IN THE COURT OF APPEALS OF IOWA

No. 6-552 / 05-1626
Filed September 21, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RICHARD WAYNE WILSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Clarke County, John Lloyd and Paul R. Huscher, Judges.

Richard Wilson appeals from his conviction and sentence for operating while intoxicated, first offense. **AFFIRMED.**

Robert G. Rehkemper of Gourley, Rehkemper & Lindholm, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, and Elisabeth Reynoldson, County Attorney, for appellee.

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

HECHT, J.

Richard Wilson appeals from his conviction and sentence for operating while intoxicated, first offense. We affirm.

I. Background Facts and Proceedings.

On May 26, 2005, at approximately 1:00 a.m., Clarke County Deputy Sheriff Shane Blakely responded to a call from dispatch reporting that Richard Wilson (hereinafter "Wilson") and Bill Holland were causing problems at the rural residence of Diana Wilson. Wilson and Diana were married but separated, and Diana was living alone at the marital residence. Diana had previously sought and obtained a protective order that the Sheriff's agent had unsuccessfully attempted to serve on Wilson a few days earlier.

Diana reported to the Sheriff's dispatcher that Wilson and Holland were driving through her yard and were refusing to leave. Diana expressed concern that Wilson would shoot her animals. Diana provided a description of the vehicle Wilson was operating: a black Chevy truck with an extended cab. Deputy Blakely, who was aware of the existence of the protective order, quickly drove to Diana's residence. When Blakely was less than one mile from the residence, he passed a black Chevy truck that matched the description provided by the dispatcher. Blakely decided to stop the vehicle and investigate.

Blakely informed Wilson, who was operating the truck, that he had stopped the truck because of the call Diana had made to the dispatcher. He also informed Wilson of the protective order filed against him. During the course of the stop, Blakely became suspicious that Wilson was intoxicated. Upon

confirming those suspicions, Wilson was arrested and later charged with operating while intoxicated, first offense.

Wilson filed a motion to suppress the evidence of intoxication, arguing that Blakely lacked the requisite reasonable suspicion to stop the vehicle. Wilson contended Blakely lacked reasonable suspicion of criminal activity because (1) the protective order was not effective for lack of service, and (2) he could not have been guilty of trespass because he still jointly owned the marital residence with his wife. Wilson also contended that even if there was reason to believe criminal activity had occurred, the description of the vehicle provided by Diana was too vague to give Blakely reasonable suspicion that either the truck he was stopping or its occupants were involved in the suspected criminal activity.

The district court denied the motion to suppress on the record at the conclusion of the suppression hearing. Wilson was later found guilty of OWI, first offense, after a stipulated trial on the minutes. He now appeals, contending the district court erred in overruling his motion to suppress.

II. Scope of Review.

We review constitutional issues de novo. *State v. Biddle*, 652 N.W.2d 191, 200 (Iowa 2002). Any evidence obtained in violation of a defendant's Fourth Amendment right against unreasonable search and seizure is inadmissible and should be suppressed regardless of its relevance and probative value. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691, 6 L. Ed. 2d 1081, 1090 (1961); *State v. Jones*, 666 N.W.2d 142, 145 (Iowa 2003).

III. Discussion.

It is settled law that an officer may briefly detain a vehicle to investigate, without a warrant, so long as the detaining officer has a reasonable and articulable suspicion that a crime has occurred and that the person to be stopped has committed it. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968). "Whether reasonable suspicion exists for an investigatory stop must be determined in light of the totality of the circumstances confronting a police officer, including all information available to the officer at the time the decision to stop is made." *State v. Kreps*, 650 N.W.2d 636, 642 (Iowa 2002). An inchoate or generalized suspicion will not serve to uphold a warrantless investigatory stop of a vehicle. *Alabama v. White*, 496 U.S. 325, 329, 110 S. Ct. 2412, 2416, 110 L. Ed. 2d 301, 308 (1990). In reviewing the reasonableness of the stop, we take appropriate account of the detaining officer's particular training and experience. *Kreps*, 650 N.W.2d at 642. We note that reasonable suspicion of criminal activity may be found to exist even when the conduct at issue "is subject to a legitimate explanation and turns out to be wholly lawful." *Id*.

After our de novo review, we conclude Deputy Blakely had reasonable suspicion of criminal activity at the time he decided to detain the truck Wilson was operating. It is undisputed that Deputy Blakely did not observe Wilson commit any traffic violations prior to stopping the truck. However, Blakely was aware that a protective order had been issued restricting Wilson's contacts with Diana. Although the order was not yet effective because it had not yet been served on Wilson, the basis for the order was known to Blakely at the time he

made the investigatory stop in question. The dispatcher had informed Blakely that Wilson's conduct at the residence placed Diana in fear for herself and her property, and Blakely could have reasonably suspected that some form of criminal harassment or domestic assault had occurred at Diana's residence. Given the fact that Blakely knew a protective order had been obtained restricting Wilson's contact with Diana, we believe the officer would have been subject to criticism had he not briefly detained Wilson to investigate the circumstances surrounding Diana's report and to inquire whether the occupants of the vehicle fitting Diana's description were involved in the incident. *See id.* (noting that founded suspicion exists where "the possibility of criminal conduct was strong enough that, upon an objective appraisal of the situation, we would be critical of the officers had they let the event pass without investigation").

Blakely also had reasonable suspicion to believe the truck and its two occupants had been involved in possible criminal activity at the residence. We note that the marital residence was located in a very rural area where Blakely testified he was unlikely to encounter much traffic, especially at one o'clock in the morning. Blakely encountered a vehicle matching the description provided by Diana, in very close proximity to the residence, within sixteen minutes of responding to the dispatch. In light of these circumstances, we conclude Blakely's stop of the truck was reasonable even though Blakely did not recall running a license check on the truck to verify that Wilson was the truck's owner.

Finding the stop was supported by reasonable suspicion, we conclude the district court properly denied Wilson's motion to suppress. Wilson's conviction and sentence are hereby affirmed.

AFFIRMED.