

IN THE COURT OF APPEALS OF IOWA

No. 7-851 / 07-0121
Filed January 16, 2008

STATE OF IOWA,
Plaintiff-Appellant,

vs.

SHANE LYNN MONELL,
Defendant-Appellee.

Appeal from the Iowa District Court for Woodbury County, Duane E. Hoffmeyer, Judge.

The State seeks discretionary review of a ruling suppressing evidence of methamphetamine possession. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Darrel Mullins and Mary Tabor, Assistant Attorneys General, Patrick Jennings, County Attorney, and Brigit Barnes and James Loomis, Assistant County Attorneys, for appellant State.

Douglas Roehrich, Sioux City, for appellee.

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

VAITHESWARAN, J.

The State seeks discretionary review of a ruling suppressing evidence of methamphetamine possession. We reverse and remand.

I. Background Facts and Proceedings

At the request of agents of the Bureau of Alcohol, Tobacco, and Firearms, Sioux City police officers Wagner and Ragar conducted surveillance of a man they believed to be Carl Bertling. The officers followed the man from one location to another. The man eventually got into a taxi. At this point, ATF officers asked Wagner to stop the taxi. Two other officers did so. One of the officers who initiated the stop, Officer Tisher, obtained the man's identification and checked the name for warrants.

When Wagner arrived at the scene, he asked the passenger his name. The man responded that it was Shane Monell. Wagner asked if Monell had anything illegal on him. Monell admitted he had methamphetamine.

Monell was taken to the police station where police interviewed him. He was later arrested and charged with possession of methamphetamine with intent to deliver and a drug tax stamp violation. Monell's attorney filed an untimely motion to suppress the evidence. Following a hearing on the motion, the district court concluded defense counsel had good cause for the late filing. The court granted the motion to suppress. The State filed a request for discretionary review, which was granted.

II. Suppression Ruling

As a preliminary matter, we address the State's argument that defense counsel lacked good cause for the late filing of the motion to suppress. See Iowa

R. Crim. P. 2.11(3). Defense counsel stated that he filed the motion late because he was waiting to receive a video recording of a police interview with Monell. The State does not argue that this recording was provided to defense counsel within the time prescribed for filing a motion to suppress. The State simply argues the recording was irrelevant to the validity of the stop. We agree with defense counsel that counsel needed the recording to determine the scope of the motion to suppress. Accordingly, we affirm the district court's determination that defense counsel had good cause for the late filing.

Turning to the merits of the court's ruling, the district court determined that the officers had reasonable suspicion to stop the vehicle but the length of the detention was constitutionally impermissible. The court made the following key findings:

TFO Wagner did not have the individual they were looking for and the individual had a valid identification with no outstanding warrants. TFO Wagner then attempted to salvage this stop by "a routine" questioning on drugs, illegal activity, etc. But the bottom line was at this point in time there was no reasonable and articulable basis for such an inquiry. Mr. Monell had been held for longer than what is contemplated by the United States and Iowa Constitution. This subsequent detention and inquiry is contrary to the law, despite the ultimate evidence found. Iowa law does not yet recognize a good-faith exception to salvage the officer's actions and evidence later found.

The law on the length of detentions is well-established. An investigatory detention must be temporary and last no longer than necessary to effect the purpose of the stop. *Florida v. Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319, 1325, 75 L. Ed. 2d 229, 238 (1983). "[T]he seizure cannot continue for an excessive period of time" *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 185-86, 124 S. Ct. 2451, 2458, 159 L. Ed. 2d 292, 302 (2004). A person "may not be

detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds.” *Royer*, 460 U.S. at 498, 103 S. Ct. at 1324, 75 L. Ed. 2d at 236.

To determine whether these constitutional standards were satisfied, we review the record de novo. *State v. Adams*, 554 N.W.2d 686, 689 (Iowa 1996).

The key question here is whether the purpose of the stop had ended when Officer Wagner questioned Monell about illegal items in his possession. The purpose of the stop was to identify and detain Carl Bertling. Officer Wagner testified that the detaining officer had begun the identification process when Wagner arrived at the scene. Specifically, he had obtained Monell’s identification and was checking for outstanding warrants. There was no indication that the warrant check was complete or that Monell’s identification had been returned to him when Wagner asked Monell about illegal items. Wagner’s recollection of the stop is instructive:

Q. Okay. So what happened after that? A. The vehicle stopped—Officer Patrick Tisher was the uniformed officer that stopped the vehicle He was able to walk up on the passenger side of the vehicle and ask the defendant, Mr. Monell, out of the vehicle. He had done this already by the time I was able to get my vehicle positioned correctly and walked up to the scene. When I got to the scene, Officer Tisher was doing a local’s check. He was checking the subject for warrants. He had provided an ID at that time. I asked him who he was. He stated his name was Shane Monell. I then—just as routine—in speaking with anybody on a road-side situation, I asked him if he had anything illegal on him and that’s when he postured, put his head down, and really appeared to be fairly defeated when I asked him that question.

Later, Wagner confirmed that, even after Officer Tisher received identification from Monell, it was still necessary to verify the information on the identification. We conclude the purpose of the stop, which was to identify the passenger in the

taxi and apprehend him if he was Carl Bertling, was not complete at the time Officer Wagner asked Monell about illegal items in his possession.

As for the question itself, we conclude Officer Wagner's inquiry "was a commonsense inquiry" made in the course of a valid stop and detention that had yet to be finalized. *Hiibel*, 542 U.S. at 189, 124 S. Ct. at 2460, 159 L. Ed. 2d at 304. In other words, Officer Wagner's inquiry was "justified at its inception, and . . . reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* at 185, 124 S. Ct. at 2458, 159 L. Ed. 2d at 302 (quoting *United States v. Sharpe*, 470 U.S. 675, 682, 105 S. Ct. 1568, 1573, 84 L. Ed. 2d 605, 613 (1985)).

We emphasize that our conclusion is limited to the precise facts raised here: whether the purpose of a valid stop had been accomplished when the officer posed the key question to Monell. We do not address whether the officer's question would have been permissible if it had come after the purpose of the stop was accomplished. See *United States v. White*, 81 F.3d 775, 778-79 (8th Cir. 1996) (after purpose for stop fulfilled, encounter between officer and defendant "became nothing more than a consensual encounter between a private citizen and a law enforcement officer"); *State v. Smith*, 683 N.W.2d 542, 546-47 (Iowa 2004) ("[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen The person approached

need not answer any question put to him”) (quoting *Royer*, 460 U.S. at 497-98, 103 S. Ct. at 1324, 75 L. Ed. 2d at 236).¹

We conclude Wagner’s questioning did not violate the Fourth Amendment to the United States Constitution or Article one, section eight of the Iowa Constitution.

We reverse the suppression ruling and remand for further proceedings.

REVERSED AND REMANDED.

Vaitheswaran, J. and Baker, J. concur. Sackett, C.J., dissents.

¹ The test in that case is “whether a reasonable person would feel free to decline the officer’s requests or otherwise terminate the encounter.” *Id.* at 547 (quoting *United States v. Drayton*, 536 U.S. 194, 202, 122 S. Ct. 2105, 2111, 153 L. Ed. 2d 242, 251 (2002)). Arguably, even if the purpose of the stop had been accomplished, Monell could reasonably have believed he was not free to go based on the four officers’ proximity to him. See *Drayton*, 536 U.S. at 204, 122 S. Ct. at 2112, 153 L. Ed. 2d at 253 (no seizure where there was “no application of force, no intimidating movement, no overwhelming show of force, no brandishing of weapons, no blocking of exits, no threat, no command, not even an authoritative tone of voice”).

SACKETT, C.J. (dissenting)

I dissent. Giving the required deference to the factual findings of the district court, I would affirm.