Attorney, for appellee.

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

EISENHAUER, C.J.

Jason Vanderweide appeals from his conviction of third-offense possession of a controlled substance as a habitual offender. He contends the trial court erred in denying his motion to suppress.

Because the officer had reasonable suspicion criminal activity was afoot, the stop and seizure did not violate Vanderweide's constitutional rights. The officer also had a reasonable belief his safety was in danger when he asked Vanderweide to step out of the vehicle and performed a pat-down search of Vanderweide's person. Because the search and seizure were constitutional, we affirm.

I. Background Facts and Proceedings.

On January 7, 2012, Des Moines Police Officer Garth House stopped a vehicle because its driver's side mirror was missing. As he approached the vehicle, Officer House noticed a Sons of Silence gang sticker on the rear windshield. When he reached the driver's window, he noticed the steering column was broken and had been wired with a toggle switch to start and stop the vehicle.

The driver of the vehicle, Vanderweide, was "very civil" and provided Officer House with his driver's license. He explained the vehicle belonged to his mother and the toggle switch was installed because the vehicle "was kind of messed up." Officer House returned to his squad car to check the driver and vehicle information. A check of the license plate showed the vehicle had not been reported stolen and the vehicle description matched the vehicle driven by Vanderweide. Officer House also confirmed the vehicle was registered to a

woman, although her last name was different than Vanderweide's.[1] A check of Vanderweide's driver's license revealed he had seven convictions for possession of a controlled substance and was a Sons of Silence gang member.

Officer House again approached the vehicle to see if its VIN matched the VIN associated with the license plate. Concerned about Vanderweide's gang affiliation and drug convictions, Officer House asked Vanderweide to step out of the vehicle. Upon stepping out, Officer House noticed a large, folding knife sticking out of Vanderweide's pocket.[2] When asked if he had any weapons on his person, Vanderweide replied "no."

Given the inconsistency in Vanderweide's statement about having a weapon, Officer House asked Vanderweide to consent to a pat-down, and Vanderweide consented. While performing the pat-down, the officer felt a lump in Vanderweide's coin pocket. He placed Vanderweide in handcuffs and asked him what was in his pocket. Vanderweide stated it was marijuana. Officer House confiscated the item, which was confirmed to be marijuana.

Vanderweide was charged with possession of a controlled substance, third offense as a habitual offender. He pleaded not guilty and filed a motion to suppress the marijuana, alleging the seizure and search of his person violated his rights under the Fourth and Fourteenth Amendments of the United States Constitution and Article I, Section 8 of the Iowa Constitution. The district court denied the motion following a hearing. Vanderweide consented to a trial on the

[1] The woman the vehicle was registered to was later identified as Vanderweide's mother.

[2] The knife's blade was three-and-one-half inches long and permissible to carry concealed under city ordinance.

minutes and was found guilty. He was sentenced to a term of incarceration not to exceed fifteen years.

II. Scope and Standard of Review.

We review the denial of a motion to suppress based on deprivation of the defendant's constitutional right against unlawful searches de novo. *State v. Ochoa*, 792 N.W.2d 260, 264 (Iowa 2010). We are called upon to make an independent evaluation based on the totality of circumstances shown in the entire record. *Id.* We give deference to the trial court's fact findings, but are not bound by them. *State v. Lowe*, 812 N.W.2d 554, 566 (Iowa 2012).

III. Merits.

Vanderweide contends the court erred in denying his motion to suppress. He argues the search of his person was unconstitutional under both the federal and state constitutions. Although we may construe the Iowa Constitution differently than its federal counterpart, we need not do so here where we can decide the case under the identical provisions contained in the United States Constitution. *See State v. Kooima*, ___ N.W.2d ___, ___, 2013 WL 3238574, at *4 (Iowa 2013).

"The Fourth Amendment prevents government officials from arbitrarily intruding into citizens' privacy and security." *Id.* Stopping a vehicle and detaining its occupants constitutes a seizure under the Fourth Amendment unless, as here, a police officer has reasonable suspicion supported by articulable facts that criminal activity may be afoot. *Id.*

Vanderweide does not contest the propriety of the initial stop and detention. He instead argues Officer House's suspicion the vehicle may have

been stolen should have been assuaged and the stop should have terminated upon learning the vehicle had not been reported stolen and the registration information matched the description of the vehicle. Vanderweide further argues Officer House's claim he was checking the vehicle's VIN is suspect, noting the officer did not include that information in his report.

At the suppression hearing, Officer House testified he wanted to check the vehicle's VIN against the VIN associated with the license plate. He admitted this information was not included in his report, but stated the report is "an overview of the situation." Even if Officer House's motivation was other than stated, his actual motivation does not determine the validity of the stop. *See State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004). Because the reasonableness test is an objective one, the State is not limited to the reasons given by the investigating officer in justifying the stop. *Scott v. United States*, 436 U.S. 128, 138 (1978); *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002).

We find there was reasonable suspicion to continue the stop following the initial check of Vanderweide's driver's license and the license plate. The officer had the following information at the time: the license-plate check did not show the vehicle associated with the license plate was stolen; the description of the vehicle associated with the license plate matched Vanderweide's vehicle; the vehicle was not registered to Vanderweide or a woman with the same last name; and the vehicle had a toggle switch installed on the column. Given the uncertainty as to whether Vanderweide had a legal right to operate the vehicle he was driving, a reasonable person in Officer House's position would extend the detention a few minutes longer to check the VIN of Vanderweide's vehicle against the VIN on the

license plate information to determine if the license plate had been switched with another vehicle of similar appearance.

We next consider whether the officer violated Vanderweide's constitutional rights when he ordered Vanderweide to step out of his vehicle. "[O]nce a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977). When weighing officer safety against intrusions on personal liberty, the act of asking a driver to expose to view "little more of his person than is already exposed" is a "de minimis" intrusion. *Id.* at 111. Because Vanderweide was lawfully detained, Officer House did not violate his constitutional rights in ordering him out of the vehicle.

The final question before us is whether the pat down search of Vanderweide was constitutionally permissible.[3] Although warrantless searches are per se unreasonable, *State v. Watts*, 801 N.W.2d 845, 850 (Iowa 2011), the Supreme Court has recognized "a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime." *Terry v. Ohio*, 392 U.S. 1, 24 (1968). In conducting a pat down for officer safety, the officer "need not be absolutely certain that the individual is armed; the issue

[3] Although Officer House testified Vanderweide consented to the search, we choose to address Vanderweide's claim the officer had no reasonable belief his safety was in danger. Regardless of Vanderweide's consent, the outcome reached is the same.

is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Id.* at 27.

Upon ordering Vanderweide out of the vehicle, Officer House observed a large knife in his pocket. However, when asked, Vanderweide stated he had no weapons on his person. Given his statement was inconsistent with the officer's own observation, Officer House initiated a pat-down search for weapons to ensure no other concealed weapons were on his person. These facts, coupled with the officer's knowledge of a "link between gang members and weapons," provide a reasonable basis to conduct a search for officer safety. *See Terry*, 392 U.S. 21-22.

Officer House had reasonable grounds to stop and detain Vanderweide to investigate whether criminal activity was occurring. The officer did not violate Vanderweide's constitutional rights by ordering him out of the vehicle and conducting a brief pat down search for his own safety. Accordingly, we find Vanderweide's motion to suppress was properly denied.

AFFIRMED.