FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-342 / 90-1223

STATE OF IOWA,

Plaintiff-Appellee,

vs.

511

MARVIN EARL GLOVER,

Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Joseph C. Keefe and Roger F. Peterson, Judges.

Glover appeals his conviction, following a bench trial, for possession of cocaine with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Brian K. Sissel, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Amy M. Anderson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and D. Raymond Walton, Assistant County Attorney, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

The sole issue in this case is whether the trial court should have suppressed evidence obtained in a pat down search. Defendant-appellant Marvin Earl Glover was charged and convicted, following a bench trial, of possession of cocaine with intent to deliver. Defendant has appealed from the resulting conviction. Defendant contends the trial court erred in denying his motion to suppress the evidence a police officer patted him down and obtained the cocaine and cash.

A police officer, through a telephone call from a confidential informant, learned defendant was allegedly selling drugs in a bar. The informant described where defendant was sitting in the bar, what defendant was wearing, and where defendant had the drugs. The officer learned from a second officer the informant had given reliable information in the past. The officer who received the call went with two other officers to the bar. One of the officers recognized defendant from the description the informant gave. The officer approached defendant, informed defendant he was a police officer, and he had information defendant was dealing in narcotics in the bar. The officer asked defendant if he would mind if he patted him down. Defendant, without speaking, stood up, put his hands on the bar, and spread his legs.

When the officer patted the defendant down, he felt what appeared to be a plastic bag in his front pocket, and what appeared to be folded money in his rear pants pocket. The officer testified he was positive in his mind it was some kind of dope. The officer took the plastic bag. It contained narcotics. The officer also took $413 in cash from defendant's pocket. Defendant contends evidence of the money and the narcotics should have been suppressed.

Defendant raises four challenges to the search. He contends the search was not voluntary. We disagree and find defendant by his actions consented to the search. We, therefore, need not address defendant's other challenges.

Review of a voluntariness issue requires examination of the totality of the circumstances. State v. Hall, 297 N.W.2d 80, 89 (Iowa 1980). An otherwise impermissible search is valid if it occurred after a voluntary consent. See State v. Ahern, 227 N.W.2d 164, 165 (Iowa 1975). A State seeking to rely upon consent to validate an otherwise unlawful search must prove by clear and convincing evidence the consent was freely and voluntarily given. See Schneckloth v. Bustamonte, 412 U.S. 218, 222, 93 S. Ct. 2041, 2045, 36 L. Ed. 2d 854, 860 (1973); Ahern, 227 N.W.2d at 166. Mere acquiescence to asserted authority is insufficient. Ahern, 227 N.W.2d at 166. In order for a party's consent to be valid, it must be voluntary and uncoerced. See State v. Erickson, 362 N.W.2d 528, 530

(Iowa 1985). The burden of proving voluntariness is on the State. Id. When there is an allegation of coercion, the State, therefore, must show there has been no undue pressure, threats, or improper inducements. State v. Holland, 389 N.W.2d 375, 381 (Iowa 1986). The consent must be freely and voluntarily given, and not a mere submission to authority. Bumper v. North Carolina, 391 U.S. 543, 548-49, 88 S. Ct. 1788, 1792, 20 L. Ed. 2d 797, 802 (1968). The officer informed the defendant he was a police officer and had information defendant was dealing in narcotics. The officer asked defendant if he would mind if he patted him down. Defendant stood up, put his hands on the bar, and spread his legs apart. The defendant did not say anything. The officer made no threats, and did not touch the defendant prior to the pat down. Defendant assumed a position that communicated his consent to a search. Consents can come from actions as well as words. See North Carolina v. Butler, 441 U.S. 369, 373, 99 S. Ct. 1755, 1757, 60 L. Ed. 2d 286, 292 (1979). Defendant voluntarily consented to the search. We affirm.

AFFIRMED.