



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Appellee,

v.

RICHARD ROY BERTRAND,

Appellant.

Filed September 21, 1978

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Appeal from Polk District Court - Dale Missildine, Judge.

Defendant appeals his conviction of carrying a concealed weapon alleging trial court error in ruling on motion to suppress. Affirmed.

Mr. William H. Cone, Jr., Des Moines, for appellant.

Mr. Richard C. Turner, Attorney General, Mr. Raymond Sullins, Assistant Attorney General, and Dan Johnston, Polk County Attorney, for appellee.

Submitted to Donielson, Acting C.J., Snell, Oxberger and Carter, JJ.

PER CURIAM

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Defendant, Richard Roy Bertrand, appeals his conviction of the crime of carrying a concealed weapon in violation of § 695.2, The Code. He contends the trial court erred in overruling his motion to suppress as evidence a revolver seized from his automobile after an investigatory stop which defendant claims was constitutionally impermissible. We affirm the trial court.

The record at the suppression hearing developed the following facts. At 3:00 a.m. on July 28, 1977, officer Dennis Anderson and police cadet Douglas Phillips were driving in their patrol car north on N.W. 2nd Avenue in Polk County. At that time the driver, officer Anderson, observed in his rear view mirror that two cars, one closely behind the other, were tailgating his car. Anderson testified that he increased his speed in an attempt to place a greater distance between his and the following cars. The cars maintained their relative positions at the increased speed. Anderson testified that he then determined the cars to be speeding and turned off N.W. 2nd Avenue. He planned to thereby get behind the speeding cars. The car immediately following his made the turn as well and stopped along side his car. The female occupant of that car reported that the third car had been following her all the way from downtown Des Moines and that her attempts to allude it had failed. She pointed at the car which had continued to travel north on 2nd Avenue. It was the only car to be seen on the street. The officers pursued the defendant's car. They both testified that in their opinions the car was speeding and that at the time they thought the driver might be intoxicated. Anderson stated that defendant's car crossed over the street's center line once or twice. When defendant's car was finally stopped officer Anderson asked for defendant's operator's license. Cadet Phillips approached the passenger side of defendant's car and through the window saw a pistol on the car's floorboard. Phillips asked the defendant if he had a permit to carry a concealed weapon. When the defendant responded that he did not have such a permit, he was placed under arrest. The pistol was admitted into evidence at trial.

The basis of defendant's motion to suppress and argument on appeal is that the officers did not have reasonable cause to stop his car. Assuming arguendo, that the stop was permissible, defendant concedes the plain-view doctrine would justify seizure of the weapon. See State v. Davis, 228 N.W.2d 67 (Iowa 1975). An investigatory stop of a

motor vehicle is constitutionally permissible if the stopping officer has specific and articulable cause to reasonably believe criminal activity is afoot. Circumstances evoking mere suspicion or curiosity will not suffice. *Terry v. Ohio*, 392 U.S. 1 (1968); *State v. Dixon*, 241 N.W.2d 21, 23 (Iowa 1976); *State v. Donnell*, 239 N.W.2d 575, 577 (Iowa 1976); *State v. Cooley*, 229 N.W.2d 755, 760 (Iowa 1975). In application of the foregoing legal principles the trial court correctly concluded that the officers observed unusual conduct, some of which was itself potentially criminal and some of which indicated that "criminal activity may be afoot." *State v. Donnell*, supra at 577. The trial court did not err in overruling defendant's motion to suppress.

AFFIRMED.