

IN THE COURT OF APPEALS OF IOWA

No. 2-1152 / 11-1818
Filed February 13, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CONNIE LYNN FLOYD,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman (motion to suppress), Jeffrey L. Poulson (trial), Judges

Connie Lynn Floyd appeals from her judgment, conviction, and sentence for delivery of a controlled substance, keeping a disorderly house, and possession of drug paraphernalia. **AFFIRMED.**

Matthew R. Metzfar of Rhinehart Law, P.C., Sioux City, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Patrick Jennings, County Attorney, and Amy Klocke, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., and Danilson and Tabor, JJ.

POTTERFIELD, P.J.

Connie Lynn Floyd appeals from her judgment, conviction, and sentence for delivery of a controlled substance, keeping a disorderly house, and possession of drug paraphernalia. She contends the warrantless entry and search of her residence constituted an illegal search and seizure in violation of her rights under the Fourth Amendment and article one, section eight of the Iowa Constitution. We affirm, finding probable cause and exigent circumstances existed for the officers' warrantless entry into the residence.

I. Facts and Proceedings

On March 4, 2011, Sioux City police received a general illegal drug complaint regarding the apartment of Connie Floyd. The person who contacted the police was a resident of the apartment building and reported heavy foot traffic going in and out of the apartment. A Sioux City police officer, Officer Kolker, drove to the complex and waited for a second officer, Officer Nice, to arrive as support. The complainant and the apartment complex landlord pulled up and spoke with Officer Kolker as she waited. They informed the officer that they had observed heavy foot traffic and smelled drug odors in the past coming from the specific apartment.

Officer Nice parked in front of the apartment complex and proceeded inside. He walked up the stairs and stood outside of the apartment, where he overheard voices inside. The occupants seemed fixated on the police presence at the apartment complex. The officer also overheard a male in the apartment who sounded "panicky" state he had an "O" on him. Nice knew from his training that an "O" meant an ounce of a drug—usually marijuana. Once Officer Nice

was aware Officer Kolker had arrived at the apartment complex, Nice knocked on the apartment door. A female voice responded, "Who is it?" Nice initially did not respond. Nice knocked again, this time identifying himself as the police. Floyd opened the door, and Nice entered.

The apartment was small, cluttered, and crowded. Nice observed a large number of people in the living room area. Kolker also entered the apartment and proceeded into the kitchen area to help secure the premises, asking any people in the other rooms to go into the living room area. Nice observed two drug-related items sitting in plain view in the living room area: a Coke can partially manipulated into a marijuana pipe and a football-shaped Brillo pad typically used as a filter on a crack cocaine pipe.

Nice asked the group to identify the individual who had stated he had an "O" on him. A person responded that the individual who made the statement was no longer there. Nice walked through the apartment, checking places where a person could hide. During this sweep, Nice observed a methamphetamine pipe in the bathroom.

Upon returning to the living room, the officers began to ask for identification from the individuals and pat them down for weapons. By this time, two other officers had arrived to assist. Nice requested permission to search the apartment and reported Floyd initially verbally consented, a fact which Floyd contests. Nice then handed Floyd a written request for consent, but she stared at the form and did not seem to understand, even when others attempted to read it to her. The officers arrested Floyd for keeping a disorderly house, and arrested the eight other occupants for frequenting a disorderly house. The eight

occupants were taken to the police department. Floyd remained in the apartment with Officer Nice and a police sergeant while they waited for another officer to obtain a search warrant.

Floyd was read *Miranda* warnings,¹ which she waived, and Nice proceeded to ask her some questions. When asked about the man who said he had an “O” on him, she responded that when the police knocked on the door she told the man to leave the apartment out of the kitchen window. Nice walked over to the window and observed a fire escape. When an officer returned with the search warrant, the apartment was searched. The officers discovered needles in the bathroom, methamphetamine pipes in the dresser, notebooks containing drug notes, pickets,² and several bags of marijuana.

Floyd was transported to the police station and interviewed further. She was charged with possession with intent to distribute a controlled substance, keeping a disorderly house, and possession of drug paraphernalia. She filed a motion to suppress statements and physical evidence claiming her federal and state constitutional rights were violated by the police’s warrantless entry into her home. This motion was denied. She was tried before the court and found guilty of deliver of a controlled substance—marijuana, keeping a disorderly house, and possession of drug paraphernalia. She appeals from these proceedings.

II. Analysis.

We review constitutional claims regarding the right to be free from unreasonable searches and seizures de novo. *State v. Watts*, 801 N.W.2d 845,

¹ *Miranda v. Arizona*, 384 U.S. 436, 468–72 (1966).

² Officer Nice testified that pickets are a tool used to create a methamphetamine pipe.

850 (Iowa 2011). Floyd argues the entry of police into her apartment violated her rights under both the Fourth Amendment of the United States Constitution and article one, section eight of the Iowa Constitution. “The scope and purpose of Iowa’s search and seizure clause is coextensive with the federal court’s interpretation of the Fourth Amendment.” *State v. Carter*, 733 N.W.2d 333, 337 (Iowa 2007). Floyd does not outline how her Iowa constitutional claim should be evaluated differently; therefore, we interpret the claim identically under both the federal and state constitutions for purposes of this appeal. *State v. Wilkes*, 756 N.W.2d 838, 842 n.1 (Iowa 2008) (noting that while “[w]e zealously guard our ability to interpret the Iowa Constitution differently from authoritative interpretations by the United States Supreme Court,” where no argument is made that the Iowa Constitution should be interpreted in a different manner than the United States Constitution, “we for prudential reasons assume for the purposes of this appeal that the United States Constitution and the Iowa Constitution should be interpreted in an identical fashion”).

Searches conducted without a warrant are per se unreasonable unless conducted pursuant to an exception to the warrant requirement. *Watts*, 801 N.W.2d at 850. One exception is probable cause coupled with exigent circumstances. *Id.* “In determining whether an exception to the warrant requirement applies, the court must assess a police officer’s conduct based on an objective standard.” *Id.* The State has the burden of proving an exception exists by a preponderance of the evidence. *Id.* “Exigent circumstances sufficient to justify a search and seizure without a warrant usually include danger of violence and injury to the officers or others; risk of the subject’s escape; or the

probability that, unless taken on the spot, evidence will be concealed or destroyed.” *Id.* A claim of exigent circumstances “must be supported by specific, articulable grounds.” *Id.* at 851. Destruction of evidence may constitute an exigent circumstance “when specific and articulable facts, along with any rational inferences from those facts, would lead a reasonably prudent police officer to believe that the events which are unfolding will cause evidence of crime to be threatened with immediate removal or destruction.” *Id.*

In *Watts*, our supreme court found no exigent circumstances existed to justify an exception to the warrant requirement where an officer testified he conducted a warrantless search to find other individuals in an apartment, when no facts in the record “would have justified a reasonably prudent officer in believing anyone else might be in the apartment.” *Id.* “Rather, the information relayed to [police officers] mentioned only that ‘a subject’ (i.e., Watts) was selling marijuana from the apartment.” *Id.* Therefore, the court concluded, the officers had no reasonable fear that evidence would be lost in the time necessary to obtain a warrant. *Id.* at 852.

Here, in contrast, the information relayed to police officers indicated a large amount of foot traffic and drugs, an officer heard several individuals inside the apartment discuss their concern about police presence in the building, and one individual stated he had drugs on him and needed to leave the apartment.³ Given the specific, articulable facts known to Officer Nice regarding the scenario

³ We note that though the individuals present were concerned about police presence in the apartment complex, this does not foreclose the police from relying on the ensuing remarks as the basis of an exigent circumstance exception. *Kentucky v. King*, 131 S. Ct. 1849, 1858 (2011).

unfolding behind the apartment door, along with the rational inferences that could be made therefrom, a reasonable officer in his position could have feared either the escape of a subject or the destruction of evidence.

Because we find probable cause and exigent circumstances existed for the entry of officers into Floyd's apartment, we need not address Floyd's alternative argument regarding the validity of the subsequent search warrant.

AFFIRMED.

Tabor, J., concurs; Danilson, J., dissents.

DANILSON, J. (dissenting)

The issue on appeal was whether the officers' warrantless entry was in violation of Floyd's rights against unreasonable searches and seizures under both the United States and Iowa Constitutions. The search here related to possession of marijuana, not a grave offense; there was no concern for the safety of officers or others; the officers took no action to locate the exits to the apartment; there is no evidence of the time necessary to obtain an arrest warrant; there was no evidence of an inability to call other officers to the scene to secure the exits if needed; and the exigency if any, pertained to finding the male individual who possessed the "O" who was going to flee and not an exigency to search Floyd's residence for drugs that may be destroyed. Under these facts, the officers' entry was permissible if at all for the limited purpose to locate the male individual. "A warrantless search must be strictly circumscribed by the exigencies that justify its initial intrusion." *Mincey v. Arizona*, 437 U.S. 385, 393 (1978). Floyd argues that "Officer Nice's actions were not objectively reasonable based upon all conversations he was hearing . . . prior to his entry." I agree. I would reverse.