

IN THE COURT OF APPEALS OF IOWA

No. 1999-100 (9-287) / 1998-1749

Filed July 23, 1999

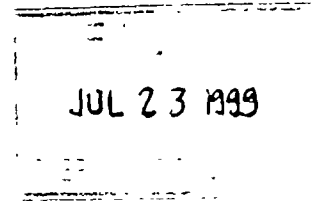
STATE OF IOWA,

Appellee,

vs.

TIMOTHY EDWARD DOW,

Appellant.



Appeal from the Iowa District Court for Black Hawk County, Jeffrey L. Harris,
Judge.

Defendant appeals from the judgment and sentence entered upon his conviction
for operating while intoxicated (second offense). **REVERSED AND REMANDED.**

Carter Stevens of Roberts & Stevens, P.L.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Anthony Janney, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., Zimmer, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

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HAYDEN, S.J.

Timothy Dow appeals the judgment and sentence from his conviction for operating while intoxicated (second offense), in violation of Iowa Code section 321J.2 (1997). We reverse the district court decision denying Dow's motion to suppress and remand for further proceedings.

On November 22, 1997, at approximately 2:15 a.m., Waterloo police officers received a call from dispatch reporting a suspicious vehicle to the rear of a residence in the 1100 block of Commercial Street. The vehicle was reported as being a red and white Ford truck with license number 197 EDG.

Officer Robert Greenlee III responded to the call. The area in question was a mixture of residences and commercial buildings. At the time of the call all of the businesses were closed. There had been a drive-by shooting in the area two months prior to the call and the area had been a target in recent prostitution sting operations. While driving in the 1000 block of Commercial Street, officer Greenlee spotted a truck which matched the description given. He followed the vehicle and saw the license plate was number 197 EDG. He saw there were two people in the truck. He observed no criminal activity.

Officer Greenlee stopped the vehicle. The driver was Timothy Dow. As Dow exited the vehicle Officer Greenlee noticed his zipper was down and he smelled of alcohol. Dow failed field sobriety tests. Dow was arrested and charged with operating while intoxicated.

Dow filed a motion to suppress. He claimed the evidence seized from the traffic stop should be suppressed because the officer did not have reasonable cause to stop his vehicle. The district court denied the motion. Dow was convicted of OWI (second offense). He now appeals.

A challenge to the district court's ruling on a motion to suppress implicates the Fourth and Fourteenth Amendments to the United States Constitution. *State v. Wiese*, 525 N.W.2d 412, 414 (Iowa 1994). When constitutional rights are at issue, we find the facts de novo. *State v. Otto*, 566 N.W.2d 509, 510 (Iowa 1997).

It is well settled 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. Lamp*, 322 N.W.2d 48, 51 (Iowa 1982). When a stop is challenged on the basis reasonable cause did not exist, the State must show the stopping officer had specific and articulable cause to support a reasonable belief criminal activity may have occurred. *State v. Waters*, 538 N.W.2d 862, 863 (Iowa App. 1995).

The reasonableness of a stop is measured by 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. *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995). We hold officers to their true reason for stopping a vehicle in question and will not allow them to justify a stop with reasons upon which they did not actually have. *State v. Rosenstiel*, 473 N.W.2d 59, 61 (Iowa 1991). If the State fails

to meet its burden, the evidence obtained as a result of the stop must be suppressed. *Waters*, 538 N.W.2d at 863.

Dow contends Officer Greenlee did not have reasonable suspicion to believe criminal activity had occurred or was going to occur prior to stopping his vehicle. At the time of the stop, the police officer relied on these facts: a citizen reported a suspicious vehicle matching the description of Dow's vehicle; there were two people in the vehicle; there had been one drive-by shooting in the area two months previously; and the area had been the target of a prostitution sting operation.

We determine these facts were not sufficient to warrant a person of reasonable caution to believe a stop was appropriate. Officer Greenlee did not state what criminal activity in particular he thought Dow was engaged in. A generalized suspicion of criminal activity is not sufficient to justify an investigatory stop. *Haviland*, 532 N.W.2d at 770.

The facts in this case are similar to those found in *Haviland*. There a car was parked in an residential area with some businesses. *Id.* at 769. No recent crimes had been reported, and the area was not considered a high crime area. *Id.* As police officers approached, the car was driving in a lawful manner. *Id.* The supreme court determined police officers did not have reasonable cause to stop the vehicle. *Id.* at 770.

The district court erred by denying Dow's motion to suppress. Dow's conviction is reversed and we remand this case to the district court for further

proceedings consistent with this opinion. Costs of this appeal are assessed to appellee.

REVERSED AND REMANDED.