

**IN THE COURT OF APPEALS OF IOWA**

No. 6-562 / 05-1812  
Filed November 16, 2006

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**RICHARD PAUL BECKWITH II,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis,  
District Associate Judge.

Defendant appeals his conviction for operating while intoxicated, second  
offense. **AFFIRMED.**

Robert G. Rehkemper of Gourley, Rehkemper & Lindholm, P.L.C., Des  
Moines, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney  
General, J. Patrick White, County Attorney, and Michael Brennan, Assistant  
County Attorney, for appellee.

Considered by Sackett, C.J., and Eisenhauer, J., and Nelson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

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

At about 8:20 a.m. on February 13, 2005, Iowa City police officers received a report of reckless driving in the area of the Saddlebrook Trailer Court. The complainants identified a pickup truck parked in front of a mobile home as being involved in the incident. Officers knocked on the door of the home, and Richard Beckwith II answered the door. Beckwith admitted the truck was his, but stated he had not driven it that morning.

Officer Mark Hewlett asked if he could check the vehicle to see if it had been running, and Beckwith agreed. Officer Hewlett determined the engine was hot, and concluded the pickup had just been running. In the meantime, the officers had received consent from Beckwith to enter the home.

Inside the home, officers saw liquor bottles and several people that were either sleeping or hiding from the police. Beckwith obtained the car keys from his bedroom. One of the guests stated that Beckwith had been driving and he had been a passenger that morning. Officer Paul Batcheller informed Beckwith of his Miranda rights. Beckwith then admitted he had been the driver.

Due to Beckwith's appearance, conduct, and demeanor, officers believed he was under the influence of alcohol. He failed field sobriety tests. He was arrested and taken to the police station. Beckwith consented to a breath test, which showed an alcohol concentration of .190. Beckwith was charged with operating while intoxicated (OWI), second offense, in violation of Iowa Code section 321J.2 (2005).

Beckwith filed a motion to suppress, claiming he had revoked his consent for the officers to enter his home. He asserted that his confession that he had been driving the pickup should be suppressed. Officer Hewlett testified that he did not remember Beckwith asking the police officers to leave. On cross-examination, Officer Hewlett testified:

Q. Is it possible that he would have told you something to the effect that, "I wish you guys would just leave"? A. He could have. I don't know. I don't remember that.

Officer Batcheller testified no one had asked him to leave once he came into the residence. Officer Charles Singleman testified he did not hear Beckwith ask the officers to leave.

Beckwith presented the testimony of his roommate, Jessica Karper, who testified Beckwith stated, "I wish you would just leave." Karper's boyfriend, Scott Hoffman, who also sometimes stayed at the house, stated he could not hear what Beckwith and the officers were talking about, but he did hear Beckwith ask the officers to leave. Two guests, Patricia Mooney and Timothy Hoffman, testified Beckwith stated, "I wish you would just leave."

The district court denied the motion to suppress. The court found, "[w]hether Beckwith clearly revoked his consent and at what point in time, assuming he attempted to do so, is disputed." The court concluded that even if Beckwith revoked his consent, exigent circumstances existed which made it reasonable for the officers to remain in the home without a warrant. The court determined there were exigent circumstances here because further delay would result in the destruction of evidence.

The case was tried to the court based on the minutes of testimony. The district court found Beckwith guilty of OWI, second offense. He was sentenced to seven days in the county jail, and ordered to pay a \$1500 fine, complete a drinking driver's class, and obtain a substance abuse evaluation. Beckwith appeals.

## **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**

Beckwith contends that the police officers' continued presence in his home after he revoked his consent violated his Fourth Amendment rights. 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 and seizure 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).

Beckwith claims that while he initially consented to the officers' presence, he later withdrew his consent. "[A]n initial voluntary grant of consent may be limited, withdrawn or revoked at any time prior to the completion of the search." *State v. Sanford*, 474 N.W.2d 573, 575 (Iowa 1991). In order to revoke consent, a defendant must clearly inform officers that the initial consent has been withdrawn or revoked. *State v. Anderson*, 517 N.W.2d 208, 213 (Iowa 1994). A revocation of consent does not operate to retroactively make a search conducted prior to the time of revocation unreasonable. *State v. Myer*, 441 N.W.2d 762, 765 (Iowa 1989). Any attempt to revoke consent after an investigation reveals critical evidence is ineffective. *Anderson*, 517 N.W.2d at 213.

As the district court noted, the evidence of whether Beckwith revoked his consent was "disputed." The police officers testified they were not asked to leave the premises. Beckwith relies upon officer Hewlett's statement that Beckwith could have asked the officers to leave, but he did not remember such a statement being made. This is far from being an admission that the officers had been asked to leave. Officers Batcheller and Singleton clearly stated they never heard Beckwith or anyone else ask the officers to leave.

Even if we accepted the testimony of Beckwith's witnesses that he had asked the officers to leave, however, we find no evidence in the record to show that Beckwith clearly and unequivocally revoked his consent prior to the time he admitted he had been driving the pickup. While Beckwith's witnesses testified they heard Beckwith state that he wished the officers would just leave, no time frame was given by any of these witnesses. On our de novo review we find there

is no evidence to show that if consent was revoked, it was revoked prior to Beckwith's admission.

We determine the district court properly denied Beckwith's motion to suppress. We affirm Beckwith's conviction.

**AFFIRMED.**