

IN THE COURT OF APPEALS OF IOWA

No. 6-1032 / 06-0566
Filed January 31, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRUCE DALE CHIDESTER,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James D. Coil,
District Associate Judge.

Defendant appeals his convictions for possession of methamphetamine
and possession of marijuana. **AFFIRMED.**

Patricia Reynolds, Acting State Appellate Defender, and James G. Tomka,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Brett Schilling and Steve
Conroy, Assistant County Attorneys, for appellee.

Considered by Miller, P.J., and Vaitheswaran, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

ROBINSON, S.J.**I. Background Facts & Proceedings**

On August 11, 2004, Officer Kye Richter of the Waterloo Police Department noticed a vehicle which did not have any tail lights. Officer Richter was accompanied by Officer Daniel Fredericksen. They stopped the vehicle, which was driven by Bruce Chidester. Officer Richter felt Chidester appeared nervous, and he asked for consent to search the vehicle. Chidester consented to the search. Nothing was found in the vehicle. Officer Kristin Hoelscher came to the scene to provide back-up.

Officer Richter asked Chidester if he could perform a pat-down search. Chidester asked why, and Officer Richter responded that it was for officer safety and Chidester's own safety. Officer Richter testified Chidester stated, "Sure. Go ahead." At the suppression hearing, Officer Fredericksen testified Chidester seemed a bit hesitant, and then said, "Well, go ahead." Officer Hoelscher stated Officer Richter advised Chidester he was going to pat him down. She stated she had a hard time hearing what they were saying.

During the pat-down search, Officer Richter found a metal pipe with marijuana residue in Chidester's pocket. Chidester was placed under arrest. Officer Richter then performed a search incident to arrest, and in a pocket found two pieces of folded-up paper. The papers contained methamphetamine. Chidester was charged with possession of methamphetamine and possession of marijuana, both in violation of Iowa Code section 124.401(5) (2003).

Chidester filed a motion to suppress, claiming his Fourth Amendment rights had been violated. After a hearing, at which evidence was presented as outlined above, the district court determined Chidester had consented to both a search of his vehicle and a pat-down search of his person. The court also found Officer Richter had performed a valid search incident to arrest after the marijuana pipe had been found. The court found Chidester had not been informed of his *Miranda* rights after he was arrested, and any statements he made in response to questions posed after his arrest should be excluded from evidence. In all other respects, the court denied the motion to suppress.

The case proceeded to bench trial. The district court denied Chidester's request to reopen the hearing on the motion to suppress. At the trial, Officer Richter testified as he had at the suppression hearing. Officer Fredericksen testified he could not hear Chidester's response when Officer Richter asked for consent to the pat-down search. Officer Fredericksen stated his memory was better at the time of the suppression hearing than it was at the time of the criminal trial. Officer Hoelscher testified she could not hear what Chidester had said. Thomas Collins, a friend of Chidester's, testified that although he was half a block away, he heard Chidester say, "No, you can't search me." At the close of the evidence, defense counsel again asked to reopen the hearing on the motion to suppress, and the court denied that request.

The court found Collins lacked credibility. The court concluded Chidester was guilty of possession of methamphetamine and possession of marijuana. Chidester was sentenced to sixty days in jail on each count, with all but four days

suspended. He was placed on probation and ordered to have a substance abuse evaluation. Chidester appealed.

II. Standard of Review

We review constitutional questions de novo, in light of the totality of the circumstances. *State v. Naujoks*, 637 N.W.2d 101, 106 (Iowa 2001).

III. Merits

Evidence obtained in violation of the Fourth Amendment guarantees against unreasonable searches and seizures is inadmissible in a criminal prosecution. *State v. Manna*, 534 N.W.2d 642, 643-44 (Iowa 1995). Warrantless searches are unreasonable under the Fourth Amendment unless they come within one of the exceptions to the warrant requirement. *State v. Hoskins*, 711 N.W.2d 720, 726 (Iowa 2006). The recognized exceptions include: (1) consent; (2) plain view; (3) probable cause coupled with exigent circumstances; (4) search incident to arrest; and (5) emergency aid. *Id.* If there is no search warrant, the State must prove by a preponderance of the evidence that one of the recognized exceptions applies. *State v. Howard*, 509 N.W.2d 764, 767 (Iowa 1993).

On appeal, Chidester claims the State did not prove by a preponderance of the evidence that he consented to the pat-down search. Officer Richter consistently testified Chidester consented to the pat-down search. The only evidence that Chidester did not consent to the search came from Collins, whom the district court specifically found was not credible. While Officer Fredericksen testified at the suppression hearing that he heard Chidester's consent, but testified at the criminal trial he could not hear what Chidester said, he also stated

his memory was better at the time of the suppression hearing. In both instances Officer Hoelscher testified she could not hear Chidester.

We give deference to the district court's factual findings due to its opportunity to assess the credibility of the witnesses, but we are not bound by those findings. *State v. McConnelee*, 690 N.W.2d 27, 30 (Iowa 2004). We determine the State met its burden to show by a preponderance of the evidence that Chidester consented to the pat-down search. The pat-down search was not unreasonable under the Fourth Amendment. We conclude the district court properly denied Chidester's motion to suppress.

AFFIRMED.