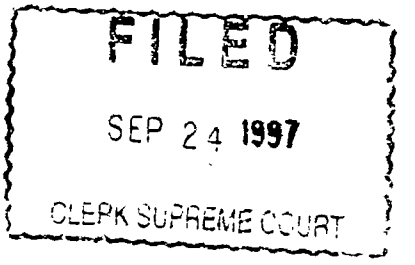
IN THE COURT OF APPEALS OF IOWA

No. 7-483 / 96-2143

000375



STATE OF IOWA,

Plaintiff-Appellee,

vs.

EDWIN E. CARUTH,

Defendant-Appellant.

Appeal from the Iowa District Court for Hamilton County, David R. Danilson, Judge.

Edwin Caruth appeals from his conviction, following a bench trial, for operating while intoxicated in violation of Iowa Code section 321J.2 (1995). **AFFIRMED.**

Douglas Cook of Brekken, Deppe, Wynia, Cook & Hyland, P.C., Jewell, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Patrick B. Chambers, County Attorney, and Kyle J. Groves, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Streit and Mahan, JJ.

MAHAN, J.

Edwin Caruth appeals his conviction following a trial to the court on a charge of operating while intoxicated in violation of Iowa Code section 321J.2 (1995). He contends the district court erred in denying his motion to suppress based upon an allegedly illegal investigatory stop of his vehicle. We affirm.

I. SCOPE OF REVIEW. Caruth alleges a violation of the Fourth and Fourteenth Amendments. Our review of constitutional rights is de novo. *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995). In determining the propriety of the district court's action, this court may consider the evidence received at trial as well as that received at the suppression hearing. *State v. Jackson*, 542 N.W.2d 842, 844 (Iowa 1996); *State v. Cook*, 530 N.W.2d 728, 731 (Iowa 1995).

II. REASONABLE CAUSE TO STOP THE VEHICLE. Deputy Monte Stonewall of the Hamilton County Sheriff's Department was on routine patrol at approximately 4:20 a.m. on April 13, 1996. He was westbound on Highway 175 near Jewell when he observed a pickup truck leaving the parking lot of Dymle Construction. He subsequently stopped the vehicle to identify the driver and inquire regarding his presence on the property. Deputy Stonewall gave the following reasons for stopping the defendant: (1) He was aware of three or four burglaries and thefts which had occurred at Dymle over the past one-and-one-half to two years; (2) he had personally investigated a burglary at Dymle on July 25, 1995, in which a safe and

numerous tools were taken; (3) Dymle Construction was closed for business; (4) it was 4:20 a.m.; (5) Caruth's vehicle was leaving the parking lot area; (6) there were no other people in the lot, though there were other vehicles; (7) there was a lack of any legitimate attractions in the area; and (8) the vehicle was a pickup truck with out-of-county plates.[1] Caruth was arrested for operating while intoxicated following the stop and further investigation.

In the case of *State v. Lamp*, 322 N.W.2d 48 (Iowa 1982), the supreme court stated:

> 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 "specific and articulable 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).

Id. at 51. An officer must base the stop on something more than "unparticularized suspicion or hunch." *Haviland*, 532 N.W.2d at 768. But, "an officer may make an investigatory stop with 'considerably less than proof of wrongdoing by a

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[1] *State v. Donnell*, 239 N.W.2d 575, 578 (Iowa 1976), indicates the type of vehicle was one factor to be considered in the reasonable cause analysis.

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)). "Seemingly innocent activities may, however, combine with other factors to give an experienced law enforcement officer reason to suspect wrongdoing." *State v. Rosentiel*, 473 N.W.2d 59, 62 (Iowa 1991). The primary and fundamental purpose of such a stop is to "resolve the ambiguity as to whether criminal activity is afoot." *Richardson*, 501 N.W.2d at 497. We measure the reasonableness of a stop by an objective standard: "whether the facts available to the officer at the moment of the stop would warrant a person of reasonable caution to believe the action taken was appropriate." *Haviland*, 532 N.W.2d at 768.

Caruth argues the district court erred in concluding the instant case was analogous to the *Richardson* case which upheld the stop. Instead, Caruth argues this case is analogous to *Haviland* in which the stop was found to be unconstitutional. We do not agree. In *Haviland*, the supreme court stated:

> [Officer] Kruse's stated suspicion appears to have been partly based on: (1) the vehicle being parked in a closed business area; and (2) the vehicle turning on its lights and leaving as the police turned the curve in the road. These two factors by themselves do not constitute more than an inchoate and unparticularized suspicion.

Haviland, 532 N.W.2d at 768. In addition, the supreme court pointed out that the area was residential with a business in it and no burglaries had been reported. *Id.* at 769. In the instant case, the stop was based on several additional factors set out

above. We agree with the trial court that Deputy Stonewall had reasonable and articulable cause to stop the vehicle. The motion to suppress was properly overruled. Therefore, we affirm the decision of the district court.

AFFIRMED.