



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

vs.

)

THOMAS ELLSWORTH SMALL,

)

Defendant-Appellant.

)

Filed May 28, 1987

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7-118
86-788

Appeal from the Iowa District Court for Polk County (CR 30561), Jack D. Levin and Richard Strickler, Judges.

Defendant appeals his convictions for first-degree burglary and second-degree robbery. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Bradley V. Black, Assistant Attorney General; Patricia Houlihan and Gregory Biehler, Assistant Polk County Attorneys; for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

SCHLEGEL, J.

The defendant appeals his convictions for first-degree burglary and second-degree robbery. We affirm.

On August 18, 1985, Officer Franklin Irvin stopped a pickup truck driven by defendant. The officer later testified that the reason he stopped the truck was because the rear license plate was covered by ice and snow. Two other police officers were driving in the other direction when they saw Officer Irvin turn on his red flashing lights. They pulled their vehicle around and pulled in behind Officer Irvin. Officer Irvin approached the truck on the driver's side and asked for identification. While waiting for identification he observed a sawed-off shotgun sitting on the floor of the truck. He asked the defendant and two passengers to get out of the truck and walk back to the other police car. The officer then wiped away the snow and ice from the truck's rear license plate and called in the plate number for identification.

The officer then returned to the truck and observed money and certificates of deposits hanging out of the glove compartment and a pistol under the passenger seat. Defendant and the passengers were arrested. The truck was impounded.

Evidence found in the truck later linked the defendant to a burglary and an unrelated robbery which had occurred earlier the same evening. The officer testified that he was aware of two reports of robberies committed that evening. He testified that at the time of the stop he did not suspect the occupants of any crime other than a violation of Iowa Code section 321.38 (1985) (license plate to be visible and free from foreign materials).

After a jury trial, defendant was convicted of first-degree burglary. After a separate trial to the court, the defendant was convicted of second-degree robbery. The defendant contends that the district court erred by denying his motion to suppress the evidence obtained from the stop of his truck. He contends

the investigatory stop was illegal because the officer had no reasonable cause to make the stop.

The principles governing our resolution of the defendant's contention are well established. Because he alleges a violation of constitutional safeguards, we make an independent evaluation of the totality of the circumstances. State v. Losee, 353 N.W.2d 876, 878 (Iowa App. 1984). Accordingly, our review is de novo. State v. Hillesheim, 291 N.W.2d 314, 316 (Iowa 1980).

In order to comport with constitutional strictures, an officer must have reasonable cause to stop a vehicle. State v. Aschenbrenner, 289 N.W.2d 618, 619 (Iowa 1980). To establish reasonable cause, the State bears the burden of demonstrating that the stop was premised upon specific and articulable facts supporting the officer's belief that criminal activity was afoot. State v. Peck, 329 N.W.2d 680, 686 (Iowa App. 1982). The officer is bound by the true reason for making the stop, and may not rely upon reasons which he could, but did not actually, have. Aschenbrenner, 289 N.W.2d at 619.

The defendant argues the officer was not credible as to his reasons for making the stop. Defendant attempts to substantiate this claim by focusing on the radio transmissions, or lack thereof, made in the course of the stop. Officer Irvin testified that when he stopped the truck at 12:44 a.m. he transmitted a "signal 5" radio code which indicates a traffic stop has been made. He also testified that after he wiped off the license plate he made a second call and transmitted the number a few minutes after he made the first transmission. Evidence of radio transmissions received by the dispatcher that evening show only one transmission received. The defendant infers from this that the basis for the stop was not the motor vehicle violation but speculation and conjecture that the occupants of the truck might have been involved in the robberies.

It is possible, as the State suggests, that a problem in transmission or recording of the transmission was responsible for the lack of a record of the first call that the officer testified he made. The State also suggests that the officer may have been mistaken in his recollection of making the "signal 5" transmission. The trial court apparently did find the officer's testimony credible that the transmissions were made as he testified. We accord considerable deference to the trial court's findings on credibility. State v. Hatter, 342 N.W.2d 851, 854 (Iowa 1983). Furthermore, the detailed account of Officer Irvin of the relevant circumstances of the arrest were substantiated by the two officers who pulled up behind Irvin immediately after the stop. The testimony of Officer Irvin was not impeached. The court properly rejected defendant's motion to suppress since there were articulable, objective facts available to justify the stop.

AFFIRMED.