

IN THE COURT OF APPEALS OF IOWA

No. 7-636 / 97-411

000335

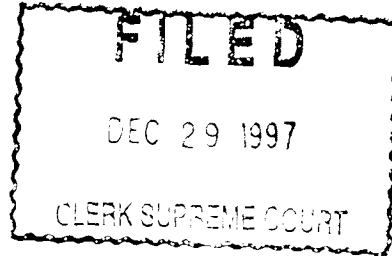
STATE OF IOWA,

Appellee,

vs.

PAUL BRENT BOCHMANN,

Appellant.



Appeal from the Iowa District Court for Story County, Thomas Hronek,
District Associate Judge.

Paul Bochmann appeals the judgment and sentence entered upon his conviction
of operating while intoxicated, second offense, in violation of Iowa Code section
321J.2(1) (1995). **AFFIRMED.**

William T. Talbot of the Parker Law Firm, Nevada, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney
General, Gregory Becker, Student Intern, Mary Richards, County Attorney, and
Angelina M. Smith, Assistant County Attorney, for appellee.

Considered by Streit, P.J., Vogel, J., and Habhab, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HABHAB, S.J.

After midnight on December 15, 1996, Iowa State Patrol trooper Richard Schaff observed the defendant driving east on county road E-26 hugging the centerline. The trooper turned around and followed the defendant east on E-26, then north on county road R-38, then east again on county road E-23, a total distance of approximately two and one-half miles. Trooper Schaff used his video camera to record the incident, although it apparently was deactivated during the turn from R-38 to E-23. Trooper Schaff testified he observed the defendant weaving from the centerline to the edge of the road, that the defendant made a wide turn on to E-23, and that the defendant was not wearing his seat belt. After the defendant's turn on to E-23, Trooper Schaff stopped the defendant and questioned him. Believing the defendant to be intoxicated, Trooper Schaff had the defendant perform field sobriety tests which he failed. The preliminary breath test showed the defendant had alcohol in his blood. The officer gave him his *Miranda* warning, placed the defendant under arrest, and transported him to the Story County jail.

On January 8, 1997, the defendant filed a motion to suppress evidence, claiming he was driving normally, the stop was improper, he was "in de facto custody" from the time of the stop, and therefore all evidence from the stop should be suppressed. The district court ruled the defendant was not "in custody" during the stop and subsequent testing, until Trooper Schaff placed him in the patrol car. Therefore, the court suppressed any evidence which occurred in the patrol car before

the *Miranda* warnings were given, but refused to suppress the earlier tests and questioning.

The defendant sought a continuance of the trial and an interlocutory appeal. The court denied the request for a continuance and set trial for February 6, 1997. At trial, the jury found the defendant guilty of OWI second offense. The defendant appeals, arguing the trial court erred in refusing to suppress all evidence from the “warrantless stop.”

The parties agree that because a constitutional right is involved, we are obliged to make an independent evaluation of the totality of the circumstances as shown by the entire record. *See State v. Riley*, 501 N.W.2d 487, 488 (Iowa 1993). Accordingly, in our *de novo* review of the propriety of the district court’s ruling on defendant’s motion to suppress, we may consider the evidence adduced during the suppression hearing as well as that presented at trial. *State v. Vincik*, 436 N.W.2d 350, 353 (Iowa 1989).

The police may stop and briefly detain a person for investigative purposes if the officer has reasonable cause to believe a crime may have occurred. *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995); *State v. Rosenstiel*, 473 N.W.2d 59, 61 (Iowa 1991). In order for law enforcement officers to conduct a lawful investigatory stop they must reasonably believe from the circumstances criminal activity may have occurred, but they do not need to know the requisite facts to meet the requirements of probable cause. *State v. Reese*, 259 N.W.2d 793, 795 (Iowa 1977); *State v. Dixon*,

241 N.W.2d 21, 23 (Iowa 1976). Unparticularized suspicion is not an adequate reason for a stop, but "an officer may make an investigatory stop with 'considerably less than proof of wrongdoing by a preponderance of the evidence.' " *State v. Richardson*, 501 N.W.2d 495, 496-97 (Iowa 1993) (quoting *United States v. Sokolow*, 490 U.S. 1, 8, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1, 10 (1989)).

The leading case on investigative stops is *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). There the Court, 392 U.S. at 22, 88 S.Ct. at 1880, recognized authority on the part of officers to stop an individual, absent probable cause, for the purpose of investigating unusual behavior which reasonably causes them to believe criminal activity is afoot. By way of illustration, the Court stated in *Adams v. Williams*, 407 U.S. 143, 145, 92 S.Ct. 1921, 1923, 32 L.Ed.2d 612 (1972):

In *Terry* this Court recognized that 'a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest.' (Citation omitted). The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape.

Id.; see also *United States v. Hernandez*, 486 F.2d 614, 616 (7th Cir. 1973), *cert. denied*, 415 U.S. 959, 94 S.Ct. 1488, 39 L.Ed.2d 574 (1974); *State v. Cooley*, 229 N.W.2d 755, 759-60 (Iowa 1975).

Trooper Schaff observed the defendant driving erratically. Although the weaving as he drove across the wind could be attributed to the wind, the trooper also

thought the ~~defendant~~ was intoxicated. The defendant argues it would be impossible for Trooper Schaff to see the presence or absence of his seat belt if the trooper could not see he was wearing a Santa Clause costume. A seat belt, if worn, would be distinguishable even if it were not light enough to recognize the color of a red costume. The trooper only had to see the belt through a truck cab, not through the passenger compartment of a car. The only way Trooper Schaff could make certain his belief criminal activity was afoot, was to stop the vehicle. We conclude, from the circumstances at the time, a person of reasonable caution would find the action appropriate. We therefore find the stop was permissible after evaluating the totality of the circumstances. The trial court correctly refused to suppress the evidence obtained from the stop.

AFFIRMED.