IN THE COURT OF APPEALS OF IOWA

No. 8-458 / 07-1675
Filed July 30, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LEIAH MARIE KRUIP,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, James M. Drew, Judge.

Defendant appeals the district court's overruling her motion to suppress evidence. **AFFIRMED.**

Colin C. Murphy of Fitzsimmons & Vervaecke Law Firm, P.L.C., Mason City, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, and Paul L. Martin, County Attorney, for appellee.

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

SACKETT, C.J.

Defendant, Leiah Marie Kruip, appeals following her conviction of possession of marijuana with intent to deliver in violation of Iowa Code sections 124.401(1) and 124.401(1)(d) (2005), and failure to affix a drug tax stamp in violation of sections 453B.1(3)(b) and 453B.12. Defendant unsuccessfully sought to suppress drug evidence discovered when a state trooper cut open a stuffed teddy bear during a search of the vehicle she was renting. She appeals from this adverse ruling. We affirm.

I. BACKGROUND.

On September 25, 2006 at approximately 3:54 p.m., Iowa State Patrol Trooper, Andrew Ward, stopped defendant because she was speeding. The stop was videotaped. When Ward requested identification, insurance information, and vehicle registration, the defendant advised him she rented the car in Minnesota and the rental agreement was expired. She stated she was rushing to return the car because she needed to return it that day to avoid additional rental charges. Defendant provided the trooper her driver's license and the car rental agreement and other papers. The trooper asked defendant to sit in the patrol car. The trooper joined her there and inquired where she was coming from and what her plans were. She advised the officer she lived in Las Vegas and had flown to Minneapolis to visit some friends and rented a car there. She ended up staying for a couple of weeks and decided to drive the car back home, believing she could return the car to the Las Vegas Avis rental office. She claimed when she returned the car to the Las Vegas office it was going to charge her three thousand dollars in fees for returning it there. She then made an

agreement with the original rental office in Minnesota whereby they agreed not to charge her the additional fees if she returned the car to that office. As Ward completed the speeding citation, he called the dispatcher to determine whether defendant had any criminal history. He learned she had a valid California driver's license and no criminal history in Iowa, Minnesota, or California.

The rental agreement showed it had expired on August 16, over a month earlier. The defendant claimed though it was overdue, she had made arrangements with the Minnesota office to have the car beyond the expiration of the agreement. Ward then explained how defendant could pay for the speeding ticket and told defendant he was going to call Avis. Defendant told Ward to call either the Avis national office number or the Minnesota office to verify her story. Ward called the number for the national Avis office. The conversation with the national Avis office is largely inaudible from the videotape but Ward told the defendant after the phone conversation that the Avis representative did not know anything and could not confirm or deny anything. Ward then called the Minnesota office at 4:13 p.m. The Avis representative asked for details about the car and told Ward she would investigate and call him back within five or ten minutes.

Ward then began asking defendant questions about the passenger in the car, a girlfriend of defendant's accompanying her on the trip. Ward again explained how to pay for the speeding ticket and told defendant they were going to wait until Avis called back. Ward then exited the patrol car and went to talk with the passenger who was still in the rental car. Ward seemingly turned off his microphone as he approached the car because the conversation cannot be

heard on the videotape. Ward returned to the patrol car and ran a criminal background check on the passenger. While waiting for this criminal history, defendant expressed concern that she would not get to the rental office on time. Ward continued to ask defendant questions. Ward learned the passenger had no criminal history. Defendant told Ward she knew he needed to verify her story and would wait for the call back from Avis but would return the car as soon as Ward let her leave.

Ward then asked defendant more questions. He asked if she had been pulled over earlier on the trip. He then asked defendant, at 4:31 p.m., for consent to search the car because he wanted to expedite the process. He gave her a form and told her to read it before signing. Defendant signed the form. Immediately thereafter, Ward's cell phone rang and he exited the patrol car. The phone conversation cannot be heard on the videotape because the officer's microphone must have been turned off. However, it appears the call was from the Avis rental office because Ward opened the patrol car door while he was on the phone and asked defendant the name of the Avis representative she dealt with in Minnesota. Defendant told Ward she did not remember the name but repeated that the office was aware she was returning the car that day.

Ward, still on the phone, walked over to the passenger in the rental car and spoke to her. The passenger then exited the rental vehicle and sat in the patrol car with the defendant. Ward began searching the vehicle at 4:35 p.m. and additional officers arrive at around 4:45 p.m. At that time, Ward made another call. Ward testified at the suppression hearing he was speaking with another officer. While on the phone, Ward searched the trunk of the rental car.

One of the backup officers began talking with the defendant in the patrol car and defendant asked him if Ward was talking to Avis. The officer stated he thought Ward was talking to another officer. The backup officer then asked defendant questions including about the rental agreement, her travel plans, where she lives, if she was traveling with children since there was a large teddy bear and baby wipes in the car. Defendant told the backup officer the teddy bear was her niece's and she was taking it to a friend's daughter in Minnesota who wanted the bear.

At 4:55 p.m., Ward completed searching the trunk and then pulled out the large teddy bear from the back seat and placed it on the trunk. Ward approached the patrol car and asked defendant what was in the bear and why she had it. The defendant said nothing was in the bear and repeated that she was taking it to a friend's daughter. Ward returned to the rental car and began squeezing the bear. The backup officer continued to talk to the defendant saying they might have to cut open the bear. Defendant said "You can't cut it open." The backup officer replied, "We might have to. It looks like they are feeling something suspicious. Do we need to perform surgery on the bear?" Defendant then stated, "No sir."

At 4:58 p.m., Ward said into his phone, "I can see where it possibly has been re-stitched." He approached the patrol car and told the defendant he could feel there was something inside the bear and he was going to make a little incision. Ward then cut open the bear on the trunk, and found packages of what appeared and was later confirmed to be marijuana. Ward stayed on the phone, receiving instructions from another officer on how to proceed.

Defendant was charged by trial information with possession of marijuana and failure to affix a drug tax stamp. Defendant filed a motion to suppress the drug evidence which the district court denied. The matter proceeded to a trial on the minutes of evidence and the court found defendant guilty on both counts.

Defendant contends the motion to suppress should have been granted because (1) the trooper's continued detention of her after accomplishing the purposes of the traffic stop rendered her consent to search the vehicle involuntary, (2) the trooper did not have probable cause to forcefully squeeze the teddy bear without a warrant, and (3) the defendant withdrew her consent to search before the trooper cut into the teddy bear.

II. SCOPE OF REVIEW AND THE FOURTH AMENDMENT.

The Fourth Amendment of the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This is binding on the states via the Fourteenth Amendment. *State v. Shanahan*, 712 N.W.2d 121, 131 (Iowa 2006). Article one section eight of the Iowa Constitution also protects this fundamental right. *See State v. Reinier*, 628 N.W.2d 460, 464 (Iowa 2001). We review alleged Fourth Amendment violations de novo. *Id.* We will independently evaluate the totality of the circumstances as shown by the record and are not bound by the district court's findings. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). We do give deference to the district court's findings of fact because it has the opportunity to assess witness credibility. *Id.* "Warrantless searches and seizures are per se unreasonable unless the State proves by a preponderance of the evidence that a recognized

exception to the warrant requirement applies." *State v. Howard*, 509 N.W.2d 764, 766 (Iowa 1993). Exceptions to the warrant requirement include searches based on consent, plain view, exigent circumstances, and searches incident to arrest. *Id.* at 766-67. The State argued defendant gave a valid consent to search the vehicle and the district court found consent was given but that her consent did not reasonably include permission to cut open the bear. The court determined exigent circumstances coupled with probable cause made the search inside the teddy bear permissible. Defendant argues the consent was involuntarily given and there was no probable cause to search the teddy bear by forcefully squeezing it.

III. PROLONGED DETENTION.

The defendant first contends the officer procured her consent while she was illegally detained and thus her consent was given involuntarily. Though she concedes the initial traffic stop was lawful, she argues her prolonged seizure after issuance of the speeding citation was illegal and her consent was obtained as a result of this illegal detention. A traffic stop is a seizure under the fourth amendment. *In re S.C.S.*, 454 N.W.2d 810, 812 (citing *Berkemer v. McCarty,* 468 U.S. 420, 436-37, 104 S. Ct. 3138, 3148, 82 L. Ed. 2d 317, 332-33 (1984)). When an officer observes a traffic violation, there is probable cause to stop the vehicle and its driver. *U.S. v. Olivera-Mendez*, 484 F.3d 505, 509 (8th Cir. 2007) (citing *Pennsylvania v. Mimms,* 434 U.S. 106, 109, 98 S. Ct. 330, 332, 54 L. Ed. 2d 331, 336 (1977)). "Once a lawful stop is made, an officer may conduct an investigation 'reasonably related in scope to the circumstances which justified the interference in the first place.'" *State v. Aderholdt*, 545 N.W.2d 559, 563 (Iowa

1996) (quoting *Terry v. Ohio*, 392 U.S. 1, 20, 88 S. Ct. 1868, 1879, 20 L. Ed. 2d 889, 905 (1968)). A reasonable investigation includes asking to view the driver's license and registration, having the driver sit in the patrol car, and asking questions regarding the driver's purpose for traveling and destination. *Id.* at 563-64 (citing *United States v. Bloomfield,* 40 F.3d 910, 915 (8th Cir.1994)). Conducting a criminal history check is also permissible. *Olivera-Mendez*, 484 F.3d at 509.

"If, upon reasonable investigation surrounding the stop, the officer has a valid suspicion of other wrongdoing not the purpose of the stop, he can broaden the scope of the detention." *State v. Bergmann*, 633 N.W.2d 328, 335 (Iowa 2001). For example, if "responses or actions raise suspicions unrelated to the traffic offense," the officer may inquire further to address those suspicions. *Aderholdt*, 545 N.W.2d at 564. The stop becomes unlawful, however, "'if it is prolonged beyond the time reasonably required to complete' its purpose." *U.S. v. Peralez*, 526 F.3d 1115, 1119 (8th Cir. 2008) (quoting *Illinois v. Caballes,* 543 U.S. 405, 407, 125 S. Ct. 834, 837, 160 L. Ed. 2d 842, 846 (2005)). The issue is whether the facts known to the officer created a reasonable suspicion of criminal activity to investigate further and extend the detention. *See Bergmann*, 633 N.W.2d at 335-37 (explaining the reasonable suspicion standard for prolonging a traffic stop and various factors courts use in applying it). There is no per se time limit on traffic stops and whether the duration of the stop is reasonable is a fact intensive inquiry. *Peralez*, 526 F.3d at 1119. Complications that arise when the officer carries out the traffic stop may justify a longer detention. *Olivera-Mendez*,

484 F.3d at 510 (citing *United States v. Sharpe,* 470 U.S. 675, 685-87, 105 S. Ct. 1568, 1575-76, 84 L. Ed. 2d 605, 614-16 (1985)).

The defendant was detained for thirty-seven minutes before she was asked for consent to search the vehicle. Though we acknowledge this was a long traffic stop, longer detentions have been found to be reasonable under the circumstances. *See Aderholdt*, 545 N.W.2d at 564 (finding fifty-minute detention following traffic stop to summon drug sniffing dog reasonable when detainees' responses to questions were suspicious).

Due to the circumstances the officer encountered during the stop, the prolonged detention and broader inquiry were legitimate. Defendant was driving a rental car and the rental agreement expired over a month earlier. When asked about her travel plans, the defendant stated she flew from Las Vegas to Minnesota, rented a car and drove it back to Las Vegas without extending the rental contract, and now she was returning it back to Minnesota and planned to fly back to Las Vegas although she did not know when. Sorting through and verifying complicated driver and vehicle documentation may justify extending a traffic stop. *See Olivera-Mendez*, 484 F.3d at 510 (finding length of detention not unreasonable when vehicle ownership document was incomplete and driver presented information relating that car was registered in one state, licensed in another, and the driver lived in a third state). Unusual travel plans that make little sense may also raise an officer's suspicions of potential criminal activity. *See Aderholdt*, 545 N.W.2d at 561, 563 (noting officer had reasonable suspicion based on, among other things, defendants' unlikely story regarding their travel plans). The fact the rental agreement expired over a month earlier created a

reasonable suspicion that that defendant was driving the car without the consent of Avis and that she may have illegally converted the car to her own use, justifying the officer's decision to take the time to contact Avis. The first call failed to verify defendant's claim she had Avis' permission to drive the car. The officer had not yet received the promised return call from the Minnesota office when he asked for consent to search the car. Defendant was lawfully detained at this point as the officer was conducting a reasonable investigation into the suspicions raised by defendant's possession of the car and an expired rental agreement.

IV. VOLUNTARINESS OF CONSENT.

Defendant next contends she did not give consent voluntarily. Even if defendant was lawfully detained when Ward asked for consent to search the vehicle, her consent is still only valid if it is voluntarily given without duress or coercion, express or implied. *Reinier*, 628 N.W.2d at 465. The State must prove the consent was voluntary by a preponderance of the evidence. *Id.* It is a question of fact based on the totality of the circumstances. *Id.* The defendant consented to the search. The question is whether that consent was given voluntarily. A number of factors aid our evaluation including: (1) defendant's knowledge of the right to refuse, (2) whether police claimed authority to conduct a search prior to obtaining consent, (3) any coercive action used by police, (4) any officer's use of deceptive tactics without justification, and (5) any threats by police to obtain a warrant and forcibly execute it without a sufficient basis to obtain a warrant. *Id.* We pay particular attention to,

> "*personal characteristics* of the [consenter], such as age, education, intelligence, sobriety, and experience with the law; and features of

> the context in which the consent was given, such as the length of detention or questioning, the substance of any discussion between the [consenter] and police preceding the consent, whether the [consenter] was free to leave or was subject to restraint, and whether the [consenter's] contemporaneous reaction to the search was consistent with consent."

State v. Lane, 726 N.W.2d 371, 378 (Iowa 2007) (quoting *United States v. Va Lerie*, 424 F.3d 694, 709 (8th Cir. 2005)).

We find the State has met its burden of proving by a preponderance that defendant voluntarily gave consent to search the car. The form she signed briefly and clearly states "I understand that I have the right to refuse to consent to the search . . . and to refuse to sign this form." The officer instructed the defendant to read the form before signing it.

We do note circumstances that support an alternate finding, such as the indications the defendant was prohibited from leaving. It is unclear whether the officer was still in possession of defendant's driver's license when he asked for consent. Keeping a driver's identification documentation could lead a driver to conclude the traffic stop was not completed and he or she could not freely leave the scene or refuse the search request. Furthermore, the officer had completed explaining the traffic citation twelve minutes prior to asking for consent; yet, after issuing the citation Ward indicated she was not free to leave stating, "We're just gonna wait right here until [Avis] calls back." The officer also did not relate any information he learned from Avis on to the defendant so she would be informed as to whether confusion or suspicion about the rental was resolved. Nonetheless, the defendant seemed alert, cooperative, and articulate during the traffic stop. The evidence showing she read the form and was aware of her right

to refuse convinces us the State met its burden to prove consent was given voluntarily.

V. WITHDRAWN CONSENT AND PROBABLE CAUSE.

Defendant also argues even if her consent was voluntary, she unequivocally revoked her consent before Ward cut into the teddy bear and discovered the marijuana. The district court found whether defendant clearly revoked her consent was irrelevant because the officer's cutting into the bear exceeded the scope of a reasonable search based on consent. The district court found another exception to the warrant requirement, probable cause coupled with exigent circumstances, permitted Ward's cutting into the bear.

The scope of a driver's consent to search a vehicle "is determined by what a 'typical reasonable person [would] have understood by the exchange between the officer and the suspect.'" *State v. McConnelee*, 690 N.W.2d 27, 30-31 (Iowa 2004) (quoting *Florida v. Jimeno*, 500 U.S. 248, 251, 111 S. Ct. 1801, 1803-04, 114 L. Ed. 2d 297, 302 (1991)). The form defendant signed gave consent to search the vehicle, including luggage, containers, and the contents of such items. We find a reasonable person would understand her consent would include feeling and handling other items or gear in the vehicle, including the large stuffed teddy bear in defendant's rear seat.[1] However, we agree with the district court

[1] Defendant argues Ward's probing and tactile examination of the bear is akin to the physical manipulation of bus passenger luggage prohibited in *Bond v. United States*, 529 U.S. 334, 338-39, 120 S. Ct. 1462, 1465, 146 L. Ed. 2d 365, 370 (2000). We find this case inapplicable. *Bond* considered whether a border patrol officer's routine tactile examination of bus passengers' bags in overhead compartments was a search under fourth amendment analysis. *See Bond*, 529 U.S. at 336, 120 S. Ct. at 1464, 146 L. Ed. 2d at 369. It concluded this was a search under the fourth amendment. *Id.* at 338-39,

that no reasonable person would understand giving consent to search a vehicle and its contents would include cutting open one's possessions. Therefore, the search could not have been extended to this extent unless another exception to the warrant requirement applied to the circumstances. *See Id.* at 32 (noting officer had no authority to expand search of vehicle beyond the scope of driver's consent unless another exception applied).

A warrant is not necessary prior to conducting a search when there is probable cause to conduct the search and exigent circumstances demand the search be done immediately. *Id.* "'A police officer has probable cause to search an automobile when the facts and circumstances would lead a reasonably prudent person to believe that the vehicle contains contraband.'" *Id.* (quoting *State v. Gillespie,* 619 N.W.2d 345, 351 (Iowa 2000)). They may search within the vehicle "'*where they have probable cause to believe contraband or evidence is contained.*'" *Id.* (quoting *California v. Acevedo*, 500 U.S. 565, 580, 111 S. Ct. 1982, 1991, 114 L. Ed. 2d 619, 634 (1991)). "[T]he only exigency required to justify a warrantless search of a vehicle is the vehicle's ready mobility." *State v. Allensworth*, 748 N.W.2d 789, 797 (Iowa 2008).

Ward testified he squeezed the stuffed animal while it was still in the car and felt a hard brick shape. He asked a backup officer to also feel it to confirm whether something was inside the bear. Ward testified he knew marijuana was often packaged in brick forms. At that point Ward removed the bear from the car to look and feel it more closely. He noticed that the neck area of the bear had

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120 S. Ct. at 1465, 146 L. Ed. 2d at 370. It did not address the extent of permissible tactile examinations based on consent or probable cause, the issue presented here.

been restitched. These facts gave Ward probable cause to believe the bear contained contraband and the mobility of the vehicle permitted Ward to make a small incision to determine whether the bricks were marijuana.

VI. CONCLUSION.

We affirm the district court's ruling on defendant's motion to suppress in all respects. The officer had reasonable suspicion to detain defendant after issuing the citation given his purpose in verifying whether defendant lawfully possessed the vehicle. The defendant voluntarily consented to having the vehicle searched during this period and the officer's detection of potential bricks sewn inside the teddy bear within the vehicle gave the officer probable cause and exigent circumstances to justify cutting into the bear without a warrant.

AFFIRMED.