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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed January 25, 1979
vs.	)	
ROBERT RICHARD RUSSELL,	)	712/60550
Defendant-Appellant.	)	

Appeal from Black Hawk District Court - Carroll Engelkes, Judge.

Defendant appeals his conviction of larceny in the night time alleging trial court error in ruling on motion to suppress. Reversed and Remanded.

W. H. Gilliam & Don E. Gottschalk, of Cedar Falls, counsel for appellant.

Thomas J. Miller, Attorney General of Iowa, Ann Fitzgibbons, Assistant Attorney General, and David Correll, Black Hawk County, counsel for appellee.

Heard by Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

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DONIELSON, J.

Defendant Robert Richard Russell appeals his conviction of the crime of larceny in the night time in violation of § 709.4, The Code 1975. He contends the trial court erred in overruling his motion to suppress evidence seized from his automobile and a confession obtained as a result of an investigatory stop which defendant claims was constitutionally impermissible. We reverse the trial court.

The depositions of police officers contained in the record of suppression hearing developed the following facts. At 4:00 a.m. on November 12, 1976, Detective Sergeant Lavern J. Link was patrolling a downtown Waterloo business area in an unmarked police car when he noticed an old white Mercury automobile being driven very slowly. The policeman was working overtime because of a rash of break-ins, and first noticed the car near the site of two break-ins on the previous night. The officer followed the car for about a mile. As he left the business district, the driver of the Mercury sped up, although at all times the driver remained within the posted limits. The officer testified that although neither of the two occupants of the car acted suspiciously, from his years of experience and the "seedy" appearance of the car, he knew the occupants were "up to no good." He radioed for assistance from uniformed officers who stopped the white Mercury and questioned the defendant who was driving. No citations for traffic violations were issued by any of the officers, although the Mercury had a loud muffler, a missing tail light and a cardboard replacement for a broken window.

The policemen shined a flashlight into the back seat of the Mercury, revealing several packs of cigarettes, a metal coin box and some tools which could be used for burglaries. Link "just had a feeling" that defendant had been involved in a break-in. The officers continued to detain the car after ascertaining that there were no outstanding warrants, nor were defendant and/or his passenger wanted for any alleged criminal involvement. However, after 30 minutes, a call was received that a Cedar Falls pizza parlor had been broken into and cigarettes of the brand found in defendant's car and a metal coin box had been taken. Defendant was arrested, a search warrant was obtained, the car was searched and the items in the back seat were seized. Defendant then made an oral confession at the police station concerning the break-in. Both the items seized from the car and the confession were admitted at trial.

The basis of defendant's motion to suppress and argument on appeal is that the officers did not have reasonable cause to stop his car. Because defendant asserts a violation of his constitutional rights, our review is **de novo**, i.e., we independently evaluate the circumstances in totality. Bettuo v. Pelton, 260 N.W.2d 423, 425 (Iowa 1977); State v. Iowa District Court in and for Johnson County, 247 N.W.2d 241, 245 (Iowa 1976).

An investigatory stop of a motor vehicle is constitutionally permissible if the stopping officer has specific and articulable cause to reasonably believe criminal activity is afoot. Circumstances evoking mere suspicion or curiosity will not suffice. Terry v. Ohio, 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); State v. Dixon, 241 N.W.2d 21, 23 (Iowa 1976); State v. Donnell, 239 N.W.2d 575, 577 (Iowa 1976); State v. Cooley, 229 N.W.2d 755, 760 (Iowa 1975). Protection from unjustified governmental intrusion depends upon the judiciary's willingness to intercede in the determination of whether facts possessed by the police warrant interference with a particular individual's privacy. Coolidge v. New Hampshire, 403 U.S. 443, 449-51, 91 S.Ct. 2202, 29 L.Ed.2d 564 (1971).

The testimony of the police officers at the suppression hearing reveal few objective facts to support their investigatory stop. State v. Reese, 259 N.W.2d 793, 795 (Iowa 1977). They observed no suspicious or criminal activity; rather, they felt defendant and his car was "not normal" and "out of place." After the stop, they held defendant at least 30 minutes while calls were made to the dispatcher to see if he was wanted on a warrant. Calls were made to surrounding communities to see if any break-ins had been reported. Neither the fact of the early morning hour nor the recent increase in break-ins furnish support for the investigatory stop. We find that the actions of the officers in stopping defendant's automobile were based "upon nothing more than speculation, conjecture and surmise," and not on specific and articulable cause to reasonably believe criminal activity was afoot. State v. Cooley, supra at 760; State v. Donnell, supra at 578; State v. Dixon, supra at 23; State v. Reese, supra at 795.

The trial court should have suppressed the evidence and defendant's oral confession obtained as a result of the impermissible stop and detention of defendant, and erred when it overruled defendant's motion to suppress and motion for new trial.

State v. Reese, supra at 796. We reverse and remand for new trial where the evidence we have herein determined inadmissible shall not be considered.

REVERSED AND REMANDED.