

**IN THE COURT OF APPEALS OF IOWA**

No. 1-625 / 10-1504  
Filed November 23, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**ERIK THOMAS KLIMSTRA,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Clinton County, Phil Tabor, District Associate Judge.

The State seeks discretionary review of a suppression ruling that found a stop and subsequent search, which yielded marijuana and a prescription drug, violated defendant's constitutional rights. **REVERSED.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant Appellate Defender, for appellee.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Michael L. Wolf, County Attorney, and Robin Strausser, Assistant County Attorney, for appellant.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J., takes no part.

**VOGEL, P.J.**

The State seeks discretionary review of a suppression ruling that found a stop and subsequent search, which yielded marijuana and a prescription drug, violated defendant Erik Klimstra's constitutional rights. Because we find probable cause supported Klimstra's arrest, and because a search incident to a lawful arrest is an exception to the warrant requirement, the marijuana and prescription drug evidence attained during the search incident to arrest should not have been suppressed. We reverse.

**I. Background Facts and Proceedings**

On June 2, 2010, Clinton police officer William Sattler was patrolling downtown Clinton around 10:30 p.m. In the days leading up to June 2, Clinton's downtown businesses had experienced a sudden increase in burglaries and officers were on notice to be proactive in identifying people walking around the downtown business district. While on patrol, Officer Sattler observed two people walking in the one-hundred block of Sixth Avenue South. His attention was drawn to these two subjects as one had a cane<sup>1</sup> and the other, Klimstra, was wearing a hooded sweatshirt with the hood pulled up over his head and nearly covering his face. Officer Sattler found it "concerning" that Klimstra was wearing a sweatshirt in that manner, as it was sixty-five to seventy degrees outside and other people were wearing shorts.

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<sup>1</sup> The recent burglaries were carried out by the burglars breaking the front glass of the various businesses' windows to gain entry into the buildings. Officer Sattler testified that because neither man appeared very old, he was initially suspicious when he saw the man with the cane. As Officer Sattler approached the men, however, he observed the one man actually required a cane to walk.

Officer Sattler approached the two men in an effort to identify them. He asked the two men for their identification, explaining that there had been an increase in burglaries in the area. The men provided Officer Sattler with proper identification. While talking with the men, Officer Sattler observed Klimstra's eyes were bloodshot and watery, and he could smell alcohol on Klimstra's breath. When he asked Klimstra about his alcohol consumption that evening, Klimstra spoke with slurred speech and admitted he had been drinking, but refused to answer how many drinks he had consumed. During the encounter, Officer Sattler paid close attention to Klimstra's face, the placement of his hands, and his pockets. He observed a clear plastic bag sticking out of the coin pocket on the front, right-hand side of Klimstra's pants. As the bag protruded from the pocket, Officer Sattler saw what he believed to be marijuana inside the bag.

Officer Sattler asked Klimstra to put his hands on his head, as he was concerned any mention of his observation of the marijuana could lead Klimstra to somehow destroy it or to flee the scene. When he asked if he could search Klimstra's pockets, Klimstra denied permission. Officer Sattler then asked Klimstra if there was anything unlawful in his pockets, such as weapons or drugs, and Klimstra replied there was not. Walking behind Klimstra as he answered, Officer Sattler believed this answer was untruthful and removed the bag from Klimstra's coin pocket. He confirmed that the bag contained marijuana, and arrested Klimstra for possession of marijuana. Officer Sattler continued searching Klimstra and found a small piece of aluminum foil inside the coin pocket.

At this point, Officer Sattler *Mirandized*<sup>2</sup> Klimstra and inquired regarding the contents of the aluminum foil, as he was concerned it was drugs. Klimstra said the foil contained a pill his friend gave him for headaches. Upon opening the foil packet, Officer Sattler found a pill inside. Still believing Klimstra was intoxicated, Officer Sattler administered a “horizontal glaze nystagmus” (HGN) sobriety test, which Klimstra failed. Klimstra refused a preliminary breath test.

On June 22, 2010, the State charged Klimstra with possession of marijuana in violation of Iowa Code section 124.401(5) (2009), unlawful possession of prescription drugs in violation of Iowa Code section 155A.21, and public intoxication. On August 19, 2010, Klimstra filed a motion to suppress, challenging the constitutionality of the stop under the Fourth Amendment of the United States Constitution and citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). A suppression hearing was held on August 20, and on the same day the district court granted Klimstra’s motion. The State filed an application for discretionary review on September 17, 2010. On October 18, 2010, our supreme court granted the State’s application and stayed further proceedings.

## **II. Standard of Review**

Where a motion to suppress is based on a claim of deprivation of the defendant’s constitutional right against unlawful searches and seizures, our review is de novo. *State v. Watts*, 801 N.W.2d 845, 850 (Iowa 2011). In conducting this de novo review we “make an independent evaluation based on

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<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436, 88 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

the totality of the circumstances as shown by the entire record.” *State v. Ochoa*, 792 N.W.2d 260, 264 (Iowa 2010) (internal brackets omitted).

Our supreme court “jealously guard[s]” its right to interpret the state constitution differently than the federal constitution, but charges counsel with the task of fashioning an interpretation of the state constitution that differs from that of the federal constitution. *State v. Effler*, 769 N.W.2d 880, 895 (Iowa 2009) (Appel, J., special concurrence). In this case, the State correctly notes the claims set forth both before the district court and on appeal are only made under the United States Constitution. We therefore do not engage in a separate analysis to determine the constitutionality on state constitutional grounds.

### **III. Analysis**

The Fourth Amendment of the United States Constitution provides “the right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause.” U.S. Const. amend. IV.; *State v. Wilkes*, 756 N.W.2d 838, 842 (Iowa 2008). There are four exceptions to the Fourth Amendment’s warrant requirement: (1) consent search; (2) search based on probable cause and exigent circumstances; (3) search of items in plain view; and (4) search incident to lawful arrest. *State v. Christopher*, 757 N.W.2d 247, 249 (Iowa 2008). The State has the burden of proving by a preponderance of the evidence that a warrantless search falls within one of these exceptions. *Watts*, 801 N.W.2d at 850.

The State argues the district court erred in suppressing the marijuana found in Klimstra’s pocket because the marijuana was clearly visible to Officer

Sattler (1) during a consensual encounter with defendant, and/or (2) during a lawful investigatory stop and was lawfully seized based upon probable cause and exigent circumstances, and/or (3) incident to defendant's arrest for possession of marijuana. It further contends the prescription drug was discovered during a lawful search incident to arrest for Klimstra's possession of marijuana.

Klimstra's attorney acknowledged both at the suppression hearing and on appeal that an officer is permitted to approach an individual and ask for identification. See *United States v. Drayton*, 536 U.S. 194, 200–01, 122 S. Ct. 2105, 2110, 153 L. Ed. 2d 242, 251–52 (2002) (“Law enforcement officers do not violate the Fourth Amendment’s prohibition of unreasonable searches merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen. . . . [T]hey may pose questions, ask for identification, and request consent to search luggage—provided they do not induce cooperation by coercive means.”). With the clear ability to approach Klimstra, the State argues that as soon as Officer Sattler observed marijuana in Klimstra's pocket, he had probable cause to arrest Klimstra for possession of a controlled substance in violation of Iowa Code section 124.401(5).

The search incident to arrest exception allows a police officer “to search a lawfully arrested individual’s person and the immediately surrounding area without a warrant.” *Christopher*, 757 N.W.2d at 249. Our determination regarding whether this exception applies turns on whether an arrest is supported by probable cause. *Maryland v. Pringle*, 540 U.S. 366, 370, 124 S. Ct. 795, 799, 157 L. Ed. 2d 769, 774 (2003) (“A warrantless arrest of an individual in a public place for a felony, or a misdemeanor committed in the officer’s presence, is

consistent with the Fourth Amendment if the arrest is supported by probable cause.”); *Christopher*, 757 N.W.2d at 249 (stating the proper inquiry in search incident to arrest cases is “whether the officer had probable cause to arrest”). “The substance of all the definitions of probable cause is a reasonable ground for belief of guilt, and that the belief of guilt must be particularized with respect to the person to be searched or seized.” *Pringle*, 540 U.S. at 371, 124 S. Ct. at 800, 157 L. Ed. 2d at 775 (internal quotation marks and citation omitted).

Officer Sattler has been employed by the Clinton police department for thirteen years, where he works patrol and serves as both a field training officer and a crisis negotiator. At the suppression hearing, Officer Sattler testified as to what he saw in Klimstra’s pocket: “Well, again, as I’m speaking to [Klimstra], I see the baggie sticking out. And as I’m looking closer at the baggie, I see what I believe is marijuana sticking out of that pocket also inside that baggie.” Believing Klimstra was being untruthful in response to the question of whether he possessed any drugs or weapons, Officer Sattler pulled the bag from Klimstra’s coin pocket and advised Klimstra he was under arrest for possession of marijuana. Based on the totality of the circumstances, including the fact that marijuana was visible in the clear plastic bag protruding from Klimstra’s front, right coin pocket, Officer Sattler had a “particularized” and “reasonable ground for belief of guilt” regarding Klimstra’s possession of marijuana in violation of Iowa Code section 124.401(5), and therefore had probable cause to make an arrest. See *Pringle*, 540 U.S. at 371, 124 S. Ct. at 800, 157 L. Ed. 2d at 775 (internal quotation marks and citation omitted) (defining what constitutes probable cause to effectuate an arrest); see also Iowa Code § 804.7(1) (stating a peace officer

may make a warrantless arrest, “[f]or a public offense committed or attempted in the peace officer’s presence”).

One justification for the search incident to arrest is to prevent the concealment or destruction of evidence. *Christopher*, 757 N.W.2d at 249. Moreover, “[a] search incident to arrest need not be made *after* a formal arrest if it is substantially contemporaneous with it, provided probable cause existed at the time of the search.” *State v. Peterson*, 515 N.W.2d 23, 25 (Iowa 1994). We find that based on the temporal proximity between the search and arrest, and that searching Klimstra’s person on the scene absent a warrant prevented the concealment or destruction of the marijuana that was so clearly visible to Officer Sattler, the search incident to arrest exception applies. We therefore reverse the decision of the district court suppressing the marijuana evidence.<sup>3</sup>

The State further argues the district court erred in suppressing the prescription drug, and that the prescription drug should not be suppressed because it was found during a lawful search incident to Klimstra’s arrest for possession of marijuana. Because Officer Sattler effectuated a lawful arrest, the subsequent search that uncovered the prescription drug was also lawful under the search incident to arrest exception to the warrant requirement. See *State v. Freeman*, 705 N.W.2d 293, 298 (“If there is probable cause to arrest a person,

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<sup>3</sup> The State argues in the alternative, the district court erred in suppressing the marijuana protruding from Klimstra’s pocket because it was lawfully seized based upon probable cause and exigent circumstances. Because it is reasonable to believe that Klimstra, who was on foot, could either flee the scene or effectuate the destruction of the marijuana, seizure of the marijuana based on probable cause and exigent circumstances serves as another exception to the warrant requirement. See *State v. Naujoks*, 637 N.W.2d 101, 109–10 (Iowa 2001) (discussing when exigent circumstances, including risk of escape and the potential destruction of evidence, justify a warrantless search and seizure).



then a search of the person arrested and the area within his or her immediate control is lawful.”). We therefore reverse the district court’s decision suppressing the prescription drug evidence.

**REVERSED.**