

IN THE COURT OF APPEALS OF IOWA

No. 7-599 / 06-1614
Filed October 12, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEFFERY LEE BROCK, II,
Defendant-Appellant.

Appeal from the Iowa District Court for Jackson County, Gary D. McKenrick, Judge.

Jeffery Brock, II, appeals from his conviction for operating while intoxicated. **AFFIRMED.**

Charles Hallberg of Hallberg, Jacobsen, Johnson & Viner, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Phil Tabor, County Attorney, and Nick Scott, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

BAKER, J.

Jeffery Brock, II, appeals from his conviction for operating while intoxicated (OWI) in violation of Iowa Code section 321J.2 (2005). He contends the court erred in denying his motion to suppress. We affirm.

Background Facts and Proceedings.

At approximately 2:00 a.m. on March 25, 2005, Jackson County Deputy Sheriff Kevin Scott received a dispatch concerning a suspicious vehicle and the possible theft of gas from a residence approximately four miles north of the town of Miles. After responding to the home in question and finding no suspect at the scene, Deputy Scott left the call and traveled toward Miles. Upon reaching Miles about five minutes later, he observed a vehicle with an illuminated dome light parked in the lot of the Swanton Ag Service Building. He immediately saw the driver of the vehicle quickly grab the steering wheel, reach for the gear shift, and put the car in gear. Deputy Scott slowed down and made a u-turn so he could follow the vehicle, which by then was being driven in the opposite direction. About a half mile north of Miles, he stopped the vehicle, which was being driven by Jeffery Brock. Brock's eventual conviction for OWI ensued.

Scope of Review.

On appeal, Brock maintains the court erred in denying his motion to suppress in which he argued Deputy Scott lacked sufficient cause to stop his vehicle. Because Brock's argument as to the propriety of the stop involves a constitutional right, we must make "an independent evaluation of the totality of the circumstances as shown by the entire record." *State v. Cook*, 530 N.W.2d 728, 731 (Iowa 1995). "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.” *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001).

Fourth Amendment.

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. Evidence obtained in violation of this provision is inadmissible in a prosecution. *State v. Manna*, 534 N.W.2d 642, 643-44 (Iowa 1995). The Fourth Amendment requires a police officer have reasonable cause to stop an individual for investigatory purposes. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968). To meet the reasonable cause standard a police officer must be able to articulate more than an inchoate and unparticularized suspicion or hunch. *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995). “An investigatory stop is considered a seizure within the meaning of the Fourth Amendment and must be ‘supported by reasonable suspicion to believe that criminal activity may be afoot.’” *United States v. Ameling*, 328 F.3d 443, 447 (8th Cir. 2003).

A reviewing court must look at the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing. In forming a basis for suspicion, officers may draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person. While an officer’s reliance on a mere hunch is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls

considerably short of satisfying a preponderance of the evidence standard.

Id. (citations and quotations omitted).

“The principal function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot.” *State v. Richardson*, 501 N.W.2d 495, 497 (Iowa 1993). “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). “Seemingly innocent activities may combine with other factors to give an experienced police officer reasonable grounds to suspect wrongdoing.” *State v. Bradford*, 620 N.W.2d 503, 508 (Iowa 2000). Wholly lawful conduct may create reasonable suspicion for an investigatory stop when considered in light of other information known to law enforcement. *United States v. Sokolow*, 490 U.S. 1, 9-10, 109 S. Ct. 1581, 1586-87, 104 L. Ed. 2d 1, 11-12 (1989).

Analysis.

In light of this law, we now view the facts in the record. Here, we find the record contains a number of elements, all of which factor into the “reasonable suspicion” equation. First, Deputy Scott was mere minutes and a short distance away from a report of a suspicious vehicle and the possible theft of gas from a rural residence. This information provided him with cause to be vigilant for any similar vehicles in the area. Second, Deputy Scott observed Brock in his vehicle at approximately 2:22 a.m. on a Monday morning, hardly a time when individuals would normally be out driving a vehicle, let alone be parked in the lot of a closed business. We believe this late night/early morning hour is a factor arguing in

favor of a finding of reasonable suspicion. *Compare State v. Haviland*, 522 N.W.2d 767, 769 (Iowa 1995) (finding “12:30 a.m. on a Friday night/Saturday morning is not an unreasonable time to be out and about”).

Third, Scott observed Brock sitting in his vehicle in the parking lot of an industrial building, not a residential area where one may have been more likely to witness an individual in a vehicle at this time. Because the business was then closed, it is likely there was no legitimate reason for a person to be in the lot. This is one more factor in considering whether Deputy Scott possessed reasonable suspicion to stop Brock’s vehicle. *See State v. Richardson*, 501 N.W.2d 495, 497 (Iowa 1993) (finding reasonable cause to stop and investigate a car where it was “parked next to a chain link fence in a nonresidential area where there were no legitimate attractions”).

Moreover, Deputy Scott testified that in his five years as a deputy sheriff, he had “worked that area quite a bit” but never seen anybody in that lot at that hour of the morning. He further testified that the Swanton Ag Service Building had been vandalized during a “rash” of such incidents less than a year prior. His experience thus led him to believe criminal activity could be afoot. *See State v. Otto*, 566 N.W.2d 509, 511 (Iowa 1997) (noting that, in part, an officer’s experience may give rise to a specific, articulable, and reasonable suspicion of criminal activity).

We also find significant that when Deputy Scott’s vehicle neared and passed the lot in which Brock’s vehicle was located, Brock immediately grabbed the wheel, put the car in gear, and drove off. Deputy Scott described this as a “very quick movement.” While this does not describe “evasion” of an officer and

was not done in an otherwise illegal fashion, we believe it can serve as one more factor in this totality of the circumstances test. See *Richardson*, 501 N.W.2d at 497 (considering defendant's "furtive action" of pulling out of an area of a private business as the police approached significant in concluding there was reasonable suspicion to stop defendant's car).

Finally, although Deputy Scott did not observe any criminal activity or wrongdoing by Brock, this does not mean the investigatory stop was unreasonable. Seemingly innocent or otherwise wholly lawful conduct may combine with other factors to create reasonable suspicion for an investigatory stop. See *Bradford*, 620 N.W.2d at 508.

Conclusion.

We conclude the totality of the circumstances provided Deputy Scott with reasonable cause sufficient to support the investigatory stop of Brock's vehicle. The district court properly denied Brock's motion to suppress and we affirm his conviction.

AFFIRMED.