

IN THE COURT OF APPEALS OF IOWA

No. 6-920 / 06-0207
Filed January 18, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANDREW JAMES NIELSEN,
Defendant-Appellant.

Appeal from the Iowa District Court for Fayette County, James C. Bauch,
George L. Stigler, and Kellyann M. Lekar, Judges.

Andrew James Nielsen appeals his convictions for possession of
methamphetamine with the intent to deliver more than five grams and violation of
the Drug Tax Stamp Act. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney
General, and W. Wayne Saur, County Attorney, for appellee.

Considered by Huitink, P.J., Zimmer, J., and Nelson, S.J.*

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

HUITINK, P.J.

Andrew James Nielsen appeals his convictions for possession of methamphetamine with the intent to deliver more than five grams, in violation of Iowa Code section 124.401(1)(b)(7) (2005), and violation of the Drug Tax Stamp Act, in violation of section 453B.12. Nielsen argues the trial court erroneously overruled his motion to suppress evidence seized as the result of a warrantless search of his automobile. We affirm.

I. Background Facts and Proceedings.

Nielsen was arrested and charged with the foregoing offenses after Oelwein police officers Randall Voshell and Daniel Banks found thirty grams of crystal methamphetamine during a warrantless search of Nielsen's vehicle. Prior to trial, Nielsen filed a motion to suppress any evidence obtained as the result of the search of his vehicle. Nielsen argued that the arresting officers did not have reasonable cause to stop his vehicle. He also argued that, contrary to the arresting officers' claims, there was no active arrest warrant supporting the arresting officers' stated reason for stopping Nielsen's vehicle. He additionally argued his consent to search his vehicle was coerced.

The suppression record includes evidence of the following: On October 26, 2004, a Sac County magistrate issued a warrant for Nielsen's arrest on a fifth-degree theft charge. Pursuant to an internal office policy, the Sac County Sheriff's Office placed a 100-mile limit on the distance traveled to pick up Nielsen if he were arrested. The Sac County magistrate's affidavit included in the record indicates that the sheriff may nevertheless request the warrant be

served, even if the person is arrested more than one hundred miles from Sac County.

On September 9, 2005, Oelwein police officers Roland Voshell and Daniel Banks checked the license plate on a car they saw leaving a local convenience store at approximately 2:30 a.m. They were informed that the car was registered to Nielsen and that there was an existing warrant for his arrest. They were also informed of Sac County's 100-mile transportation limit attached to the warrant. Voshell requested verification of Sac County's intentions concerning Nielsen's arrest because, in his experience, transportation limits on warrants were not always enforced. While awaiting a reply to that inquiry, Voshell and Banks stopped Nielsen's car.

Voshell approached Nielsen's car and informed him of the reason for the stop. Nielsen provided Voshell with a Florida driver's license. Voshell requested a check on the status of Nielsen's Florida driver's license. While awaiting a reply to that inquiry, Nielsen was informed Sac County would not travel to Fayette County to pick up Nielsen if he were arrested on the warrant. Voshell then asked Nielsen if he had any drugs, alcohol, or weapons in the car. He also asked Nielsen for consent to search his vehicle. According to Voshell's version, Nielsen consented to the search. During the resulting search, Voshell and Banks discovered the methamphetamine forming the basis of the offenses charged. There is also evidence indicating Nielsen confirmed his consent to search and admitted the drugs were his in a post-arrest interview.

Following a hearing on Nielsen's motion, the trial court found the stop of Nielsen's car was supported by reasonable cause and Nielsen's consent to search his car was voluntary. The court accordingly denied Nielsen's motion to suppress. Nielsen waived his right to a jury trial and was found guilty on all counts by the court after a bench trial on the minutes of testimony attached to the trial information. The court subsequently entered a judgment of conviction and sentenced Nielsen to a term not to exceed twenty-five years.

On appeal, Nielsen argues the following:

- I. The district court erred in overruling Nielsen's motion to suppress evidence.

II. Standard of Review.

A motion to suppress implicates the Fourth and Fourteenth Amendments of the United States Constitution. *State v. Wiese*, 525 N.W.2d 412, 414 (Iowa 1994) *overruled on other grounds by State v. Cline*, 617 N.W.2d 277 (Iowa 2000). We review constitutional issues de novo and independently evaluate the totality of the circumstances as shown by the entire record. *State v. Howard*, 509 N.W.2d 764, 767 (Iowa 1993). "We give deference to the district court's fact findings due to its opportunity to assess the credibility of witnesses, but we are not bound by those findings." *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). In reviewing the trial court's ruling, we consider both the evidence presented at the suppression hearing and the evidence introduced at trial. *State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998).

III. The Merits.

The Fourth Amendment of the United States Constitution requires reasonable cause to stop a person for investigation. *State v. Heuser*, 661 N.W.2d 157, 161 (Iowa 2003). A peace officer may stop an individual or vehicle for investigatory purposes based on a reasonable suspicion, supported by specific and articulable facts, that a criminal act has occurred or is occurring. See *State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997) (citing *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968)). The existence of a valid arrest warrant is sufficient cause to justify an investigatory stop of a vehicle. *State v. Merrill*, 538 N.W.2d 300, 301 (Iowa 1995).

Arrest Warrant

Nielsen claims the arrest warrant relied on by the arresting officers to stop Nielsen's vehicle was invalid beyond the Sac County Sheriff's 100-mile pick-up limit and the arresting officers therefore lacked the requisite cause to make an investigatory stop. We disagree.

Arrest warrants issued by an Iowa magistrate must be directed to any peace officer in the state. Iowa Code § 804.2. The warrant may be delivered to any peace officer for execution and served in any county in Iowa. *Id.* § 804.4. A peace officer may make an arrest if the officer has received an official communication that a warrant has been issued for the arrest of a person on a designated charge. *Id.* § 804.7(4). We are unable to reconcile Nielsen's claim that the Sac County arrest warrant was invalid with the express statutory provisions providing for execution of an arrest warrant by a peace officer

anywhere in Iowa. Moreover, the suppression record indicates that the 100-mile limitation attached to the warrant was an administrative condition imposed by the Sac County Sheriff's Office and subject to revision or waiver in the Sac County Sheriff's discretion. In the absence of any controlling authority to the contrary, we decline to hold that an administrative limit attached to an arrest warrant by a county sheriff defines the territorial scope of the warrant's validity. Here, the arresting officers had reasonable cause to make an investigatory stop because the Sac County arrest warrant showed a connection between the vehicle and the person named in the warrant. We accordingly affirm on this issue.

Consent to Search

As noted earlier, Nielsen claims his consent to search his vehicle was coerced. A well-established exception to the warrant requirement is a search conducted by consent. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219, 93 S. Ct. 2041, 2043-44, 36 L. Ed. 2d 854, 858 (1973). A warrantless search conducted by free and voluntary consent does not violate the Fourth Amendment. *See id.*; *State v. King*, 191 N.W.2d 650, 655 (Iowa 1971). Consent is considered to be voluntary when it is given without duress or coercion, either express or implied. *See Schneckloth*, 412 U.S. at 225-26, 93 S. Ct. at 2047, 36 L. Ed. 2d at 862. This test balances the competing interests of legitimate and effective police practices against our society's deep fundamental belief that the criminal law cannot be used unfairly. *See id.* at 224-25; 93 S. Ct. at 2046-47, 36 L. Ed. 2d at 861. Thus, the concept of voluntariness which emerges as the test for consent represents a fair accommodation of these interests and values. *See id.* In the

end, the inquiry becomes a question of fact based upon the totality of the relevant circumstances. See *id.* at 226, 93 S. Ct. at 2047, 36 L. Ed. 2d at 862. The State is required to establish the consent was voluntary by a preponderance of the evidence. *State v. Garcia*, 461 N.W.2d 460, 462 (Iowa 1990).

The appellate defender argues Nielsen only consented to the search “because he was going to be detained until a canine unit showed up unless he consented to a search of his car.” The record on this issue includes the following testimony by Officer Voshell:

Q. Okay. While you were waiting for information back as to the status of his license in the state of Florida, did you have further conversation with Mr. Nielsen? A. Yes, sir, I did.

Q. Tell us about it. A. I requested — I requested consent for the — from the defendant to search his person and his vehicle.

Q. And what was Mr. Nielsen’s response? A. He told me that I could.

Q. Okay. After the consent was given, I guess, if you have any details of any specifics as far as exactly what you asked or precisely what he said, now would be the time to add those. How did you ask the question, how did he respond, that type of thing? A. Okay. I don’t — I don’t recall my exact — exact verbiage on that night.

Q. Okay. How did Mr. Nielsen indicate his consent? A. He told me yes, and then he told me that I could search whatever I wanted.

Nielsen testified:

Q. Okay. You are stopped. What happens? A. I’m stopped. Officer Voshell comes up to my side. It was Officer Banks — is that his name — comes up to the other side. And I asked the officer why I was getting pulled over. And he said — he asked me if I was aware that I had a warrant from Sac County, and I was like no, I didn’t have no idea. And then I — it came — right when I said, no, it came over his thing on his shoulder that they would not extradite me. And I said, “Am I free to go?” And he said that we weren’t done yet, and he ordered me out of the vehicle. And he asked me if I had any weapons on me or anything that

could hurt him, and I said, "Yes, I got a pocket knife", and I handed him my pocket knife. And then he escorted me back to his vehicle, and he asked me to search — if he could search — make a further search in my vehicle. And I asked him why, the warrant — they didn't want me, was I free to go, you know, and they were not going to extradite me. And he informed me that he was a K-9 unit and that he was just doing his job and this was — this is routine. And I said, "Well, go ahead then", you know. I didn't want to give the guy a hard time, you know, so . . .

Q. At the time you are telling him that, you are thinking he has authority, basically? A. Oh, most definitely. Ordered me right out of the car, you know.

We, like the trial court, find the State has met its burden on this issue. Contrary to Nielsen's claims, we find nothing coercive about Voshell's statements or actions prior to requesting Nielsen's consent. Moreover, the record indicates consent was requested within seven minutes of the time Nielsen was stopped and while Voshell was awaiting a status report on Nielsen's Florida driver's license. Lastly, we note the lack of any evidentiary support for appellate counsel's claims concerning a threatened delay pending arrival of a drug dog. We affirm on this issue.

We affirm Nielsen's convictions.

AFFIRMED.