

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

Filed April 23, 1986

STATE OF IOWA,

)

Plaintiff-Appellee,

)

vs.

)

MICHAEL JOHN CHASE,

)

Defendant-Appellant.

)

6-96
85-1445

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Appeal from the Iowa District Court for Humboldt County (No. 2997) -
Newt Draheim, Judge, Albert L. Habbab, Judge (on motion to suppress).

Defendant appeals from his conviction for burglary in the second degree in violation of Iowa Code sections 713.1 and 713.5 (1985). Defendant asserts the trial court erred in overruling defendant's motion to suppress evidence obtained as a result of an allegedly unreasonable investigatory stop of defendant's vehicle. **AFFIRMED.**

Charles Harrington, Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Christie J. Scase, Assistant Attorney General, and Kurt J. Stoebe, County Attorney, for plaintiff-appellee.

Considered by Snell, P.J., and Schlegel, and Sackett, JJ.

SACKETT, J

Defendant appeals from his conviction for burglary in the second degree in violation of Iowa Code sections 713.1 and 713.5 (1985). Defendant contends law enforcement officers lacked reasonable grounds for the investigatory stop of his vehicle. Defendant further contends the trial court erred in refusing to suppress evidence obtained as a result of the stop.

At approximately 2:27 p.m., February 17, 1985, Humboldt County Deputy Sheriff William Fouss received a radio dispatch from the Humboldt Law Enforcement Center that the burglar alarm at Lance Tinken's chicken farm had sounded. Deputy Fouss was approximately 14 miles northeast of the farm and proceeded immediately to the farm. While proceeding to the scene, he radioed Gilmore City Police Officer Leon Larson for assistance. Officer Larson radioed that he would proceed to the Tinken farm which is southwest of Humboldt on county road C-49 approximately six miles west of Highway 169.

After turning off Highway 169 onto C-49 Deputy Fouss met a vehicle traveling toward him approximately three to four miles from the Tinken farm. deputy Fouss, who had seen no other vehicles on C-49, testified later he recognized this vehicle by description and license plate number as the same vehicle that had been used in another recent farm burglary in the Humboldt area which he had investigated. Deputy Fouss stopped defendant's vehicle at approximately 2:35 a.m. Although defendant did not own the vehicle, he was driving it and a juvenile was in the passenger seat. Upon approaching defendant's vehicle Deputy Fouss saw through the windows a large case of eggs with Tinken's name on it in the backseat. Defendant was arrested and thereafter admitted he had been at the Tinken farm, but stated the juvenile had broken into the chicken house and taken the eggs. Deputy Fouss then obtained a warrant to search

defendant's vehicle where he found burglary tools used to pry open the chicken house door.

On July 8, 1985, defendant filed a motion to suppress evidence and statements obtained as a result of the investigatory stop on the basis that Deputy Fouss had acted without reasonable cause. Following a hearing, the trial court held the stop had been permissible and overruled the motion. Thereafter trial was held to the jury and evidence from the stop was admitted over objection. Defendant was convicted of burglary in the second degree and this appeal followed.

The sole issue defendant appeals is whether the trial court erred in refusing to sustain defendant's motion to suppress evidence obtained as a result of an allegedly illegal investigatory stop. He contends the investigatory stop was illegal because Deputy Fouss acted without reasonable cause in violation of defendant's constitutional rights.

I.

Because we are confronted with an alleged constitutional violation, we resolve the issue by making our own independent evaluation of the totality of the circumstances. State v. Conger, 375 N.W.2d 278, 279 (Iowa App. 1985); State v. Losee, 353 N.W.2d 876, 878 (Iowa App. 1984). Our review is de novo. State v. Hilleshiem, 291 N.W.2d 314, 316 (Iowa 1980). The burden is on the state to show the investigatory stop was reasonable and the evidence obtained lawfully. Hilleshiem, 291 N.W.2d at 316. In determining whether the trial court erred in overruling the motion to suppress we may consider not only evidence adduced in the motion to suppress but also later trial testimony. State v. Donnell, 239 N.W.2d 575, 578 (1976).

II.

The essential purpose of the fourth amendment search and seizure proscription is to impose a standard of reasonableness upon the exercise of discretion by law enforcement officials in order to safeguard privacy and security of individuals against invasion. Losee, 353 N.W.2d at 878, Hilleshiem, 291 N.W.2d at 316. The initial balancing of interests the courts employ to determine whether a seizure is reasonable is whether the officer's actions, in the sum of its form, scope, nature, incidents and effect, appears fundamentally unfair or unreasonable in the specific situation. Losee, 353 N.W.2d at 878, Hilleshiem, 291 N.W.2d at 316.

It is now well settled that the fourth amendment requires an officer have "reasonable cause" to stop a vehicle for investigatory purposes. Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880, 20 L.E.2d 889, 906 (1968); State v. Eis, 348 N.W.2d 224, 226-27 (Iowa 1984). Reasonable cause exists where the stopping officer had specific and articulable cause to support a reasonable belief that criminal activity may have occurred. Conger, 375 N.W.2d at 279; State v. Lamp, 332 N.W.2d 48, 51 (Iowa 1982). The test is not the officer's subjective theory but whether the record discloses objective facts were available to the officer to justify the stop under the circumstances. Losee, 353 N.W.2d at 878; State v. Peck, 329 N.W.2d 680, 686 (Iowa App. 1982). To justify an investigatory stop the fourth amendment does not require an officer have the precise level of information necessary for probable cause, however, mere suspicion or curiosity will not suffice. Peck, 329 N.W.2d at 683; State v. Dixon, 241 N.W.2d 21, 23 (Iowa 1976).

In several recent Iowa cases the court has engaged in this reasonable cause balancing analysis. In Dixon, the court held the investigatory stop was reasonable

because the officers had been informed of a specific crime which had just occurred in the vicinity and which they were investigating at the time they stopped the defendant's vehicle heading away from the robbery scene at 1:30 a.m. Dixon, 241 N.W.2d at 23.

In Hawthorne, the court found the investigatory stop to be reasonable because:

- (1) The police officer was investigating a specific crime;
- (2) The officer had been given a description of the vehicle close to the scene of the crime which was thought to be the getaway car;
- (3) The vehicle was stopped about 20 minutes after the robbery on the same highway as the location of the crime;
- (4) The vehicle was heading away from the crime scene when it was stopped.

Hawthorne, 353 N.W.2d at 891.

In Lamp, the court found the officer had reasonable cause to stop a vehicle he observed at 4:20 a.m. moving slowly in an area where a woman had been raped and stabbed a few hours earlier. Lamp, 332 N.W.2d at 51. The court held the stop was justified based on the following factors:

- (1) The officer was investigating a specific crime;
- (2) The officer had been given a description of the assailant and his vehicle;
- (3) The perpetration of the crime was reasonably close in time (approximately 4-1/2 hours) and distance (approximately 5 miles) to the investigatory stop.

Lamp, 322 N.W.2d at 51.

In Donnell, the court held the stop was permissible where a van with out-of-county license plates was slowly cruising the town of Clear Lake in November when many homes were vacant for the winter. Donnell, 239 N.W.2d at 576. The officer's surveillance of the defendant's van occurred in three residential areas at 2:00 a.m., a time when most persons would be asleep. Donnell,

239 N.W.2d at 578. The court gave substantial weight to the fact the Clear Lake residential area had been subjected to a crime wave of home burglaries during the previous winter. Donnell, 239 N.W.2d at 578. Taking all the facts together, the court held there was sufficient cause for stopping the vehicle even though the officer was not investigating a specific burglary. Donnell, 239 N.W.2d at 578. See Peck, 329 N.W.2d at 686, (fact that defendant previously convicted of auto theft sufficient to justify investigatory stop under Terry and Donnell).

The facts supporting the investigatory stop in this case are stronger than those present in Donnell. We believe there were sufficient facts in the instant case to make the investigatory stop of the defendant appropriate. We specifically find that:

- (1) Deputy Fouss was responding to and investigating a specific crime when he stopped defendant's vehicle;
- (2) Deputy Fouss recognized defendant's vehicle by description and license plate number as the same vehicle involved in another farm burglary in the Humboldt area within recent months;
- (3) This occurred at 2:35 a.m., a time when most persons in that rural area would be asleep;
- (4) When stopped the vehicle was approximately only four miles from and traveling on the same county road as the Tinken farm;
- (5) The vehicle was traveling away from the Tinken farm when stopped;
- (6) Deputy Fouss had passed no other vehicles on the country road when he met defendant's vehicle;
- (7) The vehicle was stopped within ten minutes from the time Deputy Fouss received the dispatch that the Tinken farm burglar alarm had been triggered.

These specific and articulable facts which led to the stopping of defendant's vehicle were sufficient to warrant a person of reasonable caution to believe

the action was appropriate. The circumstances were reasonably suggestive of possible involvement of the vehicle occupants in criminal conduct. We agree the trial court was right in overruling the defendant's motion to suppress.

AFFIRMED.