IN THE COURT OF APPEALS OF IOWA

No. 7-601 / 96-2137 000445

STATE OF IOWA,

Plaintiff-Appellee,

vs.

SUSAN LYNNE ZEGLIN,

Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, Douglas C. McDonald, Judge.

Defendant appeals from judgment and sentence entered, following a bench trial, for possession of marijuana. **AFFIRMED.**

Thomas H. Preacher, Bettendorf, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, William E. Davis, County Attorney, and Alan R. Havercamp, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Defendant Susan Zeglin appeals her conviction for possession of a controlled substance, marijuana, in violation of Iowa Code section 124.401(3). On appeal, Zeglin argues the district court erred in failing to grant her motion to suppress evidence seized following a warrantless search of her automobile. We affirm.

On July 7, 1996, Officers Moeller and Walker of the Davenport police department observed Zeglin driving in Davenport. Moeller had previously stopped Zeglin a month earlier at a routine traffic safety check. Zeglin's address on her license and registration was incorrect and Moeller issued her a warning, advising her to update her license and registration. On July 7, Moeller and Walker stopped Zeglin to determine if she had complied with the warning. Zeglin told Moeller she had updated the license plates and her driver's license. Zeglin went with Moeller back to the police car while he verified the status of the license and registration. The address on Zeglin's registration did not match the address she gave Moeller.

Next, Moeller asked Zeglin if she had anything illegal in her car, such as drugs or weapons, and if he could search her car. Zeglin told Moeller she did not have any contraband in her car and she would not give consent because she was tired of people going through her car. Moeller then informed Zeglin she had violated the law and they could write her a citation or take her to jail because of the registration violation. They also informed Zeglin her car would be impounded and searched if she was taken to jail. Moeller then made a second request to search the car and Zeglin approved.

Zeglin told Moeller there were syringes in the glove compartment. A search of the glove compartment revealed a small spoon, two syringes, and a piece of string wrapped in a napkin. The officers also found a partially smoked marijuana cigarette on the left floorboard area near the driver's seat.

Officer Moeller subsequently issued Zeglin citations for possession of marijuana, possession of drug paraphernalia, and failure to notify of her address change. Moeller and Walker released Zeglin after she signed the citations. Zeglin made a timely motion to suppress the evidence found during the search claiming she involuntarily consented. The court rejected Zeglin's motion.

I. SCOPE OF REVIEW. Our review of constitutional rights is de novo. *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995). We must look at the totality of the circumstances as shown by the entire record. *State v. Cook*, 530 N.W.2d 728, 731 (Iowa 1995). In determining the propriety of the district court's action, this court may consider the evidence received at trial as well as that received at the suppression hearing. *State v. Jackson*, 542 N.W.2d 842, 844 (Iowa 1996); *Cook*, 530 N.W.2d at 731. The district court's ruling may be upheld on any basis appearing in the record, even though different from the one relied upon by the court. *State v. Green*, 540 N.W.2d 649, 655 (Iowa 1993).

II. SEARCH AND SEIZURE. Zeglin argues she did not voluntarily consent because Moeller threatened to take her to jail. The State argues Zeglin did voluntarily

consent. The State also argues Moeller's search was a valid search incident to citation under Iowa Code section 805.1(4) and no consent was necessary. The Iowa Supreme Court has stated:

> The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution protect individuals against unreasonable searches and seizures. Searches and seizures conducted without prior approval by a judge or magistrate are per se unreasonable unless they fall within one of the exceptions to the warrant requirement. *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514, 19 L. Ed. 2d 576, 585 (1967); *Vincik*, 436 N.W.2d at 353.
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> One of the exceptions to the warrant requirement is a search incident to arrest. *Chimel v. California*, 395 U.S. 752, 762-63, 89 S. Ct. 2034, 2040, 23 L. Ed. 2d 685, 694 (1969); *State v. Garcia*, 461 N.W.2d 460, 462 (Iowa 1990), *cert. denied*, 499 U.S. 909, 111 S. Ct. 1115, 113 L. Ed. 2d 223 (1991). The full search of the arrestee's person "is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." *United States v. Robinson*, 414 U.S. 218, 235-36, 94 S. Ct. 467, 477, 38 L. Ed. 2d 427, 440-41 (1973); *State v. Peterson*, 515 N.W.2d 23, 24-25 (Iowa 1994). Being reasonable per se, a search incident to arrest, even when the offense is only a minor traffic violation, requires no additional justification. *Gustafson v. Florida*, 414 U.S. 260, 263-66, 94 S. Ct. 488, 491-92, 38 L. Ed. 2d 456, 460-61 (1973); *Robinson*, 414 U.S. at 234-36, 94 S. Ct. at 476-77, 38 L. Ed. 2d at 440-41; *State v. Farrell*, 242 N.W.2d 327, 329-30 (Iowa 1976).
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> The Iowa legislature has extended this broad search incident to arrest exception. Iowa Code section 805.1(4) pertinently states: "The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search." In other words, Iowa Code section 805.1(4) authorizes an officer to conduct a search, of the same scope as the constitution authorizes for a search incident to a custodial arrest, contemporaneously with the officer's issuance of a citation when that officer has probable cause to make a custodial arrest but chooses instead to issue a citation. The Iowa legislature has thus created a search incident to issuance of a citation exception to the search warrant requirement.

> In order to be legal, the State must prove by a preponderance of the evidence that its warrantless search meets an exception to the search warrant requirement. *State v. Eubanks*, 355 N.W.2d 57, 59 (Iowa 1984).

Cook, 520 N.W.2d at 731. The search incident to arrest doctrine applied in Fourth Amendment jurisprudence is dependent on facts that provide a legal basis for making a custodial arrest rather than the act of arrest itself. *State v. Doran*, 563 N.W.2d 620, 622 (Iowa 1997). If the officer is legally permitted and objectively authorized to make the arrest, he is, for that reason alone, also authorized to make the search. *Id.*

In this instance, the stop of the vehicle itself is not challenged. It is undisputed Zeglin violated Iowa Code section 321.41 when she failed to update her address information. The Code granted Officer Moeller discretion to either arrest Zeglin or issue her a citation. Iowa Code §§ 804.7(1), 805.1(1) (1995). Zeglin was ultimately given a citation for the violation. Thus, section 805.1(4) allowed him to search Zeglin's car. Even if there was a delay in the issuance of the citation for the violation of section 321.41, Moeller was within the purview of section 805.1(4) when he conducted the search of Zeglin's car. *Doran*, 563 N.W.2d at 623. We find this was a valid search incident to citation under Iowa Code section 805.1(4) and therefore do not address the issue of consent.

For these reasons, we affirm the decision of the trial court.

AFFIRMED.