IN THE COURT OF APPEALS OF IOWA

No. 8-428 / 07-1178
Filed June 25, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRADLEY COLTON HARRISON,
Defendant-Appellant.

Appeal from the Iowa District Court for Tama County, Mitchell E. Turner, Judge.

Bradley Harrison appeals from his conviction for possession of marijuana.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Stephan Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, and Brent D. Heeren, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Appellant Bradley Harrison appeals from his conviction for possession of marijuana in violation of Iowa Code section 124.401(5) (2005). We affirm.

I. Background Facts and Proceedings

On November 18, 2006, at about 10:00 p.m., Tama County Deputy Sheriff Joe Quandt was on routine patrol on a rural, gravel road in the southeastern corner of Tama County. While driving, Quandt noticed a 2001 white Pontiac Grand Am parked on the shoulder of the road facing the wrong direction and lacking license plates. Quandt turned around to check on the passengers of the vehicle and to make sure they were not in need of help. As Quandt pulled up behind the Grand Am, it began to drive away, so Quandt activated his lights, and the Grand Am stopped.

Quandt approached the vehicle and asked if they were having problems. The driver informed Quandt the vehicle had started to overheat, so they stopped on the side of the road to let it cool off. When Quandt asked about the lack of license plates, one of the passengers informed Quandt that the vehicle had been recently purchased. That passenger produced title to the vehicle. Quandt noticed the passenger in the back seat, Harrison, seemed very nervous. Around this time, Quandt noticed a bottle of alcohol in the back seat of the vehicle. Harrison volunteered the bottle to Quandt, who found that the seal was unbroken. Quandt asked for identification from the driver and two passengers, verified their information in his patrol car, and then returned to the Grand Am.

At this point, Quandt asked for permission to search the vehicle. Harrison testified that "consent was given for a search . . . by the driver of the car," though

Harrison did not himself consent or object to the search. All three of the individuals exited the vehicle, and Quandt found nothing on his search. Quandt did, however, notice that Harrison's eyes were bloodshot and watery and asked him if he had been smoking marijuana. Harrison responded in the negative, but Quandt asked if Harrison would consent to a search of his pockets. According to Harrison's testimony, "[Quandt] asked me to empty my pockets, so I did it willingly." Harrison emptied the contents of his pockets, including his wallet, which Quandt also inspected without asking for separate consent. Quandt found zig-zag papers[1] in Harrison's wallet, so he asked if he could pat Harrison down to search his person. Quandt testified that Harrison "took the stance where he spread his legs and lifted his arms." Quandt conducted a pat down search of Harrison and discovered a small bag of marijuana in Harrison's sock. Quandt arrested Harrison for possession of marijuana and placed him in the patrol car.

Following the arrest, Quandt proceeded to search the vehicle again. He found chunks of marijuana on the back seat of the vehicle where Harrison had been as well as a couple small chunks of marijuana in the front passenger seat. Quandt also found tweezers in the back seat, zig-zag papers in the glove box, and a cigar on the floorboard.[2] Harrison filed a motion to suppress all of this evidence at the district court level, but that motion was denied. Harrison now appeals, claiming that the district court erred in overruling his motion to suppress evidence, and that this error was a violation of his constitutional right against unreasonable searches and seizures.

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[1] Zig-zag papers are commonly used for rolling both tobacco and marijuana.
[2] Cigars may be hollowed out using tweezers and used to smoke marijuana.

II. Standard and Scope of Review

Because Harrison challenges the constitutionality of the search, our review is de novo. *State v. Weir,* 414 N.W.2d 327, 329 (Iowa 1987). We must therefore evaluate the totality of the circumstances as shown by the record. *State v. Lane*, 726 N.W.2d 371, 377 (Iowa 2007). We give deference to the district court on findings of fact because of that court's opportunity to see first-hand and evaluate the credibility of the witnesses; however, we are not bound by these findings. *Id.*

III. Issues on Appeal

The Fourth Amendment to the United States Constitution provides for the "right of the people to be secure in their persons . . . against unreasonable searches and seizures . . . ." U.S. Const. Amend IV. According to the Iowa Rules of Criminal Procedure, anyone who is "aggrieved by an unlawful search and seizure may move to suppress for use as evidence anything so obtained" if the property was "illegally seized without a warrant." Iowa R. Crim. P. 2.12(1)(*a*). "The State must prove by a preponderance of the evidence that a search or seizure was lawful." *State v. Bumpus,* 459 N.W.2d 619, 622 (Iowa 1990). Harrison argues that evidence obtained as a result of the initial search of the vehicle, the search of his pockets, the search of his person, and the second search of the vehicle should be suppressed because the searches violated his constitutional rights.[3]

[3] An officer observing a traffic violation, no matter how minor, is justified in stopping the vehicle. *State v. Mitchell*, 498 N.W.2d 691, 693 (Iowa 1993). Harrison concedes that Quandt's initial detention of the vehicle was justified because the vehicle did not have

A. Search of the Vehicle

Warrantless searches and seizures are presumed to be unreasonable unless the State proves the search falls within one of the exceptions to the warrant requirement. *State v. Predka*, 555 N.W.2d 202, 206 (Iowa 1996). One recognized exception to the warrant requirement is a situation where the party being searched gives consent. *State v. Vincik,* 436 N.W.2d 350, 353 (Iowa 1989). Consent must be given voluntarily, and not as the result of arrest or coercion, expressed or implied. *State v. Horton*, 625 N.W.2d 362, 364 (Iowa 2001). Consent does not necessarily need to be verbal. *State v. McConnelee,* 690 N.W.2d 27, 30 (Iowa 2004). Consent can "be found in gestures or other non-verbal conduct." *Id.* The scope of consent is whatever "a typical reasonable person [would] have understood by the exchange between the officer and the suspect." *Id.*

Once Quandt finished checking the identifications of the passengers of the vehicle and verified the title, Quandt asked the occupants if they would step out of the vehicle to allow him to search it. Harrison testified that the driver of the vehicle gave consent for a search but that he himself did not consent or object because he didn't think he had the right to since he did not own the vehicle. No evidence was presented to indicate that the driver of the vehicle did not consent voluntarily. The action of opening a door after an officer knocks and stepping back can be found to establish valid consent to enter a house. *State v. Reiner*, 628 N.W.2d 460, 467 (Iowa 2001). In this case, the driver's verbal consent

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license plates or a properly displayed temporary license. *State v. Andrews*, 705 N.W.2d 493, 495-97 (Iowa 2005).

followed by the occupants' exit of the vehicle clearly establishes consent. Therefore, we find that the initial search of the car was consensual and valid.

B. Search of Harrison's Pockets

Harrison argues that Quandt's search of his pockets was not reasonable or consensual and thus violated his constitutional rights. After the occupants had stepped out of the vehicle, Quandt asked Harrison to empty his pockets. Harrison testified that he complied and willingly emptied his pockets. Harrison does not believe that this act constituted consent. As discussed above, the scope of consent is determined by what a reasonable person would have understood from the exchange. *McConnelee,* 690 N.W.2d at 30. Harrison does not claim that he ever objected to the search, though he did testify that he asked "why [Quandt] was bothering [him] with this situation." While Harrison is not required to protest, his lack of objection allows a reasonable person to find that here where Quandt asked Harrison to empty his pockets and Harrison himself willingly did so, consent was given. Again, there is no evidence of coercion; Harrison admits that he was "asked" and not "demanded" to empty his pockets. Harrison also states that he emptied his pockets "willingly." Therefore, we find that Harrison's actions constituted implied consent to the search of his pockets.

C. Search of Harrison's Person

Harrison also argues that the pat down search of his person was not consensual or reasonable and thus was in violation of his constitutional rights. Quandt testified that he asked Harrison if he would mind if Quandt patted him down to make sure that he did not have anything illegal on his person. Quandt testified that Harrison did not respond verbally, but he "basically took the stance

where he spread his legs and lifted his arms." Harrison argues that he "figured he had no option," so he was just trying to comply with the officer. The United States Supreme Court has stated that while knowledge of the right to refuse consent is a factor to be taken into account in determining whether consent was voluntary, the State does not have to show such knowledge in order to show voluntary consent. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973). Thus, while the court must consider Harrison's claim that he did not have knowledge that he could refuse consent, this is just one factor to be used in determining whether consent was voluntary.

It is likely that Harrison did, in fact, know that he could refuse consent. He testified at the hearing on his motion to suppress that he never gave Quandt permission to search his wallet. His counsel then asked him "If [Quandt] had asked, would you have allowed him to [search your wallet]," and Harrison replied that no, he would not have given consent. Thus, it is clear that Harrison understands the concept of refusing consent.

However, even if it cannot be shown that Harrison had knowledge that he could refuse consent, after considering all of the facts, we find that his consent was still voluntary. Again, Harrison never claims that he in any way objected to Quandt's request. Harrison willingly and quickly complied when Quandt asked if he could pat him down by taking the proper stance for Quandt to be able to search him. In addition, Harrison testified that he lifted his own pant leg for Quandt, displaying the bulge of hidden marijuana. Furthermore, Harrison never gave any indication that he was withdrawing or limiting his consent which was established when he got out of the car and emptied his pockets. Though he has

the right to limit or withdraw his consent, the limitation "must clearly inform the appropriate official that the initial consent has been limited, withdrawn or revoked." *State v. Stanford*, 474 N.W.2d 573, 575 (Iowa 1991). There is no evidence to suggest that Harrison ever made it clear to Quandt in any way that he was revoking or limiting his consent. Harrison himself admitted at trial that his assumption of the stance to search his person could be construed as consent. A reasonable person would clearly see Harrison's actions as indications of consent.

D. Search of the Vehicle a Second Time

Harrison argues that even if the first search of the vehicle was consensual, that consent was not limitless, and therefore, the second search of the vehicle violated his constitutional rights. Quandt's second search of the vehicle was clearly within the scope of the law. Quandt did not need Harrison's consent to search the vehicle at that point because he had already arrested Harrison. While warrantless searches are generally unreasonable, an exception to the warrant requirement is when the search is conducted incident to arrest. *State v. Tolsdorf,* 574 N.W.2d 290, 292 (Iowa 1998). Thus, Quandt's second search of the vehicle was a valid search.

We find that the evidence supports the district court's finding that consent was asked for and given before each search made by Quandt. Accordingly, we conclude that the district court did not err in denying Harrison's motion to suppress evidence.

AFFIRMED.