

**STATE OF IOWA, Appellee,
v.
BRENT ALAN HAUGE, Appellant.**

No. 20-1568

Supreme Court of Iowa

April 22, 2022

Submitted October 8, 2021

Appeal from the Iowa District Court for
Plymouth County, Daniel P. Vakulskas, District
Associate Judge.

The defendant challenges his conviction for
possession of methamphetamine, second
offense, in violation of Iowa Code section
124.401(5), arguing he was subjected to an
impermissible search.

Martha J. Lucey, State Appellate
Defender, and Ashley C. Stewart (argued),
Assistant Appellate Defender, for appellant.

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Thomas J. Miller, Attorney General,
Thomas E. Bakke (argued), Assistant Attorney
General, for appellee.

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CHRISTENSEN, CHIEF JUSTICE.

Late one summer night, three friends went
for a ride in a two-door vehicle and headed out
on the highway to look for adventure in
whatever came their way. Little did they know
that adventure for the three friends—a speeding
driver, a back-seat passenger with an
outstanding arrest warrant, and a front-seat
passenger—would result in the arrest of both
passengers when law enforcement officers
stopped their two-door vehicle for speeding
around 10:30 p.m. along Highway 75. One
officer talked to the driver and the other officer
went to the passenger side to talk to the front-
and back-seat passengers. Instead of

acknowledging the officer shining his flashlight
into the passenger-side window right next to
him, the front passenger stared straight ahead
"like a statue" and then proceeded to use the
light from the officer's flashlight to retrieve a
lottery ticket from the door holder and examine
it. The front passenger initially resisted giving
the officer his identification, but both passengers
eventually provided that information, which led
the officers to discover the back-seat passenger
had a warrant for her arrest relating to a
conviction for domestic abuse assault with a
weapon.

To safely effectuate the arrest of the back-
seat passenger, the officers asked the driver and
front passenger to exit the two-door vehicle so
the backseat passenger could exit. Once the
front passenger exited the vehicle, one of the
officers asked him if he had any weapons on him,
to which the passenger responded he did not,
and then the officer asked him if he could "check
[him] for weapons real quick." The passenger
responded, "Yup," and the officer's pat-down

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revealed a methamphetamine pipe and a baggie
containing methamphetamine, leading to the
passenger's criminal charge of possession of
methamphetamine, second offense, in violation
of Iowa Code section 124.401(5) (2019), an
aggravated misdemeanor.

The passenger moved to suppress all
evidence obtained after the exit order, arguing
law enforcement acted unreasonably under the
Fourth Amendment to the United States
Constitution and article I, section 8 of the Iowa
Constitution by ordering him out of the vehicle.
He also claimed his consent to the pat-down was
not voluntary under article I, section 8 of the
Iowa Constitution because the officer did not
inform him that he could decline the search. The
district court denied the motion to suppress and
later convicted the passenger. We affirm the
district court judgment because the officer's
order for the passenger to exit the vehicle was
necessary to facilitate the lawful arrest of the
back-seat passenger. Further, consistent with
federal precedent and the vast majority of

states, we hold there is no requirement under the Iowa Constitution that subjects of a search must be informed of their right to decline the search in order for their consent to be voluntary. We affirm the district court's conclusion that the passenger's consent was voluntary based on the totality of the circumstances.

I. Background Facts and Proceedings.

Around 10:30 p.m. on June 14, 2019, Brent Hauge was a front-seat passenger in a two-door vehicle when Officer Colin Scherle of the Merrill Police Department stopped the vehicle for speeding along Highway 75 in Plymouth County, Iowa. Deputy Kyle Petersen of the Plymouth County Sheriff's

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Department was driving in the area and stopped to assist Officer Scherle with the traffic stop. Officer Scherle's dash camera captured the stop, though it is difficult to hear most of the officers' conversation with the vehicle's occupants. As Officer Scherle approached the driver's side to talk to the driver, Deputy Petersen approached the passenger's side. Deputy Petersen used his flashlight to see all of the occupants and observed Hauge in the front passenger seat and a female in the back seat. Hauge did not initially acknowledge Deputy Petersen's presence, staring straight ahead "like a statue" instead and then reaching into the passenger door holder to pull out what appeared to be a lottery ticket. Hauge held the lottery ticket up, using the light from Deputy Petersen's flashlight to view it, then placed it back in the door holder. After returning the lottery ticket to the door holder, Hauge began to stare straight down at the floor and continued to avoid eye contact with Deputy Petersen.

Deputy Petersen asked the passengers for their identification information, and Hauge responded by asking if he was being detained. Deputy Petersen explained he was not being detained, and Hauge provided Deputy Petersen with his identification card. Deputy Petersen also retrieved the back-seat passenger's information and then worked with Officer

Scherle to check the license and warrant status of all three occupants. Upon discovering the back-seat passenger had a warrant for her arrest due to an overdue mittimus relating to a conviction for domestic abuse assault with a weapon, the officers decided to ask the occupants to exit the two-door vehicle so they could safely arrest the back-seat passenger.

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When Deputy Petersen ordered Hauge to exit the vehicle, Hauge did not immediately exit and asked if he was being detained. Deputy Petersen informed Hauge that he was being detained and again asked Hauge to exit the vehicle. Hauge exited the vehicle and Deputy Petersen asked Hauge if he had any weapons, to which Hauge indicated that he did not. Deputy Petersen subsequently asked Hauge if it was okay to "check [him] for weapons real quick." Hauge swiftly responded, "Yup," and set the soda he was holding down so Deputy Petersen could perform the pat-down.

During the pat-down, Deputy Petersen felt an object "bulging out of [Hauge's] pocket," which he believed was a methamphetamine pipe based on the object's "size and length" and his training and experience. When Deputy Petersen went to retrieve the object from Hauge's pocket, he discovered a methamphetamine pipe and what was later confirmed to be a baggie containing methamphetamine. The State charged Hauge with possession of methamphetamine, second offense, in violation of Iowa Code section 124.401(5), an aggravated misdemeanor.

Hauge moved to suppress all evidence obtained during the search and seizure, arguing law enforcement obtained it illegally in violation of his rights under the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution. Hauge argued that the officers lacked reasonable suspicion to order him out of the vehicle or to believe Hauge was armed or dangerous to justify the pat-down and that Hauge's consent to the pat-down was not voluntary. During the hearing, Deputy Petersen testified that he

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initially became suspicious of Hauge when Hauge did not make any attempt to acknowledge Deputy Petersen and focused instead on a lottery ticket after Deputy Petersen approached the vehicle. Deputy Petersen explained, "Through my training, experience, and knowledge I've noticed that individuals that don't want to make eye contact, don't want to engage in any conversation, things of that nature, maybe more nervous around people, typically could potentially have criminal activity afoot." Deputy Petersen noted that it struck him as "very odd" that Hauge retrieved the lottery ticket from the door holder and used Deputy Petersen's flashlight to view the ticket, reasoning, "It mean[t] to me that he recognized my presence at the stop but didn't, once again, want to make contact with me or eye contact or anything of that nature, which, once again, raised red flags."

Deputy Petersen discussed various reasons for ordering Hauge out of the vehicle, including the nature of the back-seat passenger's conviction for domestic abuse with a weapon, Hauge's furtive movements of reaching into the door holder out of Deputy Petersen's eyesight multiple times, his choice not to acknowledge Deputy Petersen's presence, and his resistance to provide his identification. He expressed similar concerns when testifying about why he believed Hauge had weapons on him. Officer Scherle also testified about the safety concerns that led to the exit order. He acknowledged that the back-seat passenger could have exited the driver's side of the two-door vehicle but believed that it was safer to exit through the passenger side door where Hauge was seated. The video shows

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that the car was pulled over on the shoulder of a busy highway (U.S. 75) just slightly off the roadway.^[1]

The district court denied Hauge's motion to suppress the evidence of the methamphetamine pipe and methamphetamine. Although the district court concluded Deputy

Petersen did not have reason to believe Hauge was armed to justify the pat-down under the officer-safety exception to the warrant requirement, it reasoned the pat-down was allowed because Hauge voluntarily consented to it. It also determined the scope of the pat-down search was lawful under the plain-feel exception because the identity of the object in Hauge's pocket was immediately apparent during the pat-down. During Hauge's bench trial, he orally moved the district court to reconsider its ruling on his motion to suppress. In its written verdict, the district court denied Hauge's motion to reconsider and found Hauge guilty of possession of methamphetamine, second offense, in violation of Iowa Code section 124.401(5), an aggravated misdemeanor. Hauge appealed, and we retained the appeal.

II. Standard of Review.

"When a defendant challenges a district court's denial of a motion to suppress based upon the deprivation of a state or federal constitutional right,

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our standard of review is de novo." *State v. Brown*, 930 N.W.2d 840, 844 (Iowa 2019) (quoting *State v. Brown*, 890 N.W.2d 315, 321 (Iowa 2017)). We review the entire record to independently evaluate the totality of the circumstances and examine each case "in light of its unique circumstances." *Id.* (quoting *State v. Kurth*, 813 N.W.2d 270, 272 (Iowa 2012)). In doing so, "[w]e give deference to the district court's fact findings due to its opportunity to assess the credibility of the witnesses, but we are not bound by those findings." *Brown*, 890 N.W.2d at 321 (quoting *In re Prop. Seized from Pardee*, 872 N.W.2d 384, 390 (Iowa 2015)).

III. Analysis.

Hauge raises two issues on appeal. First, he contends the district court erred in denying his motion to suppress the evidence obtained from Deputy Petersen's warrantless search and seizure because Deputy Petersen lacked justification to order him out of the vehicle.

Second, Hauge maintains his consent to the pat-down was not voluntary.

A. Deputy Petersen's Authority to Order Hauge Out of the Vehicle.

On appeal, Hauge acknowledges the initial stop of the vehicle was valid due to the driver's traffic violation, and the State does not contest Hauge's claim that he was seized during the traffic stop under the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution. *See, e.g., State v. Warren*, 955 N.W.2d 848, 859 (Iowa 2021) ("The '[t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a "seizure" of "persons" within the meaning of' the Fourth Amendment." (alteration in original) (quoting *Whren v. United States*,

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517 U.S. 806, 809-10 (1996))). The parties also agree that Deputy Petersen's order for Hauge to exit the vehicle was lawful under the Fourth Amendment. Nevertheless, they disagree about whether Deputy Petersen had the authority to order Hauge out of the vehicle under article I, section 8 of the Iowa Constitution.^[2] Hauge asks us to interpret article I, section 8 of the Iowa

Constitution more broadly than the Fourth Amendment to the United States Constitution. Specifically, he urges us to apply our 1990 holding in *State v. Becker*, 458 N.W.2d 604 (Iowa 1990), *abrogated on other grounds by Knowles v. Iowa*, 525 U.S. 113 (1998), under the Iowa Constitution so that an officer cannot order a passenger out of the vehicle during a lawful traffic stop "unless some articulable suspicion exists concerning a violation of law by that person, or unless further interference with the passenger is required to facilitate a lawful arrest of another person or lawful search of the vehicle." *Id.* at 607.

In *Becker*, we concluded a state trooper violated a vehicle passenger's Fourth Amendment rights by ordering the passenger from the vehicle. *Id.* at 607-08. We reasoned there were different interests in privacy rights and officer safety concerning the driver and passenger, noting a person in the driver's position who is "known to the officer to have violated the traffic laws" is

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"technically subject to full custodial arrest" and law enforcement's intrusion into the driver's privacy is justified. *Id.* at 607. In contrast,"