

IN THE COURT OF APPEALS OF IOWA

No. 2-333 / 11-0970
Filed May 23, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KRISTOPHER MARTIN HANSEN,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Douglas C. McDonald, Judge.

Kristopher Hansen appeals from the judgment and sentence entered following a verdict finding him guilty of possession of a controlled substance, third or subsequent offense. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Michael J. Walton, County Attorney, Kelly G. Cunningham, Assistant County Attorney, and Calynn Walters, Student Legal Intern, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

POTTERFIELD, J.

Kristopher Hansen appeals from the judgment and sentence entered following a verdict finding him guilty of possession of a controlled substance, third or subsequent offense. An officer conducted an investigatory stop of Hansen that ultimately led to the discovery of marijuana in Hansen's coat. Hansen filed a motion to suppress the discovery of the marijuana, asserting the officer did not have reasonable suspicion to conduct an investigatory stop. The district court denied his motion to suppress, and Hansen appealed. Because we find reasonable suspicion existed for an investigatory stop, we affirm the district court.

I. Background Facts and Proceedings

On February 3, 2011, Officer Ross Curtis was conducting surveillance on a bar and an apartment above the bar. Curtis had conducted surveillance on the premises before February 3, after receiving information that the new tenant in the apartment had stolen guns and moved them into the apartment. Curtis was also aware of reports of shots fired or fireworks going off behind the bar. In addition, in the days preceding February 3, Curtis had stopped a vehicle after watching its driver pull up to the apartment, enter for approximately two to three minutes, and then leave. After stopping the vehicle, Curtis discovered marijuana in the car. Following this incident, the residence and its activity were an area of interest for law enforcement, and Curtis stated he would conduct surveillance in the area whenever he had free time.

On February 3, Curtis observed an individual go upstairs into the residence above the bar. Curtis stated that approximately two to three minutes later he saw the same individual out in the street in front of the bar. Curtis

testified that although he was using binoculars and there was a lot of foot traffic in the area, he believed the individual in the street was the same individual he had seen going up the stairs minutes earlier.

The individual walked along the street, then ran across the street, then slowed down and walked into a Conoco. At that point, Curtis pulled into the Conoco parking lot and activated his emergency lights. He performed a pedestrian stop because he believed the suspect had controlled substances and a gun on him. He patted the suspect down and did not locate any weapons. When he ran the suspect's name, Kristopher Hansen, through dispatch, Curtis received information that Hansen had several warrants out for his arrest. Curtis then arrested Hansen and asked if he had anything illegal on him. Hansen advised Curtis he had marijuana in his coat.

Hansen was charged with possession of a controlled substance, third or subsequent offense. He filed a motion to suppress asserting Curtis did not have specific and articulable cause to support an investigatory stop of Hansen. The district court denied the motion to suppress in a calendar ruling. After a bench trial, Hansen was found guilty as charged. Hansen now appeals, asserting the district court erred in denying his motion to suppress.¹

II. Standard of Review

Hansen alleges the district court should have granted his motion to suppress based on the Fourth Amendment; therefore, our review is de novo.

¹ Hansen raises a claim of ineffective assistance of counsel in the event this court finds his motion-to-suppress argument was not properly preserved. Because we find the matter was properly preserved, we do not address the ineffective-assistance-of-counsel issue.

See *State v. Freeman*, 705 N.W.2d 293, 297 (Iowa 2005). “Under this review, we make an independent evaluation of the totality of the circumstances as shown by the entire record. We give deference to the district court’s fact findings due to its opportunity to assess the credibility of witnesses, but we are not bound by those findings.” *Id.* (internal citations and quotation marks omitted).

III. Motion to Suppress

Hansen asserts Curtis’s investigatory stop was in violation of his Fourth Amendment rights under the United States Constitution.²

The Fourth Amendment imposes a general reasonableness standard upon all searches and seizures. Generally, to be reasonable, a search or seizure must be conducted pursuant to a warrant issued by a judge or magistrate. Unless an exception to the warrant requirement applies, searches conducted without a warrant are per se unreasonable.

One exception to the warrant requirement allows an officer to stop an individual or vehicle for investigatory purposes based on a reasonable suspicion that a criminal act has occurred or is occurring. The purpose of an investigatory stop is to allow a police officer to confirm or dispel suspicions of criminal activity through reasonable questioning. . . .

To justify an investigatory stop, the officer must be able to point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant that intrusion. In determining the reasonableness of the particular search or seizure, the court judges the facts against an objective standard

State v. Kreps, 650 N.W.2d 636, 641 (Iowa 2002) (internal citations and quotation marks omitted). Hansen asserts his actions on February 3 do not support a reasonable inference of criminal activity, rendering Curtis’s investigatory stop unconstitutional. “The officer must be able to articulate more

² Because Hansen does not suggest a reason to interpret state and federal constitutional provisions differently, we interpret the state constitutional claim as we would a federal constitutional claim. See *State v. Lowe*, ___ N.W.2d ___, 2012 WL 163027, at *4 (Iowa 2012).

than an inchoate and unparticularized suspicion or hunch of criminal activity. The motivation of the officer stopping the vehicle is not controlling in determining whether reasonable suspicion existed.” *Id.* (internal citations and quotation marks omitted).

After considering the particular facts of this case, we find Curtis had specific and articulable suspicion to justify an investigatory stop of Hansen. Curtis observed Hansen enter an apartment where Curtis was currently conducting surveillance in response to reports of potential drug and gun activity. Further, within the last few days, Curtis had stopped an individual who was in the suspect apartment for only a few minutes, and the individual was found to be in possession of drugs. The duration of Hansen’s stay in the apartment on February 3 was consistent with this prior individual’s behavior and was also consistent with a drug deal. Additionally, Hansen began to run across the street at a point in time when Curtis believed Hansen had seen him. Given Curtis’s information about drug trafficking in an apartment that had become a residence of interest to the police and Hansen’s conformity to a pattern of activity that Curtis had verified involved drug possession, Curtis’s investigatory stop of Hansen was based on more than an “unparticularized suspicion or hunch.” *See id.* We believe Curtis relied on specific and articulable facts that, when considered with the rational inferences from those facts, constituted reasonable suspicion that a criminal act had occurred. We therefore affirm the district court’s denial of Hansen’s motion to suppress.

AFFIRMED.