**IN THE COURT OF APPEALS OF IOWA**

No. 3-307 / 12-1431
Filed May 15, 2013

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

**vs.**

**JAMES ROBERT PIERCE,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Fayette County, Richard D. Stochl, Judge.

James Pierce appeals from his conviction for possession of a controlled substance, marijuana, second offense. **AFFIRMED.**

James T. Peters, Independence, for appellant.

Thomas J. Miller, Attorney General, Bridget Chambers, Assistant Attorney General, and W. Wayne Saur, County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

**POTTERFIELD, J.**

James Pierce appeals from his conviction for possession of a controlled substance, marijuana, second offense. He argues the district court erred in failing to grant his motion to suppress the physical evidence of marijuana, as police violated his rights under article 1, section 8 of the Iowa Constitution as interpreted under our supreme court's decision in *State v*. *Pals*, 805 N.W.2d 767 (Iowa 2011). We affirm, finding Pierce's consent to search was voluntary.

## I. Facts.

Pierce was pulled over in his vehicle for failing to stop at a stoplight and because the light on his rear license plate was not functioning. At the time, Pierce was almost home so he stopped his vehicle in his driveway. Pierce's wife came out of the house to see what was going on. She remained outside for the duration of the stop. Two officers were present for the stop; one gave Pierce a warning ticket for failing to stop at the red light and a ticket to repair the license plate light. The officer handed Pierce these tickets, as well as his license, registration, and proof of insurance. The officer thought Pierce seemed nervous, so he asked Pierce if he had any weapons or contraband on him and if he could perform a pat-down search of Pierce. Pierce responded "I don't have anything on me. I don't care."

Pierce then reached into the pocket of the jacket he was wearing, and removed a pair of gloves along with a baggie of what appeared to the officer to be marijuana. He attempted to conceal the baggie within the gloves. The officer observed the marijuana and furtive actions by Pierce, but continued with the pat-down search.

Pierce was charged with possession of a controlled substance, marijuana, second offense. He filed a motion to suppress the physical evidence as a violation of his rights under the Fourth Amendment and article I, section 8 of the Iowa Constitution. He argued the request to frisk was to search for contraband, not weapons, and that the officer had no reasonable basis to frisk. A hearing was held on the motion, and the two officers testified as to the substance of the stop. The district court denied the motion. It found the marijuana was in plain view of the officers and therefore its discovery did not violate Pierce's constitutional rights. Pierce was found guilty of possession of a controlled substance, marijuana, second offense, after trial on the minutes of testimony. He appeals, arguing the court erred in failing to grant his motion to suppress the physical evidence.

**II. Analysis.**

We review an appeal from a motion to suppress on constitutional grounds de novo. *Pals*, 805 N.W.2d at 771. We look to the entire record, and conduct an independent evaluation of the totality of the circumstances. *Id.* We give deference to the findings of the district court, as it had the opportunity to observe witnesses and evaluate their credibility; however, we are not bound by those findings. *Id.*

Pierce first contends the officer had no reasonable basis to conduct the pat-down search, but acknowledges that he gave consent to the procedure. A warrantless search of a person violates their right to be free from unreasonable search and seizure unless it falls within a recognized exception, one of which is consent to search. *State v. Reinders*, 690 N.W.2d 78, 83–84 (Iowa 2004)

(concluding suspect consented to the search of his pocket, therefore retrieval of methamphetamine from his person did not violate his Fourth Amendment rights); *see also State v*. *Carter*, 267 N.W.2d 385, 387 (Iowa 1978) (holding pat-down search of a suspect at a concert violated the Fourth Amendment where no express or implied consent was given). Pierce then argues his agreement to a pat-down search was not voluntary under our supreme court's precedent in *Pals*. 805 N.W.2d at 782. The State responds that we need not evaluate the pat-down request and consent, because Pierce put the contraband in plain view by removing it from his pocket. Because Pierce would not have removed the marijuana from his pocket without the request for consent to the pat-down, we consider whether his consent was voluntary.

In *Pals*, the court looked to four specific factors in determining whether the suspect's consent to search was voluntary. *Id.* It first noted the suspect had already been subject to a pat-down search, that the suspect was detained in a police vehicle during the subsequent consent to search—not "an encounter on the familiar surroundings of the threshold of one's home," that the suspect was not advised he was free to leave "or that he could voluntarily refuse consent without any retaliation by police," and the suspect was not advised that the officer had concluded the stop-related business prior to requesting further consent to search. *Id.* at 782–83.

Much like the scenario in *Pals*, the police officers had concluded their initial reason for the stop prior to requesting Pierce to consent to a frisk; they had returned Pierce's driver's license, insurance, and issued him his tickets. They also had not advised Pierce this business was concluded, nor did they advise

him he could refuse the frisk. However, as the district court noted, Pierce was in the driveway of his own home and he was able to walk around freely during the stop. His spouse was present. He had not been subject to a prior search. We think these are key distinctions from the more coercive surroundings in *Pals*. *See id.* On our de novo review of the totality of circumstances, we agree with the district court that Pierce gave consent voluntarily. We therefore affirm the district court's denial of Pierce's motion to suppress and uphold his conviction.

**AFFIRMED.**