

IN THE COURT OF APPEALS OF IOWA

No. 1-261 / 10-0881
Filed May 25, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JADE ALLEN HASENBANK,
Defendant-Appellant.

Appeal from the Iowa District Court for Plymouth County, Robert J. Dull,
District Associate Judge.

A defendant appeals from his conviction of operating while under the
influence in violation of Iowa Code section 321J.2 (2009). **AFFIRMED.**

Robert B. Brock II, LeMars, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney
General, Darin J. Raymond, County Attorney, and Amy Oetken, Assistant County
Attorney, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J.* Tabor, J.,
takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, S.J.

Jade Hasenbank was convicted of operating while under the influence in violation of Iowa Code section 321J.2 (2009). He appeals and asserts the district court should have granted his motion to suppress all evidence obtained as the result of the investigatory stop of his vehicle. Our review is de novo, and we “make an independent evaluation of the totality of the circumstances as shown by the entire record.” *State v. Kinkead*, 570 N.W.2d 97, 99 (Iowa 1997).

At approximately 9:50 p.m. on September 21, 2009, Officer Robert Rohmiller of the Akron Police Department saw a car drive onto the private property of the Farmer’s Co-op and park behind a grain bin. Officer Rohmiller testified that the car “shouldn’t have been back behind the grain bin” and it was an area he kept an eye on because anhydrous tanks and farm equipment were kept on the property. As Officer Rohmiller drove toward the car, the driver turned on the vehicle lights and drove away from the police car. Officer Rohmiller followed the car to a convenience store, where he initiated a traffic stop in the parking lot. Once he approached the car, Officer Rohmiller noticed a strong odor of marijuana coming from the vehicle and identified the driver as Hasenbank. After Officer Rohmiller asked a few questions, Hasenbank turned over a marijuana pipe, and the three teenage passengers admitted to smoking marijuana behind the grain bin.

One well-known exception to the warrant requirement is an investigatory stop—an officer may “stop an individual or vehicle for investigatory purposes based on a reasonable suspicion, supported by specific and articulable facts, that a criminal act has occurred or is occurring.” *Id.* at 100.

The existence of a reasonable suspicion is based on an objective standard: whether the facts available to the officer at the time of the stop would lead a reasonable person to believe that the action taken by the officer was appropriate.

Id. “An unparticularized suspicion or hunch is not enough to establish reasonable suspicion. However, an officer may make an investigatory stop with considerably less than proof of wrongdoing by a preponderance of the evidence.”

Id. (citing *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995); *State v. Richardson*, 501 N.W.2d 495, 496-97 (Iowa 1993)).

We examine the facts in the present case. Hasenbank was on private property at an hour when the business was closed, and there was likely no legitimate reason for him to be there. See *Richardson*, 501 N.W.2d at 497 (considering the area was nonresidential and it was at a time when all the businesses were closed). In addition, it appears Hasenbank attempted to conceal his car by turning off the vehicle lights and parking behind a grain bin—an area where a vehicle should not be. The officer had particular knowledge about the area—anhydrous tanks and farm equipment are stored on the property, and officers watch the area. See Iowa Code § 124.401 (prohibiting the possession of anhydrous ammonia with intent to manufacture methamphetamine); cf. *Richardson*, 501 N.W.2d at 497 (considering the officer knew the area had been frequently burglarized). Finally, Hasenbank did not just happen to be leaving the area. Rather, when the officer approached the car, Hasenbank turned on the vehicle lights and drove away. See *Richardson*, 501 N.W.2d at 497 (“He observed what he considered to be deliberately furtive actions when the defendant pulled out just as the officer completed his U-turn

and began approaching.”). We find the various factors combined to give the officer reasonable suspicion to stop Hasenbank’s car. *Compare Haviland*, 532 N.W.2d at 768 (finding no reasonable suspicion where the *only* factors to support the stop were: “(1) the vehicle being parked in a closed business area; and (2) the vehicle turning on its lights and leaving as the police turned the curve in the road”), *with Richardson*, 501 N.W.2d at 496 (finding reasonable suspicion where a sheriff observed a car parked in a nonresidential area at 12:40 a.m. when there was no “legitimate attractions” and all surrounding businesses were closed; the sheriff knew the area had been frequently burglarized; and the sheriff observed deliberate furtive actions when the defendant drove away as the officer began approaching the defendant). The district court properly denied Hasenbank’s motion to suppress. We affirm.

AFFIRMED.