IN THE COURT OF APPEALS OF IOWA

No. 3-549 / 12-1620
Filed July 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIEL ALOIS JOHNSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Timothy T. Jarman, District Associate Judge.

Daniel Alois Johnson challenges the district court's denial of his motion to suppress. **AFFIRMED.**

Martha M. McMinn, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Patrick Jennings, County Attorney, and Athena Ladeas, Assistant County Attorney, for appellee.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

Daniel Alois Johnson appeals the denial of his motion to suppress. He contends the district court erred by admitting evidence obtained by an unconstitutional search of his automobile and admitting statements obtained after an unconstitutional interrogation. He asks that we suppress the evidence and statements and reverse his conviction. We affirm.

I. Background and Proceedings

On September 27, 2011, Sioux City Police Officer Michael Sitzman initiated a traffic stop for an improperly working head lamp on the vehicle Johnson was driving. The traffic stop was recorded by the on-board camera of the police car. The officer approached the vehicle, identified himself, advised Johnson—the only person in the vehicle—of the reason for the stop, and asked for his license and registration. Officer Sitzman returned to his police car and completed a records check which indicated Johnson had been arrested for possession of drug paraphernalia in December 2010. At that time, Officer Sitzman requested a K-9 unit to the scene and was advised that it would take some time before the unit could arrive. He then returned to the vehicle and asked Johnson to step out. Officer Sitzman escorted Johnson to the front of the car and pointed out the broken headlight. After Johnson confirmed he saw the issue, Officer Sitzman asked him when he was last arrested for drugs. Johnson admitted he had been arrested in December. The officer then asked if there was presently anything illegal in the car. Johnson admitted there was marijuana and a paraphernalia pipe in the front seat. Officer Sitzman placed Johnson in

handcuffs and advised him that he was not under arrest but was being detained. Sitzman asked Johnson if he "had any objection" to him getting the drugs out of the car. Johnson agreed to the search. Officer Sitzman removed the illicit substances from the car and placed Johnson under arrest.

Johnson was charged by trial information with possession of a controlled substance (marijuana) in violation of Iowa Code section 124.401(5) (2011). Prior to trial, he filed a motion to suppress, alleging that both the physical evidence and statements made were obtained by the arresting officer in violation of the Fourth and Fifth Amendments to the United States Constitution and Article 1, section 8 of the Iowa Constitution.

After a hearing on the motion, the district court entered an order denying the motion in all respects. It found that "the [arresting] officer did not engage in an unlawful expansion of the 'seizure' initiated by the traffic stop" and noted that "from the time the officer activated his flashing lights to initiate the traffic stop to the point in time when the defendant admitted that illegal drugs were in the vehicle, less than eight minutes had elapsed." Regarding the Fifth Amendment claims, the court found "the officer was not obligated to advise the defendant of his *Miranda* rights prior to the officer asking if there were drugs in the vehicle." In reaching its conclusion, the court determined Johnson had not been in custody because he had not been arrested, was on a street in a residential area, and was outside of his car being questioned for "less than one minute" before admitting to drugs in the vehicle.

Johnson agreed to a stipulated bench trial on the minutes of testimony. The district court found Johnson guilty of possession of a controlled substance (marijuana).

Prior to sentencing, Johnson filed a motion in arrest of judgment which reasserted his arguments for suppression. The district court denied the motion, sentenced Johnson to two days in county jail, and assessed multiple mandatory fees. He now appeals.

II. Standard of Review

Johnson argues the district court should have granted his motion to suppress on federal and state constitutional grounds. Therefore, our review of the issues is de novo. *State v. Pals*, 805 N.W.2d 767, 771 (Iowa 2011).

III. Discussion

A. Consent to Search.

On appeal, Johnson argues the marijuana and drug paraphernalia pipe confiscated from his car should be suppressed because his consent to the search was involuntary and thus in violation of his Fourth Amendment rights and the rights provided to him in Article 1, section 8 of the Iowa Constitution. However, in both his motion to suppress and his motion in arrest of judgment, Johnson argued the evidence should be suppressed because the scope of the search was unreasonable. Neither he nor the district court discussed his reason for consenting to the search.[1] "It is a fundamental doctrine of appellate review

[1] Johnson's motion to suppress raised the issue of whether "[t]he evidence must be suppressed because Officer Sitzman unlawfully expanded the defendant's seizure for investigation unrelated to purpose of stop." The district court specifically addressed this

that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Because Johnson's argument regarding the nature of his consent to the officer's search was not raised and decided by the district court, we conclude it was not preserved for appeal.

B. Incriminating Statements without Miranda Warnings.

1. Preservation of Error.

The State argues Johnson waived his right to appeal by stipulating to trial on the minutes of testimony and by stipulating that he knowingly possessed marijuana on the night in question. The State argues Johnson's stipulation was the functional equivalent of pleading guilty and should be treated as such. "The defendant's [guilty] plea waive[s] all defenses and the right to contest all adverse pretrial rulings." *State v. Morehouse*, 316 N.W.2d 884, 885 (Iowa 1982) *overruled on other grounds by State v. Kress*, 636 N.W.2d 12, 20 (Iowa 2001). However, even if the two are functionally equivalent, our supreme court has decided the procedural distinction is enough to treat the two differently. *See State v. Everett*, 372 N.W.2d 235, 237 (Iowa 1985). In *Everett*, the court was faced with determining if the practical impact of such a stipulation required the district court to provide the defendant with the same notices and warnings as is required before accepting guilty pleas. *See id*. The court determined the two acts were different and should be treated as such, refusing to extend the

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issue in its ruling determining in light of "the totality of the circumstances, the court finds the officer did not engage in an unlawfully expansion of the 'seizure' initiated by the traffic stop." Johnson's motion in arrest of judgment only reiterates "the points made by him in his earlier motion."

procedure to the circumstances at hand. *See id.* The court also expressly noted, "The appellate consequences after a conviction based on a stipulation differ from what they would have following a guilty plea. The defendant could and did appeal. Moreover, a guilty plea would have waived all defenses or objections." *See id*. Johnson did not waive his right to appeal by stipulating to the facts required to be found guilty.

The State also argues Johnson waived his claim of suppression by stipulating to evidence that was the subject matter of the suppression motion. The State claims this precludes Johnson from appealing since consenting to evidence being admitted after a previous objection waives any alleged error. *See State v. Terry*, 569 N.W.2d 364, 367 (Iowa 1997). In this case, Johnson did not affirmatively consent to the admission of the evidence, he "generally stipulated that the district court could consider the minutes of testimony." *See State v. Brown*, 656 N.W.2d 355, 360 (Iowa 2003). It appears from the record that all parties understood Johnson's pretrial motion to suppress would preserve the issue at the stipulated trial. *See id*. (where the court considered the parties' understanding of the right to appeal in determining whether the right had been waived). After finding Johnson guilty, the court advised him to "to talk to [his] attorney about something called a motion in arrest of judgment." Johnson did file the motion, once again asserting that the evidence was legally inadmissible and asking the court to vacate its verdict. After his motion was denied, he appealed. Johnson did not waive his right to appeal, and we now consider the merits of his claim.

2. Merits of Claim.

Johnson asserts the district court erred by admitting his statements made during the traffic stop into evidence. He claims the statements should be suppressed as they were made as a result of custodial interrogation without *Miranda*[2] warnings.

"*Miranda* warnings protect a suspect's privilege against self-incrimination embodied in the Fifth Amendment by informing the suspect of his or her right to remain silent and right to the presence of counsel during questioning." *State v. Palmer*, 791 N.W.2d 840, 844 (Iowa 2010) (citing *Miranda v. Arizona*, 384 U.S. 436, 444–45 (1966)). "Any statements made by a suspect in response to a custodial interrogation are inadmissible unless there has been an adequate recitation of the *Miranda* warning and a valid waiver by the suspect of his or her rights." *Id*. *Miranda* warnings are not required unless there is both custody and interrogation. *Berkemer v. McCarty*, 468 U.S. 420, 429 (1984). The custody determination depends on the objective circumstances of the interrogation, not on subjective views harbored either by the officer or the person being questioned. *Stansbury v. California*, 511 U.S. 318, 323 (1994).

We apply a four-factor test to assess whether a reasonable person in the defendant's position would believe that he was in custody. *State v. Countryman*, 572 N.W.2d 553, 557 (Iowa 1997). "These factors include: (1) the language used to summon the individual; (2) the purpose, place, and manner of interrogation; (3)

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[2] *See Miranda v. Arizona*, 384 U.S. 436, 444–45 (1966).

the extent to which the defendant is confronted with evidence of [his] guilt; and (4) whether the defendant is free to leave the place of questioning." *Id*.

In this case we conclude Johnson was not in custody for *Miranda* purposes at the time he admitted having drugs and drug paraphernalia in the car. "The temporary detention of a motorist in an ordinary traffic stop is not considered 'in custody' for the purposes of *Miranda*." *State v. Scott*, 518 N.W.2d 347, 350 (Iowa 1994) (citing *Berkemer*, 468 U.S. at 437–39). Also, as the district court noted:

> There had not been an arrest of the defendant. The location was a street in a residential area. Very little time had passed from the initial stop of the defendant and the time period of the questioning outside of the vehicle was less than one minute in length before the defendant admitted to the presence of drugs in the vehicle.

The brief questioning by the officer during the routine traffic stop did not so restrict Johnson's freedom as to render him in custody. Because *Miranda* warnings were not required, the district court was correct in denying Johnson's motion to suppress the incriminating statements. We affirm.

AFFIRMED.