



IN THE COURT OF APPEALS OF IOWA SUPREME COURT

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed November 24, 1981
vs.	)	
CRAIG RAYMOND BEAN and	)	<u>1-274</u>
GREGORY DEAN CONNOR,	)	<u>64883</u>
Defendants-Appellants.	)	

Appeal from Muscatine District Court - R. K. Stohr, Judge.

Defendants appeal from the judgments entered upon their convictions for burglary in the second degree, sections 713.1, 713.3, The Code 1979, and theft in the second degree, sections 714.1(1) and 714.2(2), The Code 1979. AFFIRMED.

William L. Kutmus, Des Moines, for defendant-appellant Bean.

Mark S. Pennington, Des Moines, for defendant-appellant Connor.

Thomas J. Miller, Attorney General of Iowa, and Mark Schuling, Assistant Attorney General, for plaintiff-appellee.

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

DONIELSON, J.

Defendants Craig Raymond Bean and Gregory Dean Connor appeal from the judgments entered upon their convictions for burglary in the second degree, sections 713.1, 713.3, The Code 1979, and theft in the second degree, sections 714.1(1) and 714.2(2), The Code 1979. Defendants contend that their vehicle was subjected to an unconstitutional investigatory stop, and that the evidence seized as a result of the stop should have been suppressed.

Since a constitutional issue is raised, we make an independent examination to determine the facts. State v. Farrell, 242 N.W.2d 327, 329 (Iowa 1976). We affirm.

I.

At approximately 2:21 a.m. on September 5, 1979, a Muscatine County deputy sheriff observed an unoccupied pickup truck parked on a private road, which was posted "No Trespassing." The deputy approached the truck and observed that the keys were in the ignition and that the truck bed was empty except for a spare tire and several gas cans. Approximately forty minutes later, at about 3:00 a.m., the deputy observed the same truck being operated on a public road with two persons in the cab. He followed the truck for about 1/2 mile and then pulled it over. The deputy asked the driver for his license and then observed a tarp in the truck bed covering an unknown object that had not been in the truck forty minutes earlier. Defendants were subsequently arrested and it was determined later that the objects had come from several cottages in the area that had been burglarized.

II.

Defendants contend that since the investigatory stop of their vehicle was unconstitutional, the trial court erred by failing to suppress the evidence obtained as a result of the stop. A valid investigatory stop must be based on specific and articulable facts which, taken together with rational inferences drawn from those facts, warrant a police officer in concluding in light of his or her experience that criminal activity is afoot. State v. Cooley, 229 N.W.2d 755, 760-61 (Iowa 1975). The totality of the circumstances must be considered. United States v. Cortez, ___ U.S. ___, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621, 629 (1981). Circumstances based on mere suspicion or curiosity are not sufficient. Id. at 760.

The trial court found that the facts of the instant case were similar to State v. Donnell, 239 N.W.2d 575 (Iowa 1976) and overruled the defendants' joint motion to

suppress the evidence on that basis. We find the following facts provide reasonable grounds to justify the investigatory stop made in this case: (1) the deputy was concerned that the occupants of the truck may have committed a criminal trespass by parking on a private access road outside the city limits marked "no trespassing;" (2) the truck was parked on a deserted road, yet had keys in the ignition and appeared in working order; (3) the truck was parked above the Mississippi River in the vicinity of summer cottages that had been subject to repeated burglaries; (4) the truck was parked at 2:21 a.m. on a Wednesday in September when the cottages were primarily used only on summer weekends; (5) the truck was observed shortly thereafter being driven away; (6) the truck was capable of transporting stolen goods.

These facts indicate the deputy was not acting upon mere suspicion or curiosity when he stopped the truck. Based on our assessment of the above facts, we find the trial court correctly overruled defendants' motion to suppress the evidence.

AFFIRMED.