



Iowa General Assembly

2017 Legal Updates

Legislative Services Agency – Legal Services Division

www.legis.state.ia.us

http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20170630/14-0830.pdf

Purpose. Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.

WARRANTLESS SEARCHES AND SEIZURES IN BOATING-WHILE-INTOXICATED CASES

Filed by the Iowa Supreme Court

June 30, 2017

State v. Pettijohn

No. 14-0830

http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20170630/14-0830.pdf

Factual and Procedural Background. On August 18, 2013, an Iowa Department of Natural Resources Water Patrol Officer observed Dale Dean Pettijohn Jr. operating a rented pontoon boat on Saylorville Lake. Pettijohn was operating the boat at an appropriate speed and was not swerving or steering the boat erratically. However, the officer noticed a female passenger sitting on the rear of the boat with her feet dangling over the back edge near the motor. The officer knew the rented boats had no guard around the propeller, and he had previously witnessed severe injuries and deaths resulting from propeller-related incidents. As a result, the officer concluded the position of the female passenger on the boat posed a danger to her safety. He stopped the boat for a suspected violation of Iowa Code section 462A.12(1), which prohibits the operation of a boat in a careless, reckless, or negligent manner so as to endanger the life, limb, or property of any person. The officer did not obtain a warrant for the stop.

While speaking with Pettijohn, the officer noticed that Pettijohn had bloodshot eyes and avoided making eye contact with the officer, which led the officer to suspect that Pettijohn had been operating the boat while intoxicated. The officer sought assistance from two conservation officers authorized to investigate boating-while-intoxicated offenses. The conservation officers administered field sobriety tests on Pettijohn, and determined Pettijohn had been operating the boat while intoxicated. After transporting Pettijohn to the Polk City Police Department, a conservation officer read Pettijohn a standard form explaining the consequences of failing a breath test or refusing to consent to a breath test, which Pettijohn then signed. In addition, Pettijohn checked a box on a separate form indicating his consent to provide a breath sample upon request. Pettijohn then submitted to a breath test, which indicated his alcohol concentration was above the legal limit. The conservation officer did not obtain a warrant for the administration of the test.

The State charged Pettijohn with operating a motorboat while intoxicated in violation of Iowa Code section 462A.14(1). Pettijohn moved to suppress all evidence obtained after the officer seized the boat he was operating, including the results of his breath test. The district court denied the motion to suppress, concluding the seizure of the boat was justified by the community-caretaking exception to the warrant requirement and the administration of the breath test did not violate either the United States or Iowa Constitution. The district court convicted Pettijohn following a bench trial, and Pettijohn appealed to the Iowa Supreme Court (Court).

Issues on Appeal. Whether the warrantless seizure of the boat or the administration of the warrantless breath test violated the Fourth Amendment to the United States Constitution or Article I, Section 8 of the Iowa Constitution.

Holding. The Court, in a 4-3 decision authored by Justice Wiggins, held that the warrantless seizure of the boat did not violate either the United States or Iowa Constitution, and that the administration of the warrantless breath test did not violate the United States Constitution. However, the Court held the administration of the warrantless breath test violated the Iowa Constitution because the test was not justified under the search-incident-to-arrest exception to the warrant requirement and Pettijohn did not effectively consent to the test.

Analysis.

Boat Seizure. Unlike the district court, the Court did not consider whether the seizure of the boat was justified by the community-caretaking exception to the warrant requirement. Instead, the Court analyzed whether the seizure of the boat was justified under another established exception to the warrant requirement, which permits an officer to perform an investigatory stop if the officer has a reasonable, articulable suspicion that a criminal act is occurring. Pettijohn argued that Iowa Code section 462A.12(1) only prohibits endangering life, limb, or property by driving a boat in a careless, reckless, or negligent manner. Thus, because he was driving the boat at an appropriate speed and was not swerving or steering the boat erratically, no crime was occurring. The Court disagreed, noting the Legislature defined “operate” for the purposes of Iowa Code section 462A.12(1) to mean “navigate or otherwise use.” As a result, the Court concluded that the Legislature intended the prohibition against operating a boat in a careless, reckless, or negligent manner to apply to a broader set of circumstances which not only includes driving a boat in a careless, reckless, or negligent manner, but also includes operating a boat with a passenger in close proximity to an unguarded propeller. Therefore, the Court held the warrantless stop did not violate either the United States or Iowa Constitution because the officer reasonably suspected that Pettijohn was violating Iowa Code section 462A.12(1).

Warrantless Breath Test — U.S. Constitution. In determining whether the administration of the warrantless breath test violated the United States Constitution, the Court reviewed *Birchfield v. North Dakota*, 579 U.S. ____, (2016), a United States Supreme Court case allowing the administration of warrantless breath tests in the drunk-driving context under the search-incident-to-arrest exception to the warrant requirement. The Court analyzed two factors based on the *Birchfield* decision: the degree to which a breath test intrudes upon an individual’s privacy and the degree to which a breath test is needed to promote a legitimate government interest. The Court rejected Pettijohn’s argument that it should consider an individual’s natural right to navigate public waterways, noting that such an interest is not related to an individual’s privacy. The Court also rejected Pettijohn’s argument that the government’s interest in preventing drunk boating is much less compelling than the government’s interest in preventing drunk driving, determining that the government’s interest in preventing and deterring injuries and fatalities is similar in both the drunk-driving and drunk-boating contexts. Applying *Birchfield*, the Court concluded the administration of a warrantless breath test on any individual arrested on suspicion of a boating-while-intoxicated offense does not violate the United States Constitution.

Warrantless Breath Test — Iowa Constitution. In determining whether the administration of the warrantless breath test violated the Iowa Constitution, the Court noted that the relevant provisions of both the United States and Iowa Constitutions are nearly identical, but it retains the right to construe the provisions of the Iowa Constitution differently than the provisions of the United States Constitution. After reviewing its prior rulings relating to the search-incident-to-arrest exception to the warrant requirement under the Iowa Constitution, the Court concluded that any inconvenience resulting from the requirement to obtain a warrant and the potential loss of evidence resulting from the natural dissipation of alcohol in the bloodstream are not sufficient reasons to categorically justify the administration of a warrantless breath test on an individual arrested on suspicion of a boating-while-intoxicated offense under the search-incident-to-arrest exception to the warrant requirement. The Court noted that when unusual circumstances arise causing an officer’s ability to obtain a warrant in an expedient manner to be impracticable, the administration of a warrantless breath test may be justified, but such circumstances were not present in this case.

Having determined the warrantless breath test was not a permissible search incident to arrest, the Court analyzed whether the administration of the breath test was justified based on Pettijohn’s consent. As a preliminary matter, the Court determined the implied consent procedure set forth in Iowa Code chapter 462A does not automatically permit the administration of a warrantless breath test because the statutory procedure allows an individual to either submit to or refuse a breath test after being advised of the consequences. Because a warrantless breath test is not automatically permitted, the Court analyzed whether, under the totality of the circumstances, Pettijohn effectively and voluntarily consented to the breath test. The Court considered a variety of factors including all of the following: Pettijohn was intoxicated when he submitted to the test; Pettijohn was arrested and transported to the police station prior to being requested to take the test; the implied-consent advisory read to Pettijohn did not advise him of his constitutional right to refuse a warrantless search and implied Pettijohn had no constitutional right to refuse the test; the amount of mandatory civil fines assessed for a refusal to submit to a test are greater than the fines associated with certain criminal offenses; the implied-consent advisory misled Pettijohn to believe that a refusal would result in a suspension of his boating privileges for the same amount of time as a boating-while-intoxicated conviction; and the advisory failed to notify Pettijohn of the criminal penalties for a boating-while-intoxicated conviction. The Court concluded that Pettijohn’s consent was not voluntary or effective, and therefore the administration of the warrantless breath test violated the Iowa Constitution. The Court reversed the judgment of the district court and remanded the case for a new trial.

Finally, the Court emphasized that its decision applies only to boating-while-intoxicated cases and does not extend to operating-while-intoxicated (motor vehicles) cases.

Concurrence. Chief Justice Cady concurred with the majority opinion, but wrote separately to opine that it is unnecessary to analyze whether Pettijohn consented to the administration of the warrantless breath test under the totality of the circumstances because Iowa’s statutory implied-consent procedure for boating-while-intoxicated offenses

is inherently coercive and cannot be used under the Iowa Constitution to justify any warrantless breath test based on consent.

Dissent. Justice Waterman dissented, joined by Justice Mansfield and Justice Zager. Justice Waterman stated that based on well-settled constitutional precedent, the warrantless breath test was a constitutional search incident to arrest and valid under Iowa's implied-consent statute. He noted the majority opinion misleadingly cites cases involving invasive blood tests rather than breath tests, and blurs the distinction between lawfully enacted implied-consent statutes and an individual's actual consent. He also explained that warrants are not as easy to obtain as the majority suggests because the technology to obtain electronic warrants from the field is not yet in place. In addition, he pointed out that the legal theories relied on by the majority were not raised by Pettijohn in the district court or on appeal, and the State did not have the opportunity to develop a record refuting such theories. He further noted that the majority opinion undermines public safety by protecting drunken boaters, and creates practical problems for officers who will now have to race the clock to obtain a warrant before the alcohol in an individual's system dissipates, during which time the officer will be unavailable to perform his or her law enforcement duties.

LSA Monitor: Nicholas Schroeder, Legal Services, 515.725.7323