FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	484
vs.	)	
CHRISTOPHER LEON WECKMAN,	)	9-58 88-241
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Polk County (CR 36650), Dick Strickler, Judge.

The defendant appeals from his conviction, following a jury trial, of first-degree robbery. **AFFIRMED.**

Raymond E. Rogers, State Public Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Roxann M. Ryan, Assistant Attorney General; and James Ramey and George Karnas, Assistant County Attorneys, for plaintiff-appellee.

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

OXBERGER, C.J.

On September 17, 1987, a Vicker's gas station in Des Moines was robbed. The attendant at the station described the man's appearance. She also described a large, older, dark-colored car with a loud muffler that had attracted her attention when it drove slowly past the station shortly before the holdup. These descriptions were broadcast on the police radio. A few minutes later an officer near the scene of the robbery spotted a car matching the attendant's description, followed it, then stopped it after it tried to elude him.

A jury found the defendant, Weckman, guilty of first-degree robbery. He contends the trial court erred by overruling his motion to suppress evidence obtained as a result of an illegal investigatory stop of his car. He also alleges the trial court erred in not suppressing a voice identification that was improperly obtained. When constitutional issues are raised, our scope of review is of the totality of the circumstances. We affirm the conviction.

I. Investigatory Stop

Weckman contends he was the victim of an unconstitutional stop by the police and accordingly certain evidence should have been suppressed.

The fourth amendment requires an officer have "reasonable cause" to stop an individual for investigatory

purposes. Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889, 906 (1968). "When a stop is challenged on the basis 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) (emphasis added in Lamp)). The record must disclose objective facts available to the officer to justify the stop under the circumstances. State v. Losee, 353 N.W.2d 876, 878 (Iowa App. 1984). The test is not the officer's subjective theory. State v. Peck, 329 N.W.2d 680, 686 (Iowa App. 1982). Mere suspicion or curiosity is not sufficient to justify the stop for investigatory purposes. State v. Donnell, 239 N.W.2d 575, 577 (Iowa 1976). Circumstances for an investigatory stop exist where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experiences that criminal activity may be afoot. Id.

The robbery which is the subject of this case took place on September 17, 1987 at 2:45 a.m. at a Vicker's gas station in Des Moines. Just before the robbery took place, a female attendant was outside the station hosing down the parking lot. She observed a car which she thought to be traveling at a slower than normal pace. After the car disappeared out of her sight, she resumed her cleaning

duties. Shortly thereafter a man holding a gun approached the female attendant outside the station, ordered her inside, and demanded she give him the money from the cash drawer. When the robber left, the attendant called the police. She described the man's appearance. She also described the suspicious looking car which drove by the station just before the robbery. The stopping officer testified the following description came over the police radio in conjunction with information about the robbery: "that a large older car, dark in color, was involved, with a loud muffler; a white male in his twenties, five-nine, 140 pounds, dirty sandy hair, a small growth of beard and a mustache, was involved."

On his way to the crime scene, Officer Pendarvis saw a car matching the description with a passenger with sandy hair. When he turned around to pursue the vehicle, the vehicle had eluded him. The officer searched side streets for a few minutes and then found the vehicle again, conducted a stop and waited for backup.

We think that, in the present case, the stop was constitutional under Terry, and its progeny and that any evidence seized as a result was admissible. In this case the officer had reasonable cause to stop the defendant: (1) he was on his way to investigate the crime; (2) he had been given a description of the assailant and the possible vehicle; and (3) the perpetration of the crime was reasonably close in time and distance. See Lamp at 51.

II. Voice Identification

Weckman contends the voice identification at the scene of the car stop should have been suppressed because it was not conducted according to the procedures set out in Iowa Code chapter 810.

Iowa Code chapter 810 relates to nontestimonial identification. This chapter refers to requests by the defendant for such identification which need be applied for and granted by court order. Iowa Code §§ 810.2-810.8 (1987). We agree with the State that chapter 810 does not provide exclusive procedures for voice identification. We fail to find this chapter applicable in this situation. We note our supreme court has approved of pretrial voice identification without reference to chapter 810. See State v. Walton, 424 N.W.2d 444 (Iowa 1988).

AFFIRMED.