IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 1999-555 (9-816) / 99-0065
Filed April 12, 2000

STATE OF IOWA,

Plaintiff-Appellee,

vs.

DAVID D. BRADFORD,

Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, J. G. Johnson, District Associate Judge, and James D. Coil, District Associate Judge.

David Bradford appeals his conviction and sentence for possession of a controlled substance. **REVERSED AND REMANDED.**

Zorica Ilic of the Sporer Law Firm, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and John Standafer, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Streit and Zimmer, JJ.

PER CURIAM

David Bradford appeals his conviction for possession of a controlled substance (marijuana), in violation of Iowa Code section 124.401(5) (1997). He claims police officers exceeded the bounds of an investigatory stop when they transported him to the police station prior to his arrest. We reverse and remand.

On January 29, 1998, Alice Moore reported to the Waterloo Police Department she had received harassing telephone calls. Moore identified Antonyo Reese and Nicholas (or Phillip) Woodyard as the men who had made the calls.

Later the same day, officers received a report five men were at Moore's residence and one of them had a gun. Officers stopped Woodyard, Robert Boggs, Isaiah Labeaux, and David Bradford near a car in an alley behind Moore's house. Reese was hiding behind a nearby garage, and he was also captured. All of the men were placed in handcuffs and a pat-down search was conducted. No weapons were found on the men or in the vicinity. Moore came outside and identified Reese and Woodyard as the men who had made the threatening telephone calls.

The officers transported all of the men to the police station. Some of the men did not have identification on them, and the officers did not feel they were being truthful about their names. Before the men were placed in a holding cell, they were searched again. The second search of Bradford revealed a marijuana pipe with marijuana residue. He was arrested for possession of marijuana.

None of the men were charged for the incident outside Moore's home. Boggs was given a citation for no driver's license and released. Labeaux was

charged with interference with official acts because he had told officers his name was Carlos Labeaux, which was his brother's name. Reese and Woodyard were charged with harassment.

Bradford filed a motion to suppress. He conceded the officers had sufficient reasonable cause to conduct a *Terry* stop.[1] He claimed the officers did not have probable cause to further detain him or transport him to the police station when no weapons were found. The district court denied the motion to suppress. The court determined that once Reese was captured, the matter moved from a casual sidewalk stop to an investigation of an incident. The court found the officers' conduct was reasonable.

The case was tried to the court based on a stipulated record. The parties agreed to the facts found in the minutes of testimony. The court concluded Bradford was guilty of possession of a controlled substance (marijuana). He was given a suspended sentence and placed on probation for twelve months. Bradford appealed.

Because this case raises constitutional questions, our review is de novo based upon the totality of the circumstances. *State v. Cadotte,* 542 N.W.2d 834, 836 (Iowa 1996).

Bradford contends the police officers exceeded the bounds of a *Terry* stop by detaining him and transporting him to the police station. He asserts the police officers violated his Fourth Amendment rights against unreasonable searches and seizures.

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[1] A peace officer may stop and briefly detain a person for investigative purposes if the officer has reasonable cause to believe a crime may have occurred or criminal activity is afoot. *Terry v. Ohio,* 392 U.S. 1, 30, 88 S. Ct. 1868, 1884-85, 20 L. Ed. 2d 889, 911 (1968).

Bradford relies on *State v. Lathum,* 380 N.W.2d 743 (Iowa App. 1985). There police officers stopped two men who met the description of burglary suspects. *Lathum,* 380 N.W.2d at 744. The officers questioned the men, then transported them to the scene of the burglary, where a witness identified them. *Id.* We stated:

> The police officers, however, exceeded the bounds of an investigatory stop once they transported the suspects to the scene of the crime and later to the police station. *See Hayes v. Florida,* 470 U.S. 811, ___, 105 S. Ct. 1643, 1647, 84 L. Ed. 2d 705, 710 (1985). At that point in the investigation, police procedures were so intrusive that the full panoply of Fourth Amendment rights was triggered. In essence, in order to legally transport Lathum to the burglary scene, the officers needed either probable cause or Lathum's consent.

Id. at 745.[2] A review of the evidence revealed neither probable cause nor consent. *Id.* We held Lathum's Fourth Amendment rights were violated. *Id.* at 746.

The United States Supreme Court has refused to extend *Terry* to authorize investigative interrogations at police stations on less than probable cause. *Dunaway v. New York,* 442 U.S. 200, 211-212, 99 S. Ct. 2248, 2256, 60 L. Ed. 2d 824, 835 (1979). A person is "seized" in the Fourth Amendment sense when he or she is taken involuntarily to the police station. *Id.* at 207, 99 S. Ct. at 2253, 60 L. Ed. 2d at 832.

No one claims Bradford consented to being transported to the police station. We turn then to the question of whether police officers had sufficient probable cause to seize him for Fourth Amendment purposes. The State claims

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[2] *Hayes v. Florida,* 470 U.S. 811, 816, 105 S. Ct. 1643, 1647, 84 L. Ed. 2d. 705, 710 (1985), held police officers violated the Fourth Amendment when, without probable cause, they transported a person from his home to a police station in order to fingerprint him.

officers had sufficient probable cause to arrest Bradford for trespassing, harassment or going armed with intent. However, these were not the theories given by the police officers for transporting Bradford to the police station. At the suppression hearing, Officer Randall Hammitt testified:

> Q. At some point, was the decision made to take the five individuals into custody to the police station? A. Yes.
> Q. Why was that decision made? A. Some of them didn't have any IDs on them, so we weren't sure who they were. They were giving us names, but we didn't feel they were being truthful. They didn't know the date of births, Social Security numbers. There was conflicting stories between the suspects and the witnesses, and we were going to go back later and check for a gun again.

Officer Hammitt's testimony does not show any probable cause to suspect Bradford had committed a crime. There is not even any showing Bradford was among the individuals who did not have identification.

We conclude the police officers exceeded the bounds of the Fourth Amendment when they transported Bradford and detained him without probable cause.[3] All evidence obtained after officers transported Bradford to the police station should have been suppressed. *See Lathum,* 380 N.W.2d at 746.

We reverse the conviction and remand for a new trial.

REVERSED AND REMANDED.

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[3] We do not mean to imply officers may not take such steps as are "reasonably necessary to protect their personal safety and to maintain the status quo." *See State v. Ohlsen,* 537 N.W.2d 794, 798 (Iowa App. 1995) (quoting *United States v. Hensley,* 469 U.S. 221, 235, 105 S. Ct. 675, 684, 83 L. Ed. 2d 604, 616 (1985)). However, probable cause is needed in order to transport a person to the police station for investigatory purposes. *See Hayes v. Florida,* 470 U.S. 811, 816, 105 S. Ct. 1643, 1647, 84 L. Ed. 2d. 705, 710 (1985).