

**IN THE COURT OF APPEALS OF IOWA**

No. 9-789 / 08-1439  
Filed January 22, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**ROBERT SHINE WEBSTER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Richard D. Stochl, Judge.

A defendant appeals the district court's denial of his motion to suppress evidence found during a pat-down search conducted by an officer, contending that the evidence was obtained pursuant to an invalid, warrantless search.

**AFFIRMED.**

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

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., Danilson, J., and Huitink, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**VAITHESWARAN, P.J.**

Robert Webster appeals the district court's denial of his motion to suppress. He contends the evidence was obtained pursuant to an invalid, warrantless search and seizure.

***I. Background Facts and Proceedings***

Iowa Division of Criminal Investigation agents working at a Waterloo casino responded to a "blood-curdling scream" less than a hundred feet from their offices. The scream came from a woman standing next to Webster. One of the agents described the scene and its immediate aftermath as follows:

At that point as I ran out into the hallway, I observed both the subjects standing there. The female appeared to be hunched over and was coming up. I immediately came through the door . . . . I ran right through the door and just basically said, "What's going on." At that point the defendant put his hands in the air.

The agents suspected a domestic assault and separated the two. One of the agents took Webster to his office. Webster sat down. The agent immediately asked him to stand so the agent could perform a safety search. Webster stood, took off his coat, and handed it to the agent. He also "began to take things out of his pockets." As Webster did so, the agent noticed that Webster had a knife clipped to his pocket. At that point, the agent asked Webster "to empty out his pockets." Webster placed his knife on the table. The agent next asked Webster to "put his hands up on the wall so [the agent] could completely pat down thoroughly." The agent told Webster he did not want to be surprised, and if Webster had anything on him such as drugs or guns, the agent wanted to know. According to the agent, Webster hesitated and then "denied having anything on him." The agent proceeded with the pat-down search. As he neared Webster's

right pocket, Webster pulled his hands off the wall and began to turn away. The agent placed his own hand against Webster's back and turned him to the wall. He asked Webster what he had in his pocket that Webster did not want him to find. Webster hesitated and began to cry. The agent handcuffed Webster and re-asked the question. Webster said he had a "meth pipe" in his pocket. After ensuring the pipe was not broken and would not cut him, the agent reached into Webster's pocket and removed the pipe, as well as two baggies containing a white, powdery substance. Webster was placed under arrest.

The State charged Webster with possession of methamphetamine, in excess of five grams, with intent to deliver, and failure to affix a tax stamp. Webster filed a motion to suppress which the district court denied following a hearing. A jury found Webster guilty. He appealed following imposition of sentence.

## **II. Analysis**

Webster contends the DCI agent conducted an illegal search that does not fall within the "stop and frisk" exception to the warrant requirement of the United States Constitution. *See generally Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Our review of this constitutional issue is de novo. *State v. Scott*, 518 N.W.2d 347, 349 (Iowa 1994).

A "stop and frisk" is constitutionally permissible if two conditions are met. *Arizona v. Johnson*, \_\_\_ U.S. \_\_\_, \_\_\_, 129 S. Ct. 781, 784, 172 L. Ed. 2d 694, 700 (2009). First, the investigatory stop must be a legal one. *Id.* Second, "to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous." *Id.*

**1. Stop.** We begin with the legality of the investigatory stop. The principal function of an investigatory stop is to resolve an ambiguity as to whether “criminal activity is afoot.” *Id.* at \_\_\_\_, 129 S. Ct. at 786, 172 L. Ed. 2d at 702. That function was served. The DCI agents ran out of their offices inside a casino to investigate a “blood-curdling scream.” We have no trouble concluding they had grounds to do so.

The real question is whether the agents exceeded the permissible bounds of the investigative stop by taking Webster to the DCI office. See *Florida v. Royer*, 460 U.S. 491, 504, 103 S. Ct. 1319, 1328, 75 L. Ed. 2d 229, 241 (1983) (holding officers exceeded the scope of a permissible investigative stop when they escorted Royer from the main concourse of an airport to a small room forty feet away, held his identification and plane ticket, retrieved his already-checked luggage from another location, and asked the defendant whether they could search the luggage for narcotics). While the defense suggests that the agents could have questioned Webster without sequestering him, the agents testified that sequestration was a standard procedure where domestic violence was suspected. Based on this testimony, we conclude the relocation of Webster to a private office did not exceed the permissible bounds of the investigative stop.

**2. Frisk.** We turn to whether the DCI agent’s pat-down search of Webster was justified by an objectively reasonable belief that Webster was armed and dangerous. See *Johnson*, \_\_\_ U.S. at \_\_\_\_, 129 S. Ct. at 784, 172 L. Ed. 2d at 700. “The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.”

*State v. Scott*, 405 N.W.2d 829, 832 (Iowa 1987) (quoting *Terry v. Ohio*, 392 U.S. 1, 27, 88 S. Ct. 1868, 1883, 20 L. Ed. 2d 889, 909 (1968)).

As noted, the DCI agent asked Webster to stand up so that he could perform a search for his own safety. Before he began the search, the agent noticed that Webster had a knife on his belt. Webster suggests that this obviated the need to proceed with a weapons search. We disagree. The agent was in a confined space with a man who had a visible pocket knife as well as yet-to-be-determined items in his pockets. Additionally, the suspected nature of the crime, domestic assault, heightened the level of danger. As the agent testified, “[D]omestic assaults are inherently dangerous for law enforcement because of all the emotions that are involved. Many times there are weapons involved. You don’t know. And that’s the—that’s the hard part.” Under these circumstances, we conclude the agent reasonably could have believed that Webster remained armed and dangerous. Therefore, the frisk was justified.

Like the district court, we conclude the DCI agents conducted a valid investigatory stop and frisk. Accordingly, we affirm the district court’s denial of Webster’s suppression motion as well as his judgment and sentence.<sup>1</sup>

**AFFIRMED.**

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<sup>1</sup> In the district court, Webster also asserted that his *Miranda* rights were violated. See *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Webster has not raised this argument on appeal. Therefore, we need not address it.