

**IN THE COURT OF APPEALS OF IOWA**

No. 7-368 / 06-1678  
Filed June 13, 2007

**STATE OF IOWA,**  
Plaintiff-Appellant,

**vs.**

**JOSHUA SCOTT SHINE,**  
Defendant-Appellee.

---

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,  
Judge.

The State appeals from the order granting the defendant's motion to  
suppress. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Kevin Cmelik and Mary Tabor,  
Assistant Attorneys General, Steve Johnson, County Attorney, and Scott  
Nicholson, Assistant County Attorney, for appellant State.

Jane Odland of Walker & Billingsley, Newton, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

**BAKER, J.**

On June 25, 2006, an individual contacted police to report an attempted burglary. Dispatch contacted Officer Nicole Romer, who responded to the complaint. Upon arriving at the scene, the complaining party, Angela Neef, informed Romer that one of the subjects of the complaint, later determined to be Joshua Shine, was walking away from the scene. She also informed Romer that Shine was in possession of drugs.

Officer Romer called to Shine and instructed him to return. She then asked to search him, but Shine refused permission. Shine, however, did consent to a pat down by Officer Romer. Romer then conducted a pat down search and felt an object in the right front pocket of Shine's shirt. Shine informed Romer that it was a pocket knife. After reaching in and retrieving the object, Romer discovered that it was actually a marijuana pipe. She then placed Shine under arrest for possession of drug paraphernalia. A subsequent search yielded both a pocket knife and marijuana on Shine's person.

Based on these discoveries, the State charged Shine with possession of marijuana. Shine later filed a motion to suppress, claiming he was subject to an illegal search without reasonable suspicion or probable cause. Following a hearing on the motion, the court granted the motion, concluding: "Officer Romer was not authorized, by the mere knowledge that Joshua Scott Shine had a pocket knife in his pants pocket, to search him for it and seize it." It therefore suppressed all of the evidence obtained following this illegal search. The State thereafter sought, and was granted by our supreme court, discretionary review of this ruling.

Appellate review of claimed violations of constitutional rights under the Fourth Amendment is de novo in light of the totality of the circumstances. *State v. Lovig*, 675 N.W.2d 557, 562 (Iowa 2004). In undertaking our review, we assess the entire record, including evidence presented during the suppression hearing and by way of stipulation. *Id.* While we are not bound by the district court's determinations, we may give deference to its credibility findings. *Id.*

The Fourth Amendment to the United States Constitution assures “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. Warrantless searches and seizures are per se unreasonable, unless one of the few carefully drawn exceptions to the warrant requirement exists. *State v. Lewis*, 675 N.W.2d 516, 522 (Iowa 2004). One exception to the warrant requirement is an investigatory stop. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968); *State v. Kinkead*, 570 N.W.2d 97, 99 (Iowa 1997).

A law enforcement officer may stop and briefly detain individuals for investigative purposes if the officer has reasonable cause to believe a crime may have occurred. *State v. Rosenstiel*, 473 N.W. 2d 59, 61 (Iowa 1991). The officer must be able to articulate something more than an inchoate and unparticularized suspicion or hunch in order to meet the reasonable cause standard. *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995). Here, Officer Romer clearly possessed reasonable cause to effect an investigatory stop of Shine. After responding to a citizen’s report that some men were attempting to break into her home, the alleged victim personally identified Shine as one of the perpetrators.

At that time, Shine was walking away from Neef's home. In addition, Neef informed Officer Romer that Shine was in possession of drugs.

After validly stopping an individual, generally speaking, "an officer may make a protective, warrantless search of a person when the officer, pointing to specific and articulable facts, reasonably believes under all the circumstances that the suspicious person presents a danger to the officer or to others." *State v. Riley*, 501 N.W.2d 487, 489 (Iowa 1993). Regardless, here, Shine consented to a pat down by Officer Romer. It was during this pat down that Romer felt an object in Shine's pocket, which Romer informed Shine was a knife.

We believe the State accurately characterizes the essential question as whether Officer Romer, who was conducting a consent pat down after effecting a permissible *Terry* stop, validly reached in and seized that object. We conclude she did. *Terry* authorizes "a reasonable search for weapons for the protection of the police officer." *Terry*, 392 U.S. at 27, 88 S. Ct. at 1883, 20 L. Ed. 2d at 909. The *Terry* court noted the search "must . . . be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." *Id.* at 30, 88 S. Ct. at 1884, 20 L. Ed. 2d at 911. Probable cause to enter a pocket or an article of clothing is provided if, during the *Terry* pat down, the officer felt a weapon contained therein. *Id.* at 26, 88 S. Ct. at 1882, 20 L. Ed. 2d at 908.

In this case, Officer Romer felt a foreign object which Shine himself admitted was a knife. This admission, coupled with the fact Shine had been accused of recently attempting to break into a nearby home, supplied ample justification for Romer to reach in and seize the object. The significant concern

of officer safety during an investigation would be frustrated were we to hold Officer Romer could not reach in and take hold of what she believed, based on Shine's admission, to be a knife. There can be no doubt that a pocket knife can be a dangerous weapon with the potential for use in assaulting a police officer. The fact that the object was in fact a marijuana pipe does not change the result. The district court erred in granting the motion to suppress. We therefore reverse and remand for further proceedings.

**REVERSED AND REMANDED.**