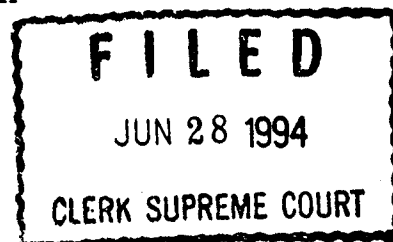


IN THE COURT OF APPEALS OF IOWA

No. 4-156 / 93-981



STATE OF IOWA,

Appellee,

vs.

JAMES EDWARD WIESE,

Appellant.

Appeal from the Iowa District Court for Montgomery
County, Glen McGee, Judge.

The defendant appeals his conviction and sentence for
one count of possession of a Schedule I controlled
substance and one count of possession of marijuana without
a drug tax stamp. **AFFIRMED.**

Bill Bracker, Council Bluffs, for appellant.

Bonnie J. Campbell, Attorney General, Amy M. Anderson,
and Tom Fisher, Assistant Attorney Generals, and Bruce E.
Swanson, County Attorney, for appellee.

Heard by Sackett, P.J., and Cady and Huitink, JJ., but
decided en banc.

CADY, J.

James Edward Wiese appeals from his conviction for possession of marijuana with intent to deliver and possession of marijuana without the required drug tax stamp in violation of Iowa Code sections 204.401 and 421A.3 (1991). He claims the trial court erred in overruling his motion to suppress evidence gathered after an investigatory stop. He claims the deputy did not have reasonable cause for a lawful investigatory stop.

On December 17, 1992 at 10:25 p.m., Deputy Irapaul "Butch" Rulla was driving routine patrol on a gravel road called "the country club gravel road." He observed tail lights on the road ahead of him. The vehicle was traveling at what Deputy Rulla described as a "real slow" rate of speed. After he followed the vehicle briefly, it suddenly sped up, only to stop again at a stop sign several hundred feet further down the road. At that point, Rulla testified, he made the decision to stop the vehicle. Subsequent to a stop, a chase, and a final stop, Deputy Rulla observed a plastic bag of marijuana on the floorboard of the vehicle.

At the hearing on the suppression motion, Deputy Rulla testified he stopped the vehicle because it was traveling very slowly. He also testified the area in which the vehicle was traveling was considered a high watch or security area. He indicated there was a new housing development to the east and there had been reports of fired

shots, vandalism and theft. From 1988 through June 1992, officers were required to log each check of the area due to specific problems in the area. Rulla testified it became a routine check area and they were no longer required to log each check. The district court overruled Wiese's motion to suppress, finding the deputy had reasonable cause for the investigatory stop.

After a stipulated trial on the minutes of testimony, the district court found Wiese guilty of possession of marijuana with intent to deliver and failure to affix a drug tax stamp. Wiese was sentenced to a five year term of imprisonment on each count, the sentences to run concurrently. Wiese has appealed.

When a defendant is alleging error involving a constitutional right, such as here, we make an independent evaluation of the totality of the relevant circumstances to determine if such an error was made. Rinehart v. State, 234 N.W.2d 649, 658 (Iowa 1975); State v. Jeffries, 417 N.W.2d 237, 239 (Iowa App. 1987).

It is well-settled law that the police may stop and briefly detain a person for investigative purposes if the officer reasonable cause to believe a crime may have occurred. State v. Richardson, 501 N.W.2d 495, 496 (Iowa 1993); State v. Rosenstiel, 473 N.W.2d 59, 61 (Iowa 1991). The principal function of an investigatory stop is to resolve any ambiguity as to whether criminal activity is afoot. Richardson, 501 N.W.2d at 497; see also 3 W.

LaFave, Search and Seizure, § 9.3(b) (1987). "While an unparticularized suspicion will not do, an officer may make an investigatory stop with 'considerably less than proof of wrongdoing by a preponderance of the evidence.'" Id. at 496-97.

Various factors combined to give Deputy Rulla reasonable cause to stop Wiese's vehicle. The vehicle was traveling at an unusually slow rate of speed. The vehicle sped up suddenly when Deputy Rulla pulled behind it. It was 10:25 p.m. Throughout the previous four years, property owners reported instances of theft and vandalism. Rulla testified it was routine to patrol the area and to view it as a high risk area, even though he did not recall making any recent arrests in that area.

In light of the circumstances, we find the deputy had reasonable cause to stop the Wiese's vehicle. The motion to suppress evidence was properly overruled. We affirm the district court.

AFFIRMED.

All judges concur except Sackett and Hayden, JJ., who dissent.

SACKETT, J. (dissenting)

I dissent.

I would find the officer's reasons for stopping defendant's vehicle, that being, the fact defendant's car was traveling slowly in a high-watch area, were not sufficient to justify the stop. The officer did not articulate any reasons for the area being high watch except there may have been problems several years earlier.

The Fourth Amendment requires reasonable cause to stop a vehicle for investigatory purposes. See State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982). The essential purpose of the Fourth Amendment proscription is to impose a standard of reasonableness upon law enforcement officers to safeguard the privacy and security of individuals against invasion. See State v. Hilleshiem, 291 N.W.2d 314, 316 (Iowa 1980). Occupants of a motor vehicle whether drivers or passengers have a legitimate expectation of privacy which is invaded when the vehicle is stopped by the government presupposing the occupants rightful presence in the vehicle. State v. Eis, 348 N.W.2d 224, 226 (Iowa 1984); State v. Losee, 353 N.W.2d 876, 877 (Iowa App. 1984). These values were those of the authors of our fundamental constitutional concept. Protections afforded by the Fourth Amendment cannot be disregarded by the courts despite a zeal for effective law enforcement. To disregard the protections afforded by the Fourth Amendment is to place in jeopardy our free society and the privacy of all our citizens. See Coolidge v. New Hampshire, 403 U.S. 443,

455, 576, 91 S.Ct. 2022, 2032, 29 L.Ed. 2d 564 (1971). An individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field. Brown v. Texas, 443 U.S. 47, 51, 362, 99 S.Ct. 2637, 2640, 61 L.Ed. 2d 357 (1979). See also Delaware v. Prouse, 440 U.S. 648, 654-55, 667, 99 S.Ct. 1391, 1396, 59 L.Ed. 2d 660 (1979). The key principle of the Fourth Amendment is reasonableness and a balancing of competing interests. Michigan v. Summers, 45 U.S. 692, n.12, 700, 348, 101 S.Ct. 2587, 2593, 69 L.Ed. 2d 340 (1981).

The pivotal question is whether the deputy had a valid reason to stop the vehicle. The state bears the burden of showing the evidence was lawfully obtained. See Hilleshiem, 291 N.W.2d at 316; State v. Shea, 218 N.W.2d 610, 613 (Iowa 1974). For a stop to be valid, an officer must be acting on facts directly relating to a suspect's guilt and not just on circumstances that describe a very broad category of predominantly innocent persons. See United States v. Jones, 759 F.2d 633, 643 (8th Cir.), cert denied, 474 U.S. 837 (1985); State v. Rosenstiel, 473 N.W.2d 59, 61 (Iowa 1991). The question is whether there was an inference of unlawful behavior and whether the officer can draw a reasonable and articulable inference of criminal activity from the act. See State v. Aschenbrenner, 289 N.W.2d 618, 619 (Iowa 1980). The Fourth Amendment requires reasonable cause to stop a vehicle for

investigatory purposes. See Rosenstiel, 473 N.W.2d at 61. When a stop is challenged on the basis that reasonable cause does not exist, the state must show the stopping officer had specific and articulable cause to support a reasonable belief that criminal activity may have occurred. See Lamp, 322 N.W.2d at 51; Aschenbrenner, 289 N.W.2d at 619. Circumstances giving rise to suspicion or curiosity will not suffice. Lamp, 322 N.W.2d at 51. The essential purpose of the Fourth Amendment search and seizure proscriptions is to impose a standard of reasonableness upon the exercise of discretion by government officials, including law enforcement officials, in order to safeguard the privacy and security of individuals against arbitrary invasion. Hilleshiem, 291 N.W.2d at 316. An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity. Eis, 348 N.W.2d at 227. This determination must be based upon the whole picture the detaining officers must have a particularized and objection basis for suspecting the particular person stopped of criminal activity. Id.

In reviewing the issue, we consider the following factors:

- (1) No particular crime was under investigation. See United States v. Nicholas, 448 F.2d 622, 624-25 (8th Cir. 1971) (fact no crime was under investigation was one factor used to determine officers were not justified in stopping the defendant).

(2) The officer had no information about the car or its occupant. Id. (fact police had no information on car or occupant a factor considered in determining a stop was not justified).

(3) There was no showing the officer had any knowledge of any suspicious activity at the time. Id. (fact no showing police had knowledge of specific activity was a factor considered in determining the stop was not justified).

(4) The officer observed the defendant for a very short time. Id. (fact defendant's auto was observed for a short time a factor considered in determining a stop was not justified); State v. Donnell, 239 N.W.2d 575, 578 (Iowa 1976) (court considered fact arresting officer had observed van in three separate residential areas factor considered in finding stop justified).

(5) Defendant was in a car at 10:25 at night. Nicholas, 448 F.2d at 624-25 (court in finding stop not justified determined 11:15 p.m. was a reasonable hour to be out on a June evening).

(6) Reports of fired shots, vandalism and theft in the past and the area in which the vehicle was traveling was considered a high watch or security area. There was no specific evidence on this issue. See State v. Cooley, 229 N.W.2d 755, 761 (Iowa 1975) (the court in finding a stop not justified recognized that the vehicle had been seen parked in a high crime area).

(7) Defendant's actions were subject to a legitimate explanation. See Cooley, 229 N.W.2d at 761 (fact the defendant's conduct was susceptible to a legitimate explanation one factor considered in finding stop not justified); State v. Losee, 353 N.W.2d 876, 879 (Iowa App. 1984) (fact officer conceded there could be another explanation for movement of car considered by court in finding stop not justified).

Hayden, J., joins this dissent.