FILED
JAN 26 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

00176

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed January 26, 1983
vs.	)	
CLARENCE BRYANT,	)	2-441 67615
Defendant-Appellant.	)	

Appeal from Polk District Court - Rodney Ryan and Harry Perkins, Judges.

Defendant appeals from his conviction of robbery in the first degree (Iowa Code § 711.1, .2 (1981)) asserting that the police lacked sufficient articulable facts upon which to base a conclusion that criminal activity was afoot and that the evidence obtained as a result of stopping him should have been suppressed. AFFIRMED.

Ray Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and John P. Messina, Assistant Attorney General, for plaintiff-appellee.

Heard en banc.

PER CURIAM

Defendant, Clarence Bryant, appeals from his conviction of robbery in the first degree. Iowa Code § 711.1, .2 (1981). On appeal, defendant asserts that the police lacked sufficient articulable facts upon which to base a conclusion that criminal activity was afoot and that evidence obtained as a result of stopping him should have been suppressed. We affirm. Pertinent facts will be set forth in relevant portions of this opinion.

I. Scope of Review. Since this is an action at law, our review is on assigned error only. Iowa R. App. P. 4. However, when violation of constitutional rights are alleged, we examine the totality of the circumstances. State v. Cullison, 227 N.W.2d 121, 126-27 (Iowa 1975).

II. Investigatory Stop. Defendant's only assignment of error is that the trial court erred in overruling his motion to suppress evidence seized during an alleged illegal investigatory stop. Defendant contends that the officer making the stop did not have a basis for making the stop. We disagree.

The court in State v. Lamp, 322 N.W.2d 48 (Iowa 1982), stated:

> When a stop is challenged on the basis that reasonable cause did not exist, the State must show that the stopping officer had "specific and articulable cause to support a reasonable belief that criminal activity may have occurred." State v. Aschenbrenner, 289 N.W.2d 618, 619 (Iowa 1980) (emphasis added). Circumstances giving rise to suspicion or curiosity will not suffice. State v. Dixon, 241 N.W.2d 21, 24 (Iowa 1976). The officer is bound by the true reason or reasons for making the stop; that is, the officer may not rely on reasons that he or she could have had but did not actually have. Aschenbrenner, 289 N.W.2d at 619. If the State fails to meet its burden, the evidence obtained as a result of the stop must be suppressed. State v. Reese, 259 N.W.2d 793, 796 (Iowa 1977).

Id at 51. In Lamp the court concluded that the officer had reasonable cause to stop defendant on the basis that:

> . . . (1) he was investigating a specific crime; (2) he had been given a description of the assailant and the vehicle he was driving; and (3) the perpetration of the crime was reasonably close in time (approximately four and one-half hours) and distance (approximately five miles) to the investigatory stop under the circumstances.

Id. "[R]easonable cause exists when an officer observes unusual conduct leading the officer to conclude that criminal activity may be afoot." Id.

In the present controversy the facts show that a robbery occurred at 9:20 a.m. at a grocery store in Des Moines at 3710 Hubbell Avenue. A description of the robbers was radioed by the police. The suspects were identified as two older males, ages 45-50, one of whom was wearing a light blue shirt. A vehicle that the robbery suspect had used was discovered on East 24th Street. In travelling toward the scene of the vehicle, Detective Lee noticed an older man in a blue shirt, about half a block from the vehicle. The man was walking slowly and deliberately away from the scene. The older man's actions aroused Detective Lee's suspicion since there was a great deal of commotion around the vehicle. Several police cars and onlookers had congregated around the vehicle and the defendant was the only man walking away from the scene despite the commotion. Detective Lee stated defendant "wasn't looking to the left or right, up or down" despite the commotion.

Based upon his observations of the defendant, Detective Lee ordered that the defendant be stopped. The order was broadcast and Officer Brunotte stopped defendant at gunpoint. After defendant gave evasive and uncertain responses to Brunotte's questions, he was frisked and a .38 caliber revolver was seized from his waistband.

Similar to the factual situation in Lamp, in this case, the officers were 1) investigating a specific crime; 2) had been given a description of the assailant; and 3) the perpetration of the crime was reasonably close in time (approximately 17 to 27 minutes) and distance (approximately 13 blocks). Id. Our review of the totality of the circumstances leads us to conclude that the officers had sufficient articulable cause to justify an investigatory stop of defendant. See also 3 W. LaFave, Search and Seizure § 9.3(d) at 93 (1978). Consequently, we affirm defendant's conviction.

AFFIRMED.