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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

9-380 / 89-210

548

**IN THE INTEREST OF J.L.W.,
A Child,**

Appellant.

Appeal from the Iowa District (Juvenile) Court for Polk County, Vincent M. Hanrahan, Judge.

Juvenile appeals from being adjudicated delinquent resulting from the offense of possessing cocaine with intent to deliver. **AFFIRMED.**

Ted E. Marks and Todd E. Babich of Marks, Marks & Marks, Des Moines, for the appellant child.

Thomas J. Miller, Attorney General of Iowa, and Kathrine S. Miller-Todd, Assistant Attorney General, for the State.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

On the 3rd day of January, 1989, J.L.W. was adjudicated a delinquent child in the juvenile court for Polk County, Iowa. The juvenile judge found he had committed the offense of unlawful possession of a schedule II controlled substance with the intent to deliver in violation of Iowa Code section 204.401(1) (1987). The controlled substance was cocaine. He appeals. We affirm.

I. The juvenile claims the cocaine seized from him at the time of his arrest should have been suppressed.

On November 11, 1988, at approximately 8:30 p.m., City of Des Moines Police Officers Richardson and LePorte were driving through the parking lot of the Last Chance Saloon. This area was known to be a high drug activity region. As the officers were driving through the parking lot, Richardson saw three male juveniles huddled beside a car in the parking lot, passing or handing off something; they were exchanging things. One of the juveniles was J.L.W., age fourteen. When the three juveniles observed the police car, they abruptly stood up and acted as if nothing was happening. Officer Richardson stopped the juveniles, asked them their names, and performed a pat-down search checking for weapons. Richardson testified the police had reports adults and juveniles were carrying weapons in that area. There had been shootings in the area and threats made against the police department. During the pat-down search,

a large wad of money was discovered in one juvenile's pocket. J.L.W. had a leather bag under his coat which was checked out by Officer Richardson. In the bag was over $1,500 in cash and cocaine. J.L.W. was arrested and taken to Meyer Hall. At Meyer Hall, the juvenile gave Officer Richardson another white rock substance from his pocket. Later, two plastic bags were found on J.L.W.'s person, which contained rocks determined to be cocaine. These plastic bags were delivered to Officer LePorte.

The principles have been summarized by the Iowa Supreme Court in the case of State v. Stevens, 394 N.W.2d 388, 391 (Iowa 1986). In writing for the five-justice panel, Justice Lavorato stated:

> The Supreme Court has stated its decision in Terry v. Ohio, 392 U.S. 1, 22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906-07 (1968), recognized:
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> > that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest." The fourth amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. . . . A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.
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> Adams v. Williams, 407 U.S. 143, 145-46, 92 S. Ct. 1921, 1923, 32 L. Ed. 2d 612, 616-17 (1972) (citations omitted). To justify an investigatory stop, the officer must have reasonable cause to believe a crime may have occurred. See State v.

> Lamp, 322 N.W.2d 48, 51 (Iowa 1982). The test of reasonable cause for an investigatory stop is not the officer's subjective theory, but whether "articulable objective facts were available to the officer to justify the stop." State v. Donnell, 239 N.W.2d 575, 578 (Iowa 1976). If the State does not establish such facts, the evidence seized as a result of the stop must be suppressed. State v. Lamp, 322 N.W.2d at 51.

The crucial question before us in this case is were there articulable objective facts available to Officers Richardson and LePorte to justify the stop.

At approximately 8:30 p.m., three juveniles were seen by the officers in the parking lot of a bar in a high-crime area. They were trading things with their hands while huddled down behind an automobile. When they saw the police, they immediately ceased their activity, stood up, and acted as if nothing had happened. We hold such circumstances would lead a reasonable person to believe criminal activity was involved and thus justify the stop. The test in Donnell has been satisfied.

II. Next the juvenile claims the seizure and search of the closed black leather satchel violated his fourth amendment rights.

Weapon searches are permitted for the protection of the police officer where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain

that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. State v. Scott, 405 N.W.2d 829, 832 (Iowa 1987). As can be seen in Scott, a search is permitted even though the officer may not have probable cause to arrest the person for a crime. We also note in the United States Supreme Court case of Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969), it was held that it was reasonable for an officer to search the area within the immediate control of an arrested person to preclude the destruction of evidence or the seizure of a weapon. Here the satchel was on the hood of an automobile, but within reach of the juvenile at the time it was searched by the officer. We hold these were exigent circumstances and the officers were justified in searching the satchel. The items seized from the satchel shall not be suppressed from evidence in this case. This search of the satchel and seizure of items from it did not violate the juvenile's U.S. Constitutional fourth amendment rights against unreasonable search and seizure. If, while conducting a Terry search, the officer discovers contraband other than weapons, he is not required to ignore the contraband, and the fourth amendment does not require the suppression of evidence such as drugs. Michigan v. Long, 463 U.S. 1032, 77 L. Ed. 2d 1201, 1220, 103 S. Ct. 3469, 3481 (1983).

III. We have held in divisions I and II the search and seizures were not unconstitutional violations of the juvenile's rights. Therefore, the juvenile's claim the search of him and seizure of items at Meyer Hall after his arrest were "fruits of the poisonous tree," is without merit and we do not address it.

IV. We do not address the juvenile's claim the procedure used by the officers to arrest him was a violation of Iowa Code section 232.22, as this claim was raised for the first time on appeal. Issues raised for the first time on appeal are too late. In the Interest of Robbins, 230 N.W.2d 489, 494 (Iowa 1975).

V. The juvenile's last claim in this appeal is the trial court erred in not applying the deadlines set up in the pretrial conference for identification of witnesses. We determine it was within the trial judge's discretion to change or modify its prior order as the date of trial had been changed from December 7, 1988, to January 3, 1989. The State gave notice to the juvenile on December 13, 1988, of its intention to call two witnesses at trial. The juvenile had three weeks' notice prior to trial to prepare for those witnesses. The juvenile was not prejudiced.

AFFIRMED.