

IN THE COURT OF APPEALS OF IOWA

No. 0-559 / 09-1839
Filed August 25, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JACOB RICHARD BOYLE,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Steven Van Marel,
District Associate Judge.

Jacob Boyle appeals from his conviction for operating while intoxicated.

AFFIRMED.

Scott Michels, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney
General, Stephen Holmes, County Attorney, and Travis Johnson, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ. Tabor, J., takes
no part.

VOGEL, P.J.

Jacob Boyle appeals from his conviction for operating while intoxicated (OWI) first offense, in violation of Iowa Code section 321J.2 (2009). He asserts the district court should have granted his motion to suppress as he claims the officer who approached his vehicle lacked reasonable suspicion to do so. We affirm.

I. Background Facts and Proceedings

This court must determine whether there was reasonable suspicion to legally approach Boyle's parked vehicle and detain him under the Fourth Amendment of the United States Constitution and article I, section 8 of the Iowa Constitution.

On August 22, 2009, at 2:10 a.m., Iowa State University (ISU) Lieutenant David Peterson observed a vehicle turn off a main thoroughfare, Mortenson Road, in Ames, Iowa, onto an access road leading into a high security, ISU research farm. Although the single lane gravel road was not specifically marked to deter entry, it was the university's private road. Charged with keeping university property secure, Lt. Peterson followed the vehicle onto the private road, and observed it had stopped and the headlights were turned off. Lt. Peterson exited his vehicle and approached Boyle's parked car to inquire as to the reason for his presence on the private property. After he approached the car and spoke to Boyle, Lt. Peterson detected the odor of alcohol emanating from Boyle, and saw two open containers on the front seat console. Boyle was arrested and charged with operating while intoxicated.

Boyle filed a motion to suppress evidence alleging, “Lt. Peterson lacked the requisite probable cause or reasonable suspicion to justify the stop of Mr. Boyle’s vehicle.” After a hearing held on October 28, 2009, the district court overruled the motion. On November 25, Boyle stipulated to a trial on the minutes of evidence, and the district court found him guilty as charged. Boyle appeals.

II. Scope of Review

Our review of a constitutional challenge is *de novo*, independently evaluating the claim under the totality of the circumstances. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). We give deference to the district court’s fact findings due to its opportunity to assess the credibility of witnesses, but are not bound by those findings. *State v. McGrane*, 733 N.W.2d 671, 676 (Iowa 2007). Although Boyle asserts a violation of his rights under both the United States and the Iowa Constitutions, he makes no distinction as to how we should differentiate or treat his claims separately. Therefore, our review applies equally to the state and federal claims. *State v. Griffin*, 691 N.W.2d 734, 737 (Iowa 2005).

III. Vehicle Stop

Boyle asserts the district court should have granted his motion to suppress evidence. He claims he was “seized” within the meaning of Fourth Amendment of the United States Constitution and article I, section 8 of the Iowa Constitution. Contrary to the district court ruling, the State on appeal concedes that Boyle was “seized” for purposes of a *Terry* detention, when Lt. Peterson activated the patrol car’s emergency lights shining on Boyle’s already stopped vehicle. *State v. Wilkes*, 756 N.W. 2d 838, 845 (Iowa 2008) (finding that police authority is

invoked with the activation of emergency lights commanding subjects to stop and remain).

The issue then becomes whether the seizure was justified. The court in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), recognized a police officer's authority to stop an individual on less than probable cause for the purpose of investigating unusual behavior that reasonably causes the officer to believe criminal activity is afoot. *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880, 20 L. Ed. 2d at 906. To justify the stop, *Terry* required that the police officer "be able to point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* In making this determination, we look at the facts available to the officer at the time of the stop. *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995). An objective standard is utilized in reviewing the officer's chosen actions. See *State v. Predka*, 555 N.W.2d 202, 205 (Iowa 1996) (noting that we consider the reasonableness of the stop based on an objective standard, and do not depend upon the actual motivation of the individual officer).

It is the State's burden to show by a preponderance of the evidence that Lt. Peterson had specific and articulable facts to reasonably believe criminal activity may be afoot. *State v. Richardson*, 501 N.W.2d 495, 496-97 (Iowa 1993) (quoting *United States v. Sokolow*, 490 U.S. 1, 8, 109 S. Ct. 1581, 1585, 104 L. Ed. 2d 1, 10 (1989) ("An officer may make an investigatory stop with "considerably less than proof of wrongdoing by a preponderance of the evidence.")). Mere suspicion, curiosity, or hunch of criminal activity is not enough. *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002). However,

reasonable suspicion must be determined considering the totality of the circumstances confronting the officer at the time the officer makes the decision to stop the vehicle. *Id.* at 642.

Boyle asserts that at the time of the stop, the facts known to Lt. Peterson did not justify an investigatory *Terry* stop. Lt. Peterson is a certified police officer for the State of Iowa, having worked for the university for twelve years. As a security officer for the university, Lt. Peterson testified that it was part of his duties to “perform general patrol functions to preserve the security of outlying areas” and that “we have a standing order from the university to patrol and have an extra watch on all of our research areas.” He testified that at 2:10 a.m., on the morning of August 22, he saw Boyle enter a private ISU road, leading to a secure farm site, and then observed that Boyle parked his car in the middle of the farm roadway and turned his headlights off. According to Lt. Peterson, “It’s very unusual to have somebody there at that time in the morning” because the farm that is accessible from the gravel road is surrounded with metal gates, and all buildings are access controlled, including the fuel tank storage area; “So I initially stopped just to investigate why he was on our property.”

Lt. Peterson did not see any insignias that would indicate the car belonged to an ISU employee, so he approached by “turn[ing] [his] lights on to let him know [he] was a police officer and not just somebody approaching the vehicle.” As the State asserts, Lt. Peterson would have been remiss had he not inquired into Boyle’s presence and purpose on university’s private property at that time of the morning, “if for no other reason than to tell him to leave.” *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002) (The purpose of such a stop is to allow the officer

to confirm or dispel suspicions of criminal activity through reasonable questioning).

The district court reasoned,

[E]ven if there was a stop or a seizure, . . . the officer had reasonable and articulable suspicion to make a very brief stop to find out why the defendant was on private property, parked in a car with its lights off at 2:10 in the morning. . . . I don't think the officer had to sit in his car and wait to see if the defendant was going to get out of his car and try and break into some place. I think he had a pretty reasonable suspicion that criminal activity was afoot and he could approach and briefly detain and speak to the defendant.

While time of night is not a sole determinative factor, other factors taken together gave Lt. Peterson reasonable cause to stop and approach Boyle's car. *Haviland*, 532 N.W.2d at 769 (noting that time of night alone is not determinative). Due to the sensitive nature of the research farm, the fact that it was a private road, Boyle's apparent lack of authorization to be on the road, and the fact that Boyle was parked in the middle of the road with his lights off, all combined with the early time of the morning, we agree with the district court that under the totality of the circumstances known to Lt. Peterson at the time, the investigatory stop was justified. *State v. Ceron*, 573 N.W.2d 587, 592 (Iowa 1997) ("Seemingly innocent activities may combine with other factors to give an experienced police officer reasonable grounds to suspect wrongdoing."); *State v. Richardson*, 501 N.W.2d 495, 496 (Iowa 1993) ("The principal function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot"). Moreover, the State correctly points out that the "stop," i.e., the intrusion on Boyle's liberty, was very minimal, since in fact Boyle's car was already stopped when Lt. Peterson activated his patrol car lights.

We affirm the denial of Boyle's motion to suppress and affirm his conviction.

AFFIRMED.