IN THE COURT OF APPEALS OF IOWA

No. 0-625 / 99-1963
Filed December 13, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TAMMY JO REINIER,
Defendant-Appellant.

FILED
DEC 13 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Artis Reis, Judge.

The defendant appeals from the judgment and sentence entered upon the district court ruling finding her guilty of possession of amphetamines with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, John Sarcone, County Attorney, and Stephanie Cox, Assistant County Attorney, for appellee.

Considered by Zimmer, P.J., and Hecht and Vaitheswaran, JJ.

VAITHESWARAN, J.

While searching the Des Moines home of Tammy Jo Reinier, police discovered methamphetamine, marijuana, and other drug-related items. Charges were filed and, following a bench trial, the district court adjudged Reinier guilty of four drug crimes. On appeal, Reinier contends the court should have suppressed the seized items on the ground the officers entered her home illegally and the search was therefore unconstitutional. We disagree and affirm.

I. Background Facts and Proceedings

Des Moines police officers Blad and Westlake received a complaint that Reinier might be involved in drug activity at her work place. They conducted surveillance of her home for approximately one week and, after noting nothing suspicious, decided to walk up to the door and ask Reinier for consent to search her home. They knocked on the outer door of a closed area characterized by the State as a porch. Reinier answered the knock and the officers entered the porch area. Reinier subsequently signed a consent to search the home. On entering the living room, the officers discovered methamphetamine, cash, marijuana, a scale, a scanner, an address book, phone book and drug notes, packaging materials, a bottle of pills, and various other items.

The State charged Reinier with: (1) possession of a controlled substance (amphetamine) with intent to deliver; (2) conspiracy to deliver a controlled substance; (3) possession of a controlled substance (methamphetamine) with intent to deliver; (4) failure to possess a drug tax stamp; and (5) possession of a controlled substance (marijuana). *See* Iowa Code §§ 124.401(1)(b)(7), (5), (10)(b)(8); 453B.3; 453B.12 (1997). Reinier moved to suppress items seized

from the home. The district court denied the motion following a hearing and the case proceeded to trial before the court. The court found Reinier guilty of all but the conspiracy count and sentenced her to prison terms not to exceed twenty-five years on the possession with intent to deliver counts, one year on the tax stamp count, and six months on the possession count, to be served concurrently. This appeal followed.

II. Suppression Ruling

A. Contentions on Appeal. Reinier contends the officers' entry onto the porch violated her right to be free from unreasonable searches and seizures guaranteed by the Fourth Amendment to the United States Constitution and article 1, section 8 of the Iowa Constitution. She maintains this entry tainted the subsequent search of her home. She also maintains her later consent to the search was not voluntary. The State responds that Reinier had no expectation of privacy in her porch under the Fourth Amendment and Iowa Constitution and, even if she did, she consented to the porch entry. The State additionally argues the written consent form Reinier signed cured any illegality associated with the entry.

B. Standard of Review. We review constitutional issues de novo in light of the totality of the circumstances. *State v. Canas*, 597 N.W.2d 488, 492 (Iowa 1999). We interpret the Iowa Constitution consistently with federal interpretations of the Fourth Amendment. *State v. Showalter*, 427 N.W.2d 166, 168 (Iowa 1988).

C. Search and Seizure Law. The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution protect

persons against unreasonable searches and seizures by government officials. U.S. Const. amend. IV; Iowa Const. art. I, § 8; *State v. Jones*, 586 N.W.2d 379, 382 (Iowa 1998). A search occurs when the government unreasonably intrudes upon a person's legitimate expectation of privacy. *State v. Breuer*, 577 N.W.2d 41, 45 (Iowa 1998). A search and seizure without a valid warrant is per se unreasonable unless it falls within a recognized exception. *Mincey v. Arizona*, 437 U.S. 385, 390, 98 S. Ct. 2408, 2412, 57 L. Ed. 2d. 290, 298 (1978). These exceptions include searches based on consent. *Breuer*, 577 N.W.2d at 45. Evidence obtained in violation of these constitutional guarantees cannot be used in a criminal prosecution against the victim of the illegal search and seizure. *U.S. v. Calandra*, 414 U.S. 338, 347, 94 S. Ct. 613, 619, 38 L. Ed. 2d 561, 571 (1974); *State v. Carlson*, 548 N.W.2d 138, 140 (Iowa 1996).

D. Porch Entry. It is undisputed the officers entered Reinier's porch area without a warrant. Therefore, we must decide whether Reinier had a legitimate expectation of privacy in the porch area triggering the constitutional protections set forth above. If she did, the officers' entry would be per se unreasonable unless supported by a valid exception, in this case, consent.

1. Reasonable Expectation of Privacy. The determination of whether a person has a reasonable expectation of privacy in a particular location is made on a case-by-case basis, considering the unique facts of each situation. *Breuer*, 577 N.W.2d at 46. Photographs of Reinier's home reveal the "porch" was an enclosed structure with siding, a screen door and what appeared to be a solid wood door. *Cf. State v. Kitchen,* 572 N.W.2d 106, 107 (N.D. 1997) (noting outer door was metal storm/screen door with large, glass, uncovered window); *State v.*

Edgeberg, 524 N.W.2d 911, 913 (Wis. App. 1994) (noting porch had only wooden screen door that opened with a lightweight latch). The structure also had glass-encased windows covered with blinds. The outer wall of the structure was the same length as the rest of the home and appeared to be part of the home. On the inside of the structure was a finished ceiling with a decorative light fixture and a smoke detector. Officer Blad testified these pictures accurately depicted the structure as it was when she entered it. Additionally, Reinier testified the door to the porch had a deadbolt that she unlocked when the officers knocked. She also testified the porch contained her belongings, including collectibles.

We find the "porch" was in fact a portion of Reinier's home. We accordingly conclude Reinier had a legitimate expectation of privacy in that area. *See Payton v. New York*, 445 U.S. 573, 590, 100 S. Ct. 1371, 1384, 63 L. Ed. 2d 639, 653 (1980) (noting in no setting "is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home . . . ."); *State v. Ahart*, 324 N.W.2d 317, 319 (Iowa 1982) (noting core of Fourth Amendment is protection of security of home against arbitrary intrusion by police); *cf. Hancock v. Dodson*, 958 F.2d 1367, 1376 (6th Cir. 1992) (noting defendant arguably had an expectation of privacy in front porch because it was area immediately surrounding residence); *Breuer*, 577 N.W.2d at 45-47 (concluding defendant had a legitimate expectation of privacy in area leading from outer door of apartment building to apartment door); *People v. Greene*, 682 N.W.2d 354, 358 (Ill. App. 2d 1997) (noting defendant had lesser expectation of

privacy in vacant porch); *State v. Dykstra*, 926 P.2d 929, 933 (Wash. App. 1996) (concluding defendant had legitimate expectation of privacy in back porch).

2. Consent. Because Reinier had a legitimate expectation of privacy in the porch area, the officers' entry into that area was per se unreasonable unless the State could establish by a preponderance of the evidence that Reinier voluntarily consented to the entry. *See Payton*, 445 U.S. at 586, 100 S.Ct. at 1384, 63 L. Ed. 2d at 651; *State v. Hatter*, 342 N.W.2d 851, 854 (Iowa 1983); *State v. Brown,* 309 N.W.2d 425, 427 (Iowa 1981). Voluntariness is a fact issue to be determined from all the circumstances. *State v. Ahern*, 227 N.W.2d 164, 166 (Iowa 1975). "This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority." *Bumper v. North Carolina*, 391 U.S. 543, 549, 88 S. Ct. 1788, 1792, 20 L. Ed. 2d 797, 802 (1968). We conclude Reinier's conduct amounted to nothing more than acquiescence to the officers' claimed lawful authority to be on her porch.

Officer Blad testified that after she and her partner knocked on Reinier's door, Reinier "opened the door really wide." She went on to state, "I don't recall if I specifically asked, 'Hey, it's cold out here. Can I come on in?' But I felt there was an invitation to come to the porch." She stated she and Westlake then stepped into the porch area, identified themselves, and explained they were there to investigate a complaint of narcotics activity. Blad conceded on cross-examination she did not indicate in her police report that Reinier consented to the entry. She further stated, "I told you I don't recall if she specifically acknowledged or spoke to let us in or if it was just an invite by physically opening the door really wide. I don't recall."

Reinier described the entry as follows:

> I seen two people standing there, and I just said, "Yes?" And they said, "Are you Tammy or Debbie?" And I said, "Well, depends on who you are." And at that time they started to walk in and I just backed up.

We find from this testimony Reinier did not explicitly consent to the officers' entry into the porch area.

The next question is whether one could infer voluntary consent from Reinier's conduct. The district court found:

> "[t]he defendant's actions as well as words did consist of an invitation to enter, and the Court finds that the defendant's opening the door-fully opening the door and stepping back was an invitation for the officers to follow her into the area.
>
> On Defendant's Exhibit C the steps that lead to this door are clearly shown. And if the defendant was not inviting officers into the area, the officers could have remained on these steps. And the defendant could have had any necessary conversation without stepping back into the home implicitly consenting for the officers to enter the home.

We disagree with this finding. In *Hatter*, police officers contended the brother of the defendant gave them consent to enter the defendant's home and arrest him. The defendant moved to suppress the fruits of the warrantless arrest, arguing his brother's statements did not amount to consent. *Hatter*, 342 N.W.2d at 854. The Iowa Supreme Court agreed with the defendant. *Id.* The court found that although the brother did not deny the police officers access to the home, he also did not give "actual consent" to enter the premises. *Id.* Based on this finding, the court concluded the brother merely acquiesced in a claim of lawful authority and the officers' entry was nonconsensual. *Id.*

Similarly, in *State v. Morales*, 395 N.W.2d 655 (Iowa App. 1986), this court held police entry into an apartment was nonconsensual where detectives neither

sought nor received express consent to enter and the most that could be gleaned from the record was that no one denied the detectives entry or requested they leave. *Id.* at 659.

We find the facts here virtually indistinguishable from *Hatter* and *Morales*. The record is undisputed that the officers did not seek or receive Reinier's express consent to enter the porch area. At best, the record suggests Reinier had the door ajar momentarily before the officers entered. Although the officers could have remained on the steps of the home until they obtained her express consent, they did not do so, choosing instead to immediately step through the first two doors. They only identified themselves and the nature of their business after entering, again suggesting they assumed a right to be in that area. We conclude Reinier did not voluntarily consent to the officers' entry into the porch area.

E. Search of Residence. However, our inquiry does not end with the illegal entry because the State contends the consent form Reinier signed cured any taint of that entry. Reinier responds the consent was involuntary. We must therefore answer the following interrelated questions with respect to the officers' search of the residence: (1) whether the illegal entry so tainted the subsequent search that the written consent was immaterial; and (2) whether the written consent was voluntary. *See State v. Howard*, 509 N.W.2d 764, 767-68 (Iowa 1993) (examining whether early promise of leniency by police tainted subsequent search and also examining voluntariness of written consent); *State v. Garcia*, 461 N.W.2d 460, 461 (Iowa 1990) (examining both taint and voluntariness of consent); *cf. United States v. Hawthorne*, 982 F.2d 1186, 1191 (8th Cir. 1992)

(examining whether there was unlawful detention that would have tainted subsequent search and whether consent was freely and voluntarily given); 3 Wayne R. LaFave, *Search and Seizure* § 8.2(d), at 656 (3rd ed. 1996) (noting evidence obtained by purported consent should be held admissible only if it is determined that the consent was not an exploitation of prior illegality and was voluntary).

1. Did the illegal entry taint search? As previously noted, it is well established that evidence seized during an unlawful search may not be used as proof against the victim of the search. *Wong Sun v. United States*, 371 U.S. 471, 484, 83 S. Ct. 407, 416, 9 L. Ed. 2d 441, 453 (1963). This exclusionary rule, however, has limits. It does not bar admission of evidence obtained via an illegal search where "the connection between the lawless conduct of the police and the discovery of the challenged evidence has 'become so attenuated as to dissipate the taint.'" *Id.* (quoting *Nardone v. United States*, 308 U.S. 338, 341, 60 S. Ct. 266, 268, 84 L. Ed. 307, 309 (1939)). The question to be asked is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Id.* (citation omitted).

Although we are convinced the officers entered the porch area illegally, we believe the entry into the living room was based on a separate and unchallenged admission by Reinier that there were drugs in her home. Specifically, Officer Blad testified, "I straight out asked her if she had drugs or paraphernalia, and she said yes but it wasn't hers." Reinier did not deny making this statement.

Additionally, Reinier did not seek to suppress the statement or otherwise challenge elicitation of this statement as coercive.[1] Therefore, Reinier's admission that the house contained drugs was an intervening factor which purged the taint of the illegal entry. *See Howard*, 509 N.W.2d at 768 (noting taint of original promise of leniency purged by subsequent events).

2. Was consent voluntary? Reinier concedes she allowed the officers to enter the living room but maintains the consent was involuntary because (a) she was not aware she could refuse consent and (b) the officers misled Reinier into consenting by suggesting they could obtain a search warrant. We will address each argument in turn.

a. Knowledge of Right to Refuse Consent. The Iowa Supreme Court has stated lack of knowledge is not a prerequisite to establishing voluntary consent but only a factor in determining voluntariness. *State v. Folkens*, 281 N.W.2d 1, 4 (Iowa 1979). Reinier argues she was not afforded an opportunity to read the consent form and, even if she had read it, the form would not have clearly advised her she had a right to refuse consent. The State responds Blad read the form to Reinier, albeit after they entered the living room and after Blad

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[1] The record suggests Officer Blad may have precipitated Reinier's admission by implying she would not take action against Reinier for petty drug use. Specifically, Blad testified, "I also had explained to [Reinier] that I wasn't worried about the petty use quantities or paraphernalia. I was more concerned about a major dealer, even manufacturing was a concern." Later, Blad again reiterated to Reinier she was not concerned about petty use. This testimony could be construed as a promise of leniency or as deception. Depending on the circumstances, either could taint a subsequent search or render a subsequent consent nonconsensual. *See Howard*, 509 N.W.2d at 766; *Ahart*, 324 N.W.2d at 319. However, Reinier did not testify she executed the written consent based on a belief she would not be prosecuted or on a belief that the "petty use" discussion was deceptive. Instead, she asserted that the illegal porch entry, police discussion of a search warrant, and her lack of knowledge she could refuse to consent vitiated and tainted her consent. These are the only arguments the district court addressed and, accordingly, the only ones we consider on appeal. *See State v. Ludwig*, 305 N.W.2d 511, 513 (Iowa 1981).

noticed the drugs. The district court considered this disparate testimony and adopted the State's version of what transpired, finding Officer Blad read the consent form to Reinier. We defer to this finding in light of the court's ability to observe the witnesses and better judge their credibility. *Hatter,* 342 N.W.2d at 854.

The form states Reinier could have asked the officers to stop searching at any time. Reinier concedes she did not do so. The Iowa Supreme Court has found the absence of an objection to a search weighs in favor of finding the consent voluntary. *See Garcia*, 461 N.W.2d at 464. Combined with the fact Reinier displayed no physical or emotional impairments, we reject Reinier's argument she did not know she could withhold consent.

b. Threat of Search Warrant. Officers' threats to obtain a warrant may amount to sufficient coercion to vitiate consent. *See* 3 Wayne R. LaFave *Search and Seizure* § 8.2(c), at 649 (3rd ed. 1996). However, "where law enforcement officers indicate only that they will attempt to obtain or are getting a warrant such a statement cannot serve to vitiate an otherwise consensual search." *United States v.* Clayton, 210 F.3d 841, 845 (8th Cir. 2000)(quoting *United States v. Dennis*, 625 F.2d 782, 793 (8th Cir. 1980)); *United States v. Salvo,* 133 F.3d 943, 954 (6th Cir. 1998) (noting no coercion when a law enforcement agent reasonably advises that absent a consent to search, a warrant can be obtained).

Reinier testified, "[the officers] said if I didn't agree to sign the paper and do a walk-through, we would all stand right there until a search warrant was brought." Officer Blad conceded she may have discussed a warrant with Reinier but stated she did not give Reinier an ultimatum. She testified:

> I may have mentioned to her, you know, as opposed to getting a warrant, we prefer going out and knock and talk and closing out bogus complaints and or petty use complaints. And then after she had admitted that she had drugs in her residence, at that point I told her I probably had enough probable cause to apply for a warrant.

She further testified if Reinier had not consented to entry into the living room, she would have conferred with the county attorney to verify she had enough probable cause to apply for a warrant. As Blad does not appear to have affirmatively misrepresented her ability to obtain a warrant, we do not find her statements coercive. *See State v. Ege*, 274 N.W.2d 350, 352-53 (Iowa 1979); *cf. Bumper v. North Carolina*, 391 U.S. at 546, 88 S. Ct. at 1792, 20 L. Ed. 2d at 801 (1968) (noting consent involuntary where authorities entered the house without permission and stated they had a warrant to search the premises); *State v. Ahern*, 227 N.W.2d at 164 (noting consent involuntary where officer knocked three times within thirty seconds, did not identify himself, then kicked down the door and said he intended to search the home). *Id.* For these reasons, we conclude Reinier's written consent was voluntary.

As the search was conducted pursuant to a voluntary consent, the search was not unconstitutional and the motion to suppress the fruits of that search was correctly overruled.

We affirm Reinier's judgment and convictions.

AFFIRMED.