

IN THE COURT OF APPEALS OF IOWA

No. 7-753 / 06-1909
Filed October 24, 2007

STATE OF IOWA,
Plaintiff-Appellant,

vs.

MICHAEL DAVID PAPESH,
Defendant-Appellee.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler,
Judge.

The State appeals from the district court's grant of Michael Papesh's motion to
suppress. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Jean Pettinger and Mary Tabor, Assistant
Attorneys General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant
County Attorney, for appellant State.

Mark C. Smith, State Appellate Defender, and Shellie Knipfer, Assistant
Appellate Defender, for appellee.

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

VAITHESWARAN, J.

A Black Hawk County deputy sheriff stopped a vehicle driven by Michael Papesh. He subsequently searched the vehicle and found illegal drugs.

The State charged Papesh with possession of a controlled substance (methamphetamine) with intent to deliver; three counts of possession of precursors with intent to manufacture a controlled substance; and failure to affix a drug tax stamp. Iowa Code §§ 124.401(1)(b) (2005), 124.401(4), and 453B.12. Papesh pled not guilty to the charges and filed a motion to suppress the evidence garnered during the search. Following a hearing, the district court granted Papesh's motion. The State sought discretionary review. The Iowa Supreme Court granted the State's request and the case was transferred to our court for resolution.

"[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968). The following factors are the "most persuasive" in determining the reasonableness of a stop: (1) whether the officer was investigating a specific crime, (2) whether the officer had been given a description of the assailant and the vehicle, and (3) whether "the perpetration of the crime was reasonably close in time and distance to the investigatory stop under the circumstances." *State v. Scott*, 405 N.W.2d 829, 832 (Iowa 1987) (quoting *State v. Lamp*, 322 N.W.2d 48, 51 (Iowa 1982), *abrogated on other grounds by State v. Heminover*, 619 N.W.2d 353 (Iowa 2000)).

Strict compliance with the *Lamp* test, though, is not required. *In re S.A.W.*, 499 N.W.2d 739, 741 (Iowa 1993). Finally, while an officer may not rely solely on

circumstances that describe a broad category of innocent persons, when combined with other factors, seemingly innocent activities may give an experienced law enforcement officer reason to expect wrongdoing. *State v. Rosenstiel*, 473 N.W.2d 59, 62 (Iowa 1991), *overruled on other grounds by State v. Cline*, 617 N.W.2d 277 (Iowa 2000).

Our de novo review reveals the following facts. Deputy Reese worked the day shift. During the morning briefing he was advised of a report received by the officers on the previous evening's shift. The report indicated that a 1995 Polaris brand all terrain vehicle (ATV) had been stolen. Shortly before noon, the deputy was patrolling the eastern part of rural Black Hawk County when he noticed a vehicle pulling a flatbed trailer with an ATV. The vehicle was approximately two-and-a-half miles west and three miles north of the road from which the ATV was reportedly stolen. The vehicle was driving away from that location.

After spotting the ATV, Deputy Reese turned around and pulled the vehicle over. He testified the ATV was consistent with a 1995 Polaris. He also testified that ATVs are difficult to identify because they are "so generic." Finally, he stated that hauling ATVs by trailer or truck was a common way of transporting them if one was not able to drive them away.

We conclude the information Deputy Reese received during the briefing, together with the knowledge he had about ATV identification and transport, satisfied the *Terry* standard for a stop and the *Lamp* criteria.

In reaching this conclusion, we recognize that information Deputy Reese acquired after the stop led him to conclude this particular ATV was not the stolen ATV. However, the focus of a *Terry* stop is on the investigation of possible criminal behavior.

Terry, 392 U.S. at 22, 88 S. Ct. at 1880, 20 L. Ed. 2d at 906-07. We are persuaded that Deputy Reese had sufficient facts at his disposal before the stop to investigate further, even though a subsequent investigation proved him incorrect. *Id.* at 23, 88 S. Ct. at 1881, 20 L. Ed 2d at 907 (“It would have been poor police work indeed for an officer of thirty years’ experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior further.”).

We also recognize that there was a lapse of up to twenty hours between the time the stolen ATV was reported and the time Papesh’s vehicle was stopped. However, the deputy was acting on a report of stolen property received just one shift earlier. Additionally, he was canvassing a small rural segment of the county near the location of the reported theft. In our view, the mere lapse of time between the report and the stop does not override these factors.

We reverse the district court’s ruling on Papesh’s motion to suppress and remand for further proceedings.

REVERSED AND REMANDED.