

**IN THE COURT OF APPEALS OF IOWA**

No. 1-306 / 10-1591  
Filed June 15, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JOHN KEONI LAWRENCE BAXTER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Marion County, Gary G. Kimes,  
Judge.

John Baxter appeals the denial of his motion to suppress. **AFFIRMED.**

F. John Spellman, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney  
General, Ed Bull, County Attorney, and Marc Wallace, Assistant County Attorney,  
for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ. Tabor, J., takes  
no part.

**DANILSON, J.**

In a bench trial on the minutes of testimony, John Baxter was convicted of possession of marijuana with intent to distribute and failure to affix a drug tax stamp. On appeal he challenges the district court's denial of his motion to suppress. We affirm. The denial of the motion to suppress was properly denied because the traffic stop was based upon reasonable suspicion and also because the motion was untimely.

**I. Background Facts and Proceedings.**

On December 1, 2009, law enforcement intercepted a person in Nebraska who was on his way from California to deliver five pounds of marijuana to Baxter in Knoxville, Iowa. The man had previously delivered marijuana to Baxter in September. In that earlier transaction, the man had called Baxter when he got close to Knoxville, then met Baxter at a gas station near the Knoxville Raceway and followed him to a garage located behind McCall Monument. The man said he pulled his vehicle into the garage, Baxter cut open several of the packages of marijuana to inspect them, and then Baxter paid the man \$16,000. The man said Baxter was driving a maroon Pontiac sedan<sup>1</sup> in September. He told law enforcement he was to meet Baxter at the same garage as in September. He agreed to cooperate with law enforcement and continue the delivery under surveillance. Nebraska law enforcement contacted and turned the man over to the Iowa Division of Narcotics Enforcement.

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<sup>1</sup> This vehicle is variously described by persons involved throughout, i.e., "maroon Pontiac," "maroon Buick," "maroon Pontiac Bonneville." All refer to the same vehicle, which was registered to Baxter.

Iowa Special Agent Jerad Dreeszen and Task Force Officer Jeff Koder went to the described garage later that afternoon and located a maroon Pontiac Bonneville registered to Baxter. Several law enforcement officers located and watched Baxter and the garage during the day. The confidential informant (CI) remained in custody.

The CI made a call to a telephone number at about 4:46 p.m. and left a message that he was about twenty minutes outside of Knoxville. At about 4:57 p.m. the CI received a telephone call from Baxter telling the CI to meet him at the same location as in September.

During the day, Baxter was seen traveling to the garage; the maroon Pontiac was backed out of the garage, and a silver pickup was driven into the garage by another individual. Baxter was seen leaving the garage in the pickup with the other person and was observed at several other locations. At about 5:17 p.m. Baxter returned to the garage alone in the pickup truck.

The CI, wearing a digital audio recorder, drove to the garage and was followed by agents with the narcotics enforcement task force. At about 5:19 p.m. the CI drove inside the east bay of the garage through an open door. Law enforcement observed the CI open the trunk of his vehicle, and then the garage door closed. At about 5:26, the garage door opened, and the CI left. Baxter walked to the pickup truck and backed it into the east bay of the garage. At about 5:28, the east bay garage door closed. Baxter was then observed entering the maroon Buick and driving away. At about 5:29, Baxter's vehicle was stopped. After being stopped, Baxter gave the officers written consent to search his vehicle, and five pounds of marijuana were found.

On December 11, 2009, a trial information was filed charging Baxter with possession with intent to deliver and failure to affix a drug tax stamp.<sup>2</sup> Written arraignment was filed December 22, 2009.

On April 6, 2010, Baxter filed a motion to suppress contending law enforcement had neither probable cause nor reasonable suspicion to stop his vehicle. The State resisted, arguing (1) the controlled delivery of marijuana raised reasonable suspicion to stop the vehicle and (2) the motion was untimely.

A hearing was held at which Special Agent Brian Metzger testified he was the agent in charge of the controlled delivery by the CI to Baxter. He stated there were more than ten people involved in the surveillance of Baxter and the garage before and after the transaction. Agent Metzger stated that through their surveillance, law enforcement determined the only persons present in the garage at the time of the delivery were Baxter and the CI. Agent Metzger was able to listen to the CI's conversation with Baxter at that time and heard a short discussion about the "flavors" of the marijuana. The plan was that once the delivery was made, the CI would telephone Agent Metzger, which he did. If Baxter left the garage, he would be stopped; if he stayed at the garage, law enforcement would get a search warrant for the premises. Agent Metzger further testified that after the controlled delivery, the CI had \$16,000 in his possession.

On cross-examination, Agent Metzger acknowledged that the sole reason for stopping Baxter's vehicle was the purported delivery and no officer observed Baxter place marijuana in Baxter's maroon vehicle.

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<sup>2</sup> A third count was charged but not pursued, and is not before us.

The district court denied the motion to suppress “on its merits and the record made.” Baxter appeals following his convictions, arguing the district court erred in denying his motion to suppress because the search of his vehicle was unconstitutional.

## **II. Scope of Review.**

Because Baxter challenges the search on constitutional grounds, we review de novo. *State v. Vance*, 790 N.W.2d 775, 780 (Iowa 2010). “We independently evaluate the totality of the circumstances found in the record, including the evidence introduced at both the suppression hearing and at trial.” *Id.*; *State v. Bogan*, 774 N.W.2d 676, 679-80 (Iowa 2009).

## **III. Discussion.**

Baxter contends the vehicle was stopped by law enforcement officers without reasonable suspicion or probable cause and the search was therefore constitutionally unreasonable.<sup>3</sup>

The Fourth Amendment of the United States Constitution requires reasonable cause to stop a person for investigation. *State v. Heminover*, 619 N.W.2d 353, 357-58 (Iowa 2000) (*overruled on other grounds by State v. Turner*, 630 N.W.2d 601, 606 n. 2 (Iowa 2001)). The main reason law enforcement may stop a person “is to resolve the ambiguity as to whether criminal activity is afoot.” *State v. Richardson*, 501 N.W.2d 495, 497 (Iowa 1993). The United States Supreme Court has said reasonable cause may exist even when there is no probable cause for an arrest. *Terry v. Ohio*, 392 U.S. 1, 20, 88 S.Ct. 1868, 1884, 20 L.Ed.2d 889, 911 (1968); *State v. Donnell*, 239 N.W.2d 575, 577 (Iowa 1976). Once a defendant challenges the legality of an officer’s stop, the State has the burden

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<sup>3</sup> Baxter cites both the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution. “Cases interpreting the federal constitution are persuasive in our interpretation of the state constitution because the federal and state search-and-seizure clauses are similar.” *State v. Hoskins*, 711 N.W.2d 720, 725 (Iowa 2006). Because Baxter has not given us reason to do otherwise, our discussion of the merits of his suppression motion applies equally to his state and federal constitutional claims. *See id.*

to show the officer had “specific and articulable cause to reasonably believe criminal activity [was] afoot.” *Heminover*, 619 N.W.2d at 358.

*State v. Heuser*, 661 N.W.2d 157, 161 (Iowa 2003).

For an investigatory stop to comply with the protections of the Fourth Amendment, the State must prove by a preponderance of the evidence the officer had specific and articulable facts that, taken together with rational inferences from those facts, would lead the officer to reasonably believe criminal activity is afoot.

*Vance*, 790 N.W.2d at 781.

Here, the State met its burden. The CI provided information about a previous delivery of marijuana to an individual at a garage in Knoxville. From his description, law enforcement was able to locate the garage, place it under surveillance, and determine it was rented by Baxter. The garage was not adjacent to any houses, and law enforcement knew Baxter had a residence in a different location in Knoxville. The CI’s description of the vehicle driven by the individual he had previously delivered drugs to fit that of a vehicle registered to Baxter and seen at the garage on December 1. See *State v. Markus*, 478 N.W.2d 405, 408 (Iowa 1991) (“Because an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity.” (citation omitted)).

Surveillance by law enforcement placed Baxter at the garage before the CI’s arrival. No other persons were observed there at the time, and the garage had been under surveillance for several hours. The CI drove into the garage. Agent Metzger was able to listen to noises depicting movement and a conversation about the “flavors” of the marijuana delivered. The CI and Agent

Metzger spoke by telephone just after the controlled delivery—as was the plan. Minutes after the controlled delivery, Baxter got into his maroon vehicle and drove off.

The rational inference to be drawn from these facts is that Baxter was in possession of the delivered marijuana. See *Vance*, 790 N.W.2d at 781-82 (“Although this inference may be fallible, it is sufficiently reasonable to generate reasonable suspicion for an investigatory stop to resolve the ambiguity as to whether criminal activity is afoot.”); *State v. Hoskins*, 711 N.W.2d 720, 726 (Iowa 2006) (“Probable cause exists to search a vehicle ‘when the facts and circumstances would lead a reasonably prudent person to believe that the vehicle contains contraband.’” (citations omitted)).

The district court did not err in denying the motion to suppress on the merits.

In addition, although the trial court did not rely upon this ground, the motion to suppress was untimely as it was filed more than forty days after arraignment. See Iowa R. Crim. P. 2.11(2)(c) and (4) (stating pretrial motions are to be filed “no later than 40 days after arraignment”).

**AFFIRMED.**