

IN THE COURT OF APPEALS OF IOWA

No. 7-873 / 07-0824
Filed January 16, 2008

STATE OF IOWA,
Plaintiff-Appellant,

vs.

RICHARD STEVEN WILKES,
Defendant-Appellee.

Appeal from the Iowa District Court for Cass County, Timothy O'Grady,
Judge.

In this discretionary appeal, the State seeks to reverse the district court's
ruling suppressing evidence. **AFFIRMED.**

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney
General, and Daniel Feistner, County Attorney, for appellant.

Leslie G. Peters, Avoca, for appellee.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

The State appeals from the trial court's suppression of sobriety tests conducted by Atlantic police officer Paul Wood on defendant Richard Steven Wilkes. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

Around midnight on January 11, 2007, Officer Wood was driving his police car on a routine patrol accompanied by a reserve officer. While passing a former quarry, he saw a pickup truck parked in the quarry's parking area. The former quarry is now owned by the city of Atlantic. The pickup was facing towards the quarry with its engine running and its lights on. Officer Wood turned into the only entrance/exit for the quarry and, without activating his lights or using his siren, drove to a point ten to fifteen feet behind the pickup and parked while leaving his headlights focused on the truck. Officer Wood got out and approached the truck on the driver's side while the reserve officer approached from the passenger side. Wilkes was the driver and he had a female passenger.

When Officer Wood reached the driver's door, Wilkes rolled down his window. Officer Wood asked Wilkes what was going on and Wilkes replied he was looking for a fishing spot. Officer Wood asked for driver's licenses from both parties, returned to his car and ran them through dispatch.

At some point, Officer Wood noticed a strong odor of alcohol coming from Wilkes and when he returned with the licenses he asked Wilkes to get out of the truck to perform field sobriety tests. Eventually, Wilkes was arrested and charged with operating while intoxicated, first offense, in violation of Iowa Code section 321J.2 (Iowa 2007). Wilkes filed a pre-trial motion to suppress evidence

gathered by Officer Wood and the trial court granted his motion. In May 2007, the State applied for discretionary review, which was granted.

II. STANDARD OF REVIEW.

Because this case concerns the constitutional right to be free of unreasonable searches and seizures; our review of the district court's suppression ruling is de novo. *State v. Kreps*, 650 N.W.2d 636, 640 (Iowa 2002). We independently evaluate the totality of the circumstances shown by the entire record. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001).

III. LEGALITY OF SEIZURE.

Police officers are allowed to stop and briefly detain "an individual or vehicle for investigatory purposes based on a reasonable suspicion that a criminal act has occurred or is occurring." *Kreps*, 650 N.W.2d at 641. To meet the reasonable cause standard the police officer "must be able to articulate something more than an inchoate and unparticularized suspicion or hunch." *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995).

Officer Wood testified he was approaching the truck to see what was going on but he had no suspicion of any wrongdoing. Instead, he was doing a welfare check and was "going to make sure everything was okay with the people in the vehicle." There was no evidence the quarry was a high crime area and there was no evidence of recent criminal activities at the quarry itself. The circumstances here do not support a valid investigatory stop under *Haviland*: "a lone vehicle idling in a darkened parking lot at 12:30 a.m. does not, without more, support a reasonable suspicion of criminal activity." *Id.* at 769.

However, police questioning by itself is generally not a seizure. *Reinders*, 690 N.W.2d at 82. Rather, “[a] seizure occurs when an officer by means of physical force or show of authority in some way restrains the liberty of a citizen.” *State v. Pickett*, 573 N.W.2d 245, 247 (Iowa 1997). Courts examine whether the circumstances of the encounter are so intimidating that a reasonable person would have believed he was not free to leave. *Reinders*, 690 N.W.2d at 82.

We agree with the district court’s conclusion “the more credible evidence shows Wilkes was seized within the meaning of the Fourth Amendment.” Officer Wood parked his marked patrol car ten to fifteen feet behind Wilkes’s truck and left his headlights shining directly on the truck. Officer Wood was in uniform as he approached the driver’s side of the truck and at the same time the reserve officer approached the passenger side of the truck. Under these circumstances a reasonable person would not have believed he was free to leave. *See id.*

The State argues Officer Wood’s seizure is valid because he was engaged in a “bona fide community caretaking activity justifying the intrusion.” *See State v. Crawford*, 659 N.W.2d 537, 543 (Iowa 2003). This exception has been applied where an officer stopped a car with a burned-out taillight; where an officer stopped a vehicle whose speeding posed a danger to park campers; where an officer helped with a flat tire; and where an officer opened a car door to check on a driver slumped over the wheel. *Id.* The intrusion here by Officer Wood did not occur under similar circumstances and we agree with the district court:

There was no evidence that Wilkes needed assistance. His vehicle was running. His headlights were on. There was no evidence of a crash, a mechanical breakdown or some other problem. There were no emergency flashers in use. Unlike other caretaker cases, Wilkes was not slumped over or showing other signs of distress. No evidence was presented to show a factual basis for Wood’s

belief that Wilkes was in need of assistance. The community caretaking exception is not applicable.

AFFIRMED.