

IN THE COURT OF APPEALS OF IOWA

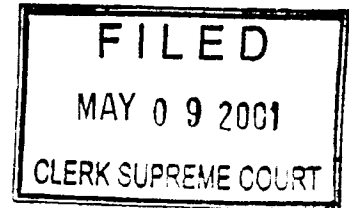
No. 1-160 / 00-0437

Filed May 9, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WENDY JANE JORDISON,
Defendant-Appellant.



Appeal from the Iowa District Court for Webster County, Gary L. McMinimee (Trial) and Joel E. Swanson (Sentencing), Judges.

Wendy Jordison appeals from her conviction for possession of methamphetamine with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, Ron Robertson, County Attorney, and Ricki Williamson, Assistant County Attorney, for appellee.

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

STREIT, J.

Wendy Jordison was convicted of possession of methamphetamine with intent to deliver. She argues her conviction was based on evidence seized during an invalid, warrantless search. We affirm.

I. Background Facts & Proceedings.

Fort Dodge police obtained a warrant to search Jordison's person and apartment for evidence establishing she was involved in drug dealing. The warrant noted the police had been told by two informants Jordison kept crank in a fake can.

Four police officers executed the search warrant at about 3:30 a.m. At Jordison's apartment, they found syringes, a spoon with drug residue, a scale, and other drug-related items. When Jordison arrived at her apartment at about 3:50 a.m., police found a "snow seal"¹ in her front pants pocket and \$690 of cash and a small notebook in her purse. Because the police had not yet found a fake can, one officer went to Jordison's car and shone his flashlight through its windows. He observed a beer can in between the car's front seats. According to the officer,

At that point I went back in the house, asked Wendy if she cared if I searched her vehicle. At first she said, "No, you ain't searching my vehicle." I said, "I'm going to ask you again, Wendy, do you care if I search your vehicle." She said, "You're going to search get a God damn search warrant, go ahead and search it." And I said, "Jot down the time she gave permission." I said, "You're giving this free and voluntarily?" And I said, "This is in front of the officers too" . . . And she said, "You're going to get a damn search warrant anyway." I said, "I can't guarantee a judge is going to issue me one on that."

¹ A "snow seal" is a folded piece of paper used to carry powdered drugs.

And she said, "Just go and search it anyway because you're going to get the damn thing anyway." And that's when I proceeded to search it.

In the car, the police found a fake Stroh's beer can, a scale, and several new and used plastic bags. The fake can contained baggies with methamphetamine residue.

Jordison was charged with possession of methamphetamine with intent to deliver and possession of methamphetamine. She unsuccessfully brought a motion to suppress the evidence seized during the searches of her apartment, her person, and her car. When the State introduced the evidence seized from Jordison's car, her attorney did not object. Jordison was convicted of possession of methamphetamine with intent to deliver. On appeal, she claims her attorney was ineffective because he did not preserve error with respect to the voluntariness of her consent to the search of her car.

II. The Merits.

Jordison waived her objection to the admission of the evidence seized from her car when her trial attorney expressly stated he had no objection to the evidence when it was offered by the State. See *State v. Schmidt*, 312 N.W.2d 517, 518 (Iowa 1981). Jordison thus challenges the district court's admission of the evidence through an ineffective-assistance-of-counsel claim. See *State v. Hildebrant*, 405 N.W.2d 839, 840 (Iowa 1987)

We review such claims de novo. *State v. Howes*, 525 N.W.2d 874, 876 (Iowa Ct. App. 1994). To prevail, Jordison must show her attorney's performance fell outside a normal range of competency and the deficient performance so

prejudiced her as to give rise to the reasonable probability that, but for her counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992). An attorney is not ineffective for failing to pursue an issue that has no merit. *State v. McPhillips*, 580 N.W.2d 748, 754 (Iowa 1998).

Jordison's ineffective-assistance-of-counsel claim hinges on the merit of her contention she did not voluntarily consent to the search of her car. "Consent is voluntary when it is 'unequivocal, specific and intelligently given, uncontaminated by any duress or coercion.'" *United States v. Ivy*, 165 F.3d 397, 402 (6th Cir. 1998) (citation omitted). We determine voluntariness by examining the totality of the circumstances. See *id.*; *State v. Garcia*, 461 N.W. 460, 462 (Iowa 1990). The circumstances must show "more than acquiescence to a claim of lawful authority." *Bumper v. North Carolina*, 391 U.S. 543, 548-49, 88 S. Ct. 1788, 1792, 20 L. Ed. 2d 797, 802 (1968).

Jordison argues her purported consent was, at best, an acquiescence to a claim of lawful authority given three salient circumstances: (1) The officers' failure to honor her initial refusal to consent; (2) her intoxication by methamphetamine; and (3) an on-going, wide-reaching search at an early morning hour with a dominant police presence. These circumstances do not undermine the voluntariness of Jordison's consent. Jordison was thirty-six years old and had previous encounters with the police, including a previous search of her car. She apparently had methamphetamine in her system, but she was

coherent enough to drive her car and talk with the officers at her home. After initially refusing to allow a warrantless search of her car, she immediately changed her mind after only one more request for her consent. Moreover, when she expressed her belief a search of her car was inevitable, she was told the officers might not be able to procure a search warrant for the car. Jordison may have given her consent to search her car begrudgingly, but she did not do so because of duress or coercion. Her attorney was not ineffective for failing to pursue this meritless issue. See *McPhillips*, 580 N.W.2d at 754. We affirm Jordison's conviction.

AFFIRMED.