

IN THE COURT OF APPEALS OF IOWA

No. 9-239 / 98-238

Filed May 26, 1999

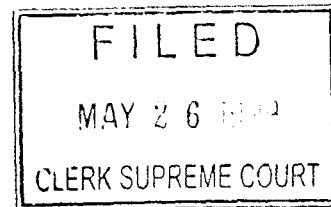
STATE OF IOWA,

Appellee,

vs.

CONNIE CONLIN,

Appellant.



Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Connie Conlin appeals her conviction for possession of a controlled substance with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and Teresa A. Vens, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Zimmer, JJ.

VOGEL, J.

Connie Conlin appeals her conviction for possession of a controlled substance with intent to deliver. We find Conlin did not limit or withdraw her consent to search her home; therefore her motion to suppress seized evidence was properly denied. We affirm.

Background facts. On September 19, 1997, Des Moines police officers presented themselves at Conlin's home after receiving complaints about suspicious traffic and activity. The officers knocked on Conlin's door, identified themselves, and explained their suspicion of illegal activity. Conlin stated that there were no narcotics in the house and verbally agreed to a search. Conlin also signed a written consent to search form. While conducting their search, officers discovered incriminating drug evidence in Conlin's purse, in her bedroom, and on her person.

Conlin was charged with one count of possession of marijuana with intent to deliver, a serious misdemeanor in violation of Iowa Code section 124.401(5) (1997), and one count of possession of methamphetamine with intent to deliver, a class "C" felony in violation of Iowa Code section 124.401(1)(c)(6) (1997). Conlin filed a motion to suppress which was denied by the district court. Following a bench trial, the court found Conlin guilty of the methamphetamine charge.¹ Conlin now appeals.

Scope of review. As Conlin alleges a violation of her constitutional rights, our standard of review is de novo. *See State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998).

¹ Conlin did plead guilty to the marijuana charge, but the charge was dismissed pursuant to the district court's sentencing order.

Under that standard, we must independently evaluate the totality of the circumstances as shown by the entire record. *See Id.* Nevertheless, we give weight to the district court's findings on credibility. *State v. Predka*, 555 N.W.2d 202, 206 (Iowa 1996); *Taylor v. State*, 352 N.W.2d 683, 687 (Iowa 1984).

Motion to suppress. While Conlin admits she initially consented to a search of her home, she asserts that she withdrew her consent before the drugs were found.

Both the United States and Iowa Constitutions protect individuals against unreasonable searches and seizures by government officials. *See* U.S. Const. amend. IV; Iowa Const. art. I, § 8. A search and seizure without a valid warrant is per se unreasonable unless it comes within one of the recognized exceptions: consent, search incident to arrest, probable cause and exigent circumstances, or plain view. *See State v. Manna*, 534 N.W.2d 642, 644 (Iowa 1995).

The scope of a search based on consent is limited to the terms of the consent, and consent “may be withdrawn or limited at any time prior to the completion of the search.” *State v. Myer*, 441 N.W.2d 762, 765 (Iowa 1989). The defendant is required “to clearly inform the appropriate official that the initial consent [has] been limited, withdrawn or revoked.” *State v. Anderson*, 517 N.W.2d 208, 213 (Iowa 1994); *see also State v. Stanford*, 474 N.W.2d 573, 575 (Iowa 1991). However, a revocation of consent does not operate retroactively to render unreasonable that search conducted prior to the time of revocation. *Myer*, 441 N.W.2d at 765.

Conlin testified that when the officers asked if they could search her house, she asked them if they would “tear up the house, get into anything or. . . make a mess of

anything. . . .” She claimed that the officers assured her that they were only going to do a routine walk-through and look for visible contraband. Officer William Hansen testified:

I asked her if we could have verbal consent to look around and make sure there was no illegal contraband in the house. She agreed. At that point I assigned Officer Curtis to begin looking in the bedrooms just adjacent to the living room. I assigned Officer Griffith to go ahead as a case officer to take the information from Miss Conlin, all the vital particulars -- name, address, the birth date, soc., whatnot -- and to fill out a consent form to have her sign

Both Officers Hansen and Griffith testified that Conlin did not limit the search. After Conlin signed the consent form,² Officer Hansen began searching the kitchen and downstairs rooms while Officer Curtis began searching the bedrooms. Officer Griffith testified that he remained with Conlin and an unidentified male in the living room throughout the search except when he went out to his car to pick up an evidence kit. Griffith further testified that Officer Curtis came out of the bedroom holding methamphetamine he found in Conlin’s purse. Griffith stated that Conlin took a deep breath and said something like: “You kind of figured this was going to be here.” Both Officers Griffith and Hansen testified that Conlin at no time revoked her consent to search. Conlin, however, testified that when she saw Officer Curtis pick up her purse, she walked into the bedroom and grabbed it from him, protesting his invasion

²The Consent to Search form provided, in part, “I Connie Conlin, hereby authorize and consent to a search of my residence (and other real property) located at 3937 E 32nd . . . I understand that I may ask the officers to stop searching at anytime.”

of her personal property. Conlin also testified that Griffith told Curtis to take the purse back and told her to “shut up and sit down.”

The district court found that the officers’ testimony was more credible than Conlin’s. The court concluded that she did not limit her consent and did not at any time tell the officers to stop their search. While our review is de novo, we give weight to the district court’s findings of credibility. *See Predka*, 555 N.W.2d at 206. After reviewing the record, we agree with the trial court’s findings. As we agree that Conlin did not limit nor revoke her consent to the search, we conclude the district court did not err in overruling the motion to suppress.

Having considered all issues properly before us on appeal, we hereby affirm Conlin’s conviction and sentence.

AFFIRMED.