

IN THE COURT OF APPEALS OF IOWA

No. 0-548 / 09-1462
Filed September 9, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CURTIS LEE HANSEL,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Steven Gerard II,
District Associate Judge.

Curtis Hansel appeals his conviction for operating while intoxicated,
second offense. **AFFIRMED.**

Mark Meyer, Cedar Rapids, and John Breitbach of Petrzelka & Breitbach,
P.C., Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney
General, Janet M. Lyness, County Attorney, Iris Frost, Assistant County Attorney,
and Eric McBurney, Legal Intern, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.
Tabor, J., takes no part.

DANILSON, J.

Curtis Hansel appeals following conviction and sentence for operating while intoxicated, second offense, in violation of Iowa Code section 321J.2(1) (2009). He contends the district court erred in denying his motion to suppress because the arresting officer did not have reasonable suspicion to stop his vehicle. We affirm because the facts support the investigatory stop where the arresting officer was aware of numerous theft complaints in the area, including thefts of construction equipment; the officer observed Hansel's pickup drive towards the back of a closed construction business late at night; and the officer had never observed a vehicle at the business at that late hour during prior patrolling of the area.

I. Background Facts and Proceedings.

On September 27, 2009, at approximately 12:00 a.m., Johnson County Deputy Sheriff Matthew Hendricks was on patrol during a Governor's Traffic Safety Bureau overtime shift, assigned to operating while intoxicated (OWI) enforcement. Deputy Hendricks was travelling eastbound on 120th Street, a two-lane road in Swisher, when he reached the intersection of 120th Street and Highway 965 and prepared to turn southbound on Highway 965. Deputy Hendricks noticed a Chevy Colorado pickup travelling westbound on 120th Street that turned southbound on Highway 965 before his squad car.

After travelling for approximately one-half mile on Highway 965, Deputy Hendricks observed the pickup turn into the gravel drive of a construction business. The business was closed with all lights off and no other vehicles around. According to Deputy Hendricks, it was "a little bit suspicious [that]

somebody would be pulling into a construction business at midnight,” so he slowed down and stopped his vehicle on the shoulder to see whether the pickup was just lost and turning around. Deputy Hendricks watched as the pickup proceeded down the driveway, slowly through the parking lot, and turned toward the rear of the construction business. Deputy Hendricks believed this was “highly suspicious,” particularly because the police had recently received “a very large number of complaints for thefts, especially construction equipment” in this area.

At that point, Deputy Hendricks activated his emergency lights and stopped the pickup to investigate whether the driver had a valid reason to be driving toward the back of the closed construction company at midnight. Deputy Hendricks identified the driver as Defendant Curtis Hansel. He noticed an odor of an alcoholic beverage coming from Hansel’s breath and person, and that Hansel had bloodshot and watery eyes. Hansel could not follow simple instructions, admitted he should not be driving, and failed field sobriety testing. A preliminary breathalyzer test depicted a blood alcohol level of .18.

On October 22, 2009, the State filed a trial information charging Hansel with operating while intoxicated, second offense. Hansel pled not guilty. Hansel filed a motion to suppress all evidence obtained as a result of the stop, alleging that the stop violated his constitutional rights because Deputy Hendricks did not have probable cause to stop his vehicle. Following a hearing, the district court entered an order denying Hansel’s motion to suppress.

Hansel waived his right to a jury trial. The district court found Hansel guilty of operating while intoxicated, second offense, and imposed sentence.

Hansel now appeals, alleging the district court erred in denying his motion to suppress.

II. Scope and Standard of Review.

Because Hansel contends his constitutional rights under the Fourth Amendment of the United States Constitution (and the comparable provision of the Iowa Constitution art. I section 8) were violated, our review is de novo. *State v. Naujoks*, 637 N.W.2d 101, 106 (Iowa 2001). Our task is to independently evaluate Hansel's claim under the totality of the circumstances as shown by the entire record. *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004). "We give considerable deference to the trial court's findings regarding the credibility of the witnesses, but are not bound by them." *Id.*

III. Merits.

Hansel contends the district court erred in overruling his motion to suppress because the record does not show that Deputy Hendricks had probable cause or reasonable suspicion to stop his vehicle. Upon a defendant's challenge to a stop on the basis that proper cause for an investigatory stop did not exist, the State must show by a preponderance of the evidence that the stopping officer had specific and articulable facts, taken together with rational inferences from those facts, to reasonably believe criminal activity had occurred or was occurring. *See id.* at 204; *State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997). Any evidence obtained through an unjustified investigatory stop must be suppressed. *State v. Jones*, 586 N.W.2d 379, 382 (Iowa 1998).

"Generally, to be reasonable, a search or seizure must be conducted pursuant to a warrant" *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002).

Warrantless searches are presumed to be unreasonable unless the search falls within one of several exceptions to the warrant requirement. *Id.* One exception to the warrant requirement is the *Terry* stop, which allows an officer to stop an individual for investigatory purposes based on a reasonable suspicion that a criminal act has occurred or is occurring. *Id.*; see also *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968). This stop is a “seizure” within the meaning of the Fourth Amendment and therefore must be reasonable. *Kreps*, 650 N.W.2d at 641.

Whether an investigatory stop is lawful must be determined under the totality of the circumstances confronting the officer at the time of the stop. *Id.* at 641-42. An officer is allowed to stop a vehicle for investigatory purposes based on specific and articulable facts, which taken together with rational inferences from those facts, give rise to a reasonable suspicion that a criminal act has occurred or is occurring. *Id.* at 641. “Circumstances raising mere suspicion or curiosity are not enough.” *Id.* (quoting *State v. Heminover*, 619 N.W.2d 353, 357 (Iowa 2000)). However, the evidence justifying the stop does not need to rise to the level of probable cause. *State v. Scott*, 409 N.W.2d 465, 468 (Iowa 1987). In this case, we must gauge the reasonableness of Deputy Hendricks’s stop based on whether or not the facts available to Deputy Hendricks at the moment of the stop would cause a reasonably cautious individual to deem the action taken by the officer appropriate. See *Tague*, 676 N.W.2d at 204; *Kreps*, 650 N.W.2d at 641-42.

The State argues the stop was permissible because Deputy Hendricks had reasonable suspicion to make an investigatory stop of Hansel’s vehicle as it

pulled into a closed business at midnight and proceeded toward the back of the business, particularly where the business was located in a rural area that had received numerous complaints of theft. In its order denying Hansel's motion to suppress, the district court stated in part:

Deputy Hendricks observed a vehicle pull into a closed business at midnight. The business is in a rural part of the County where there have been increasing criminal activities especially regarding the theft of construction equipment. The fact that the Deputy was not aware of any recent thefts from this business in particular did not make it less likely that this business could have been the intended target of a theft. ([The business-owner] Mr. Joslyn was certainly concerned and had installed a very expensive security system in his business.)

Deputy Hendricks observed the vehicle to not simply turn around and leave the area but to proceed as if to go to a place where the vehicle would not be observable from the roadway. This behavior further heightened the Deputy's suspicions. Had the vehicle driven behind the closed business, Deputy Hendricks would have had to make contact with the vehicle and its occupant or occupants in an area where other passing vehicles could not observe what might happen. It was much safer for the Deputy to investigate further in front of the business where the stop could be observed by the public.

Deputy Hendricks did not stop the Defendant from going about his way on a public roadway. He stopped the Defendant after the Defendant left the public highway, drove down a gravel lane and was driving slowly past a closed business at midnight, on a private road, on a path which would have allowed the Defendant to disappear from sight behind the building. The objective facts known to the officer would warrant a person of reasonable caution that the officer's actions in stopping the vehicle were appropriate. The limited intrusion of asking the person what his purpose was at that location at that time for the purpose of resolving the ambiguity of the situation was reasonable.

The observations made by Deputy Hendricks, provide justification for the action taken by the deputy to engage the Defendant in conversation to determine his purpose in the area. A reasonable person, in the deputy's position, could reasonably conclude that stopping the vehicle may have prevented a crime before it was committed under the circumstances presented. Accordingly, the Defendant's Motion to Suppress must be denied.

Upon our de novo review, we conclude the facts and circumstances in this case gave rise to Deputy Hendricks's reasonable suspicion that criminal activity had occurred or was occurring, and therefore justified the investigatory stop. See *Kinkead*, 570 N.W.2d at 100. Deputy Hendricks noticed Hansel's vehicle leave the highway and drive into the entrance of a closed construction business at midnight on a Friday or Saturday night, a time when the officer could reasonably expect that people would not be entering such establishment. In addition, no lights were on at the business, and no other cars were present. Although Deputy Hendricks was not aware of any recent thefts from this business as noted by the district court, he was aware of recent reports of theft, in particular construction equipment, in the Swisher area between Iowa City and Cedar Rapids. The area was also heavily patrolled, and during Deputy Hendricks's patrols, he had never observed a vehicle or anyone at the business at that hour. Deputy Hendricks became concerned about the vehicle and parked on the shoulder of the highway to determine whether the vehicle was merely lost and turning around. Deputy Hendricks then observed the pickup drive through the parking lot and toward the back of the building. The business was located in a rural area, and the back of the business was not visible from the public highway. Hansel was driving slowly, and the parking lot was large enough to turn around if he had indeed been lost. Further, if Hansel was an employee of the business or otherwise authorized to be there at that time, the intrusion of Deputy Hendricks's stop to resolve the suspicion raised by the situation was negligible.

After a careful review of the record and Deputy Hendricks's testimony, we conclude there was reasonable suspicion to support the investigatory stop. We

affirm the district court's denial of Hansel's motion to suppress, conviction, and sentence for operating while intoxicated, second offense.

AFFIRMED.