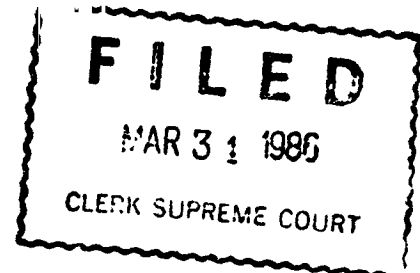


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,)

Plaintiff-Appellee,)

Filed March 31, 1986

vs.)

~~334~~

JAMES DOUGLAS MERCHANT,)

6-33
85-870

Defendant-Appellant.)

Appeal from the Iowa District Court for Greene County (CRF 2930) - Dale E. Ruigh and M. D. Seiser, Judges.

Defendant appeals his conviction for the offense of burglary, second degree, in violation of Iowa Code sections 713.1 and 713.5. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and B. John Burns, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Christie J. Scase, Assistant Attorney General; and Nicola Martino, Greene County Attorney; for plaintiff-appellee.

Heard by Oxberger, C.J., Schlegel, and Hayden, JJ.

HAYDEN, J.

Defendant appeals his conviction for the offense of burglary, second degree, in violation of Iowa Code sections 713.1 and 713.5. He contends the district court erred in denying his pretrial motion to suppress evidence obtained as a result of detention by the police. We affirm.

On September 4, 1980, at approximately 1:30 a.m., three uniformed Jefferson, Iowa police officers were engaged in routine patrol in a marked police car in the City of Jefferson, Greene County. They observed what appeared to be three males run across the street a few blocks in front of them. The police officers lost sight of the subjects as they approached by car, and then came upon a white two-door Chevrolet bearing Woodbury County, Iowa, license plate number HJY001. Defendant, James Merchant, and another man appeared to the officers to be "wrestling around inside on the front seat" of that car. The officers activated the patrol car's red lights, approached the vehicle, and asked the occupants to step out. The officers observed the men "breathing heavily like they were out of breath like they had been running." In addition, both men "seemed very excited, very nervous."

Both men reported they were visiting friends in Jefferson and had been chasing "kids" who had thrown rocks at the car. The police detained the men for 25 minutes while they checked local businesses for criminal activity. None was revealed. Police also ran a check on the car and ascertained it was not stolen. Police then allowed the men to leave.

Shortly after they were released, police discovered a local Pizza Hut had been broken into and a quantity of change stolen. Jefferson police immediately put out a request that law enforcement officers in surrounding counties stop and hold the white Chevrolet. Carroll County authorities did so at 2:26 a.m. in the City of Carroll, Iowa. One of the Carroll officers asked the vehicle driver

if they could search the car and the driver consented. The officers found a white sock containing \$250 in change in the car's engine compartment during the search.

The defendant and driver were charged with burglary, second degree. By motion to suppress, defendant claimed both stops were unconstitutional and evidence obtained therefrom should be suppressed. The court held that the stops were constitutionally permissible and overruled the motion. At trial, defendant renewed his motion to suppress and it was overruled again. Merchant was convicted as charged and this appeal followed.

Defendant's arguments on appeal concern the legality of the two investigatory stops. First he claims that the initial stop in Jefferson exceeded the lawful limits of an investigatory stop.

We review criminal cases de novo when constitutional rights are at issue. State v. Dickerson, 312 N.W.2d 526, 530 (Iowa 1981). The principles applicable to investigatory stops of vehicles are set forth in the following passage:

It is well settled that the fourth amendment requires reasonable cause to stop a vehicle for investigatory purposes. Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968); State v. Cooley, 229 N.W.2d 755, 759 (Iowa 1975). When a stop is challenged on the basis that reasonable cause did not exist, the State must show that the stopping officer had 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, 23 (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).

State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982).

Applying these principles to the present case, we conclude that the police officers had reasonable cause to stop and detain defendant. The record reflects

that Merchant and two other men were observed running across a street early in the morning in a residential-business district. They were almost immediately discovered in a parked car from another county wrestling around. Further, when police talked with them they appeared out of breath and nervous. As the trial court indicated, these factors, viewed together, justified an investigatory stop. The unusual conduct would reasonably lead police officers to believe that criminal activity was afoot.

Merchant argues that even if the original stop was reasonable, the length and restrictive nature of the stop were excessive. It is claimed that defendant was subjected to a level of restraint indistinguishable from a traditional arrest.

"An investigatory detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." Florida v. Royer, 460 U.S. 491, 500, 103 S. Ct. 1319, 1325, 75 L. Ed. 229, 238 (1983). Furthermore, "investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." Id.

In the present case, these standards are satisfied. During the course of the detention, defendant and his companion were asked to produce identification. The police officers also ran a license plate check and awaited confirmation that one of the men owned the car. One officer checked the immediate area on foot. No search was made of the men or their car. Nor were they physically restrained. Based on these facts, we find that the scope of the detention was properly tailored to its underlying justification.

We further conclude that the detention was not unreasonably long. It is apparent that the police pursued a means of investigation that was likely to confirm or dispel their suspicions quickly. This is all that is constitutionally required. See United States v. Sharpe, ___ U.S. ___, ___, 105 S. Ct. 1568, 1575, 84 L. Ed. 2d 605, 616 (1985). Contrary to defendant's claim, there is no "bright

line" rule that twenty minutes represents the outer limit of a permissible stop. In fact, the supreme court has expressly rejected such rigid time limitations. See id. at ___, 105 S. Ct. at 1575, 84 L. Ed. 2d at 615.

The investigatory stop in Jefferson was constitutionally permissible. We therefore affirm on this issue.

Merchant also argues that the second stop in Carroll County was unconstitutional because it was allegedly based on information obtained during an illegal stop in Jefferson. In light of our conclusion that the Jefferson stop was legal, we find this claim to be without merit.

AFFIRMED.