

IN THE COURT OF APPEALS OF IOWA

No. 6-541 / 05-1343
Filed August 9, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DIANE (NMN) WISE,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke and Bruce B. Zager, Judges.

Diane Wise appeals her conviction for possession of a controlled substance, third offense. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad P. Waltz, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Hecht and Vaitheswaran, JJ.

VAITHESWARAN, J.

The State charged Diane Wise with possession of cocaine, third offense. Iowa Code § 124.401(5) (2003). Wise moved to suppress the evidence. She urged “[t]here was no probable cause to justify the police detaining or arresting” her. The district court denied the motion, found her guilty as charged, and imposed sentence.

On appeal, Wise contends the district court should have granted her motion to suppress the cocaine evidence. Our review of this constitutional issue is de novo. *State v. Freeman*, 705 N.W.2d 293, 297 (Iowa 2005).

The record reveals the following facts. The Waterloo Police Department received information that two women might be engaging in prostitution. One was described as a black female wearing blue jeans and a black leather coat. Officer Michael Rasmussen was dispatched to investigate. He arrived at the scene within “[a] couple of minutes.”

After scanning the area from his marked patrol car, Officer Rasmussen observed a black woman standing on a street corner. She was wearing blue jean shorts and a red shirt, but not a black leather coat. The woman was later identified as Wise.

Officer Rasmussen pulled up to the curb to make contact with Wise. Wise turned and, according to Officer Rasmussen, staggered in the other direction. Rasmussen got out of his car and called out to Wise. She did not turn around and did not stop. Rasmussen caught up with her and told her he was investigating a prostitution complaint. Wise admitted she had been arrested for prostitution in the past, but stated she was not engaging in the activity at that

time. During this conversation, Officer Rasmussen smelled alcohol on Wise, saw that her eyes were bloodshot and watery, and noticed that her speech was slurred. Wise initially stated she had one beer, but later admitted she had been drinking all day.

Other police officers arrived at the scene. They attempted to administer a preliminary breath test. When these attempts failed, the officers arrested Wise for public intoxication. In a subsequent search incident to the arrest, officers discovered drug paraphernalia and residue in Wise's purse. The residue was later determined to be cocaine.

Wise contends these facts are constitutionally insufficient to support the investigatory stop which ultimately led to her arrest and charge. See *State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997) (stating an investigatory stop does not violate Fourth Amendment's prohibition of unreasonable government searches and seizures where it is based on "a reasonable suspicion, supported by specific and articulable facts, that a criminal act has occurred or is occurring" (citing *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968))). She notes that, when the officer stopped her, she was not wearing the same clothes as the dispatcher described. She also maintains she had a right to walk away from the officer. And, she contends she did not know the approaching car was a police squad car because it was late in the evening and it was raining.

Even if we accepted the facts and inferences cited by Wise, we would agree with the district court that Officer Rasmussen had reasonable suspicion to believe that criminal activity was afoot. "The purpose of an investigatory stop is to allow a police officer to confirm or dispel suspicions of criminal activity through

reasonable questioning.” *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002). Before Officer Rasmussen detained Wise, he saw her “staggering” away from him. See *State v. Storms*, 233 Iowa 655, 656-57, 10 N.W.2d 53, 54 (1943) (noting staggering is an indicator of intoxication). This observation was sufficient to warrant further investigation of the crime of public intoxication. Officer Rasmussen stopped Wise and saw signs that confirmed his suspicion that she was intoxicated.

Additionally, Officer Rasmussen had reasonable suspicion to believe Wise might be engaging in prostitution. The police dispatch directed him to an area “known for prostitution.” While Wise’s clothing did not precisely match the description given by the dispatcher, there were sufficient similarities to raise the suspicions of a trained officer and to dispel the notion that the officer was indiscriminately targeting black females, as asserted by defense counsel at the suppression hearing. *Kreps*, 650 N.W.2d at 647 (circumstances must be viewed through eyes of “a reasonable and cautious police officer on the scene, guided by his experience and training”).

These facts supported the investigatory stop. We find it unnecessary to address the remaining facts cited by the district court or mentioned by the State. We affirm the district court’s suppression ruling and Wise’s judgment and sentence.

AFFIRMED.