

IN THE COURT OF APPEALS OF IOWA

No. 0-440 / 89-1518

FILED

JAN 29 1991

CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

DWIGHT ALBERT BROWN,

Appellant.

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Appeal from the Iowa District Court for Polk County,
George Bergeson and Anthony Critelli, Judges.

Following a bench trial, Brown appeals his conviction
for possession of cocaine with intent to deliver.

AFFIRMED.

Linda Del Gallo, Acting State Appellate Defender, and
Brian K. Sissel, Assistant State Appellate Defender, for
appellant.

Bonnie J. Campbell, Attorney General, Thomas S. Tauber,
Assistant Attorney General, James A. Smith, County
Attorney, and Jamie Bowers, Assistant County Attorney, for
appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden,
JJ.

HAYDEN, J.

Police officers had been told by several informants Dwight Brown was selling crack cocaine from his apartment. On one occasion Officer Arnold had a conversation with Brown on this subject. Due to this conversation Officer Arnold was familiar with Brown's appearance.

One night Officer Arnold and two other officers were watching the building where Brown had an apartment. The officers saw a small group of people enter the building and then leave shortly thereafter. The officers heard one of these people make the statement, "They're not open." Later the officers stopped a suspect as he emerged from the building. Immediately after they stopped the first suspect, Brown emerged from a second floor apartment above the police officers.

The officers covered Brown with their weapons and ordered him up against the building. Officer Arnold then patted Brown down for weapons. During the pat down, Officer Arnold found a prescription bottle. It was later determined to contain crack cocaine.

Brown was charged with possession of cocaine with intent to deliver. After a bench trial, he was found guilty of that charge. He appeals the conviction.

Brown contends the district court should have suppressed the evidence seized during Officer Arnold's stop and pat-down search of Brown. Brown contends his encounter with Officer Arnold was an arrest and was done without

probable cause. The State asserts the encounter was a mere investigatory stop. Even if it was only a stop, Brown argues it was done without reasonable grounds for such a stop.

Our review on appeal is assigned errors of law. Iowa R. App. P. 4.

I. Was the Initial Stop an Arrest?

Brown first argues the initial stop was an arrest, requiring probable cause. When he exited the apartment building and came down the stairs, the police officers ordered him against the wall. They had their guns drawn at the time.

The police claim they had their guns drawn due to concerns for their own safety. Drug dealers often carry guns. Brown was a known drug dealer. Several guns had been confiscated in the area. The police had also often answered complaints concerning shootings at the apartment building and in the immediate vicinity.

The determining test as to whether an arrest occurred is "whether a reasonable person would have believed he was not free to leave." United States v. Mendenhall, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877, 64 L. Ed. 2d 497, 509 (1980); See also Florida v. Royer, 460 U.S. 491, 502, 103 S. Ct. 1319, 1326, 75 L. Ed. 2d 229, 239 (1983). Warrantless searches and seizures are per se invalid unless conducted within several narrow exceptions. State v. Roth,

305 N.W.2d 501, 504 (Iowa 1981). One of these exceptions is exigent circumstances, such as danger to the officers or others. Cf. State v. Jackson, 210 N.W.2d 537, 539 (Iowa 1973).

After reviewing the circumstances of this case, we determine the initial stop was not an arrest, but rather a brief investigatory or Terry stop. The officers' display of their weapons, under the circumstances, was a precautionary measure to ensure their own safety.

It is undisputed that the fourth amendment's protection against unreasonable intrusions on a person's liberty arises when an officer seizes a person. A seizure occurs when the officer has in some way restrained the liberty of a citizen by means of physical force or show of authority. State v. Harlan, 301 N.W.2d 717, 719 (Iowa 1981). However, in some circumstances a person may be detained briefly, without violating such person's fourth amendment rights. In Terry v. Ohio, 392 U.S. 1, 22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906-07 (1968), the United States Supreme Court recognized that a police officer may, in appropriate circumstances and in an appropriate manner, approach a person for the purpose of investigating possible criminal behavior even without probable cause for arrest. During this investigatory stop a limited protective search may be conducted "[w]hen an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others." Id. at 24, 88 S. Ct. at 1881, 20 L. Ed. 2d at 908.

State v. McGee, 381 N.W.2d 630, 631-32 (Iowa 1986).

The officers were entitled to take reasonable precautionary measures. People v. Ulrich, 268 N.W.2d 269, 272 (Mich. App. 1978).

We dismiss Brown's contention the initial stop constituted an arrest. The undisputed testimony at the suppression hearing showed the stop took place at a known drug house. Several guns and drugs had been previously confiscated on or near the premises. The police had answered complaints on shots at the property, apparently within the building from which Brown exited.

The police had already stopped another person when Brown exited the apartment building. It was late at night. Brown exited the building above the officers as they were conducting the first stop. He approached the officers from an elevated position. He had a clear line of fire, had he chosen to interfere in the first stop. Under the circumstances the police were justified in ordering Brown against the building with their pistols drawn. The need to secure their own safety justified the subsequent stop and search.

The initial stop was not an arrest. It was merely a "stop and frisk." Therefore, probable cause was not needed. However, even if it was an arrest, it was justified under the exigent circumstances exception to the warrant requirement. See cf. Jackson, 210 N.W.2d at 539.

We affirm the trial court on this issue.

II. Was the Initial Stop Reasonable?

Brown argues even if the stop was not an arrest, it lacked the necessary reasonable cause for suspicion. We disagree.

The fourth amendment requires reasonable cause to stop for investigatory purposes. Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 899, 906 (1968). 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. Lamp, 322 N.W.2d 48, 51 (Iowa 1982) (quoting State v. Aschenbrenner, 289 N.W.2d 618, 619 (Iowa 1980)). The officer is bound by the true reason or reasons for making the stop; 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. The constitutionality of the stop is judged by balancing the degree of the intrusion against its promotion of legitimate governmental interests. State v. Hilleshiem, 291 N.W.2d 314, 317 (Iowa 1980).

An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.

* * *

Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.

State v. Eis, 348 N.W.2d 224, 227 (Iowa 1984) (citing United States v. Cortez, 449 U.S. 411, 417-18, 101 S. Ct. 690, 695, 65 L. Ed. 2d 621, 628-29 (1981)).

Brown was a known drug dealer. Several persons had informed the officers they purchased drugs from Brown. The

apartment building and the building next door were known drug houses. The officers involved were frequently called to the area to investigate shootings and drug related crimes. They had conducted extensive surveillance over an extended period on time on the premises in question. They had considerable experience in drug dealings and arrests.

We determine the stop itself was reasonable in light of the circumstances known to the officers. The additional fact of exigent circumstance convinces us this is correct. Brown exited the apartment immediately after the officers had stopped the first person. He came out on the second floor, above the officers. It is not unreasonable to conclude Brown would come to the aid of his friend, placing the officers' lives in jeopardy. Thus, the officers were justified in stopping Brown with drawn guns. They were justified in searching Brown for weapons.

We affirm the trial court on all issues.

AFFIRMED.