IN THE COURT OF APPEALS OF IOWA

No. 3-337 / 12-0012
Filed August 7, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

STEPHEN JOSEPH HANRAHAN,
Defendant-Appellant.

Consolidated appeal from the Iowa District Court for Poweshiek County, Randy S. DeGeest, District Associate Judge (motion to suppress), and Lucy J. Gamon (trial and judgment entry), Judge, in SRIN013399; Lucy J. Gamon (motion to suppress) and Robert D. Fahey Jr. (trial and judgment entry), Judges, in SPLA001962.

A defendant appeals his conviction and sentence for possession of marijuana and an order forfeiting property. **REVERSED AND REMANDED ON BOTH APPEALS.**

Nicholas Sarcone and Dean Stowers of Stowers Law Firm, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas H. Miller, Assistant Attorney General, and Rebecca Petig, County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VAITHESWARAN, J.

We must decide whether the district court properly denied a motion to suppress evidence obtained during the search of a vehicle.

I. Background Facts and Proceedings

An Iowa State trooper who was part of a criminal interdiction program stopped Stephen Hanrahan on Interstate 80 for driving seventy-four miles-per-hour in a seventy mile-per-hour traffic zone. The trooper approached Hanrahan and told him he "was just going to give him a warning for it." He instructed Hanrahan to sit in his squad car while he prepared the warning ticket.

In the course of completing the paperwork, the trooper conducted a "motorist interview," asking where Hanrahan began his journey, where he was going, and his plans on arrival at his destination. The trooper testified he "[a]bsolutely" used the opportunity to conduct a separate investigation. On issuing the warning ticket, the trooper ended the traffic stop, and Hanrahan exited the squad car.

Momentarily, the trooper got out of his vehicle and asked Hanrahan whether he had drugs or large amounts of money in his car. Hanrahan answered "[n]o." The trooper asked if he could search Hanrahan's vehicle. Again, Hanrahan answered "[n]o." Hanrahan was slightly more equivocal when asked if he would wait for a drug-sniffing dog; this time he responded, "[n]o, not really." But, when the trooper said he wanted to search Hanrahan's vehicle and said they could have a dog "come and run around" his vehicle, Hanrahan asked if the trooper needed a warrant and forcefully responded, "No, you can't search my vehicle. I think—no I think that's wrong."

The trooper did not take no for an answer. He again asked Hanrahan if he would be willing to wait for a dog. Hanrahan first answered, "Not really, but unless you want me to" and then responded he would "rather not." The trooper conceded Hanrahan did not give him permission to search the vehicle and did not say he was willing to wait for a drug dog. In his words, Hanrahan "absolutely" did not consent to stay until the dog arrived.[1] At that point, the trooper stated he would detain Hanrahan until a dog came.

The dog made a "positive" drug sniff. A subsequent search of the vehicle uncovered marijuana and a large amount of cash.

The State charged Hanrahan with possession of marijuana and filed a separate complaint seeking forfeiture of the cash. Hanrahan filed identical motions to suppress in both actions, alleging in part that "[t]he search of the vehicle was conducted without reasonable suspicion or probable cause." Following a hearing, the district court denied the motion in the criminal proceeding. Later, the court dismissed the suppression motion in the forfeiture proceeding on the basis of res judicata.

The court held bench trials in both actions that resulted in Hanrahan's conviction for possession of marijuana and an order requiring the forfeiture of the cash. Hanrahan's appeals in both matters were consolidated for a decision.

[1] In *State v. Pals*, 805 N.W.2d 767, 782 (Iowa 2011), the Iowa Supreme Court determined the validity of consent searches under Article 1 section 8 of the Iowa Constitution. In light of the trooper's concession that Hanrahan did not consent to the search, we need not analyze this issue.

II. Suppression Ruling—Criminal Proceeding

Hanrahan argues that the search of his vehicle violated the Fourth Amendment to the United States Constitution and article 1 section 8 of the Iowa Constitution. *See State v*. *Tyler*, 830 N.W.2d 288, 291 (Iowa 2013) (stating both constitutional provisions "prohibit unreasonable searches and seizures by the government"). He specifically contends that the trooper (1) "impermissibly expanded the scope of the stop for speeding 4 mph over by conducting a 'motorist interview' as part of criminal interdiction designed to detect unrelated criminal activity for which [he] could not have been stopped in the first place" and (2) "lacked reasonable suspicion to continue to detain [him] after the warning was issued." We will only tangentially address the first issue because we find the second issue dispositive.[2] Our review of this constitutional issue is de novo. *State v*. *Kurth*, 813 N.W.2d 270, 272 (Iowa 2012).

We begin with certain straightforward points concerning the vehicle stop. First, the stop was "unquestionably a seizure under the Fourth Amendment." *Tyler*, 830 N.W.2d at 292. Second, the stop was supported by the probable cause exception to the warrant requirement because it was based on a speeding violation. *Id.* (stating probable cause is established "[i]f a traffic violation actually occurred and the officer witnessed it").

We turn to the trooper's "motorist interview." "Once a lawful stop is made, an officer may conduct an investigation 'reasonably related in scope to the

[2] Hanrahan's first argument includes a request to apply a more stringent analysis under article I section 8 than might apply under the Federal Constitution. Hanrahan's second argument does not include a similar request. Accordingly, "we will apply the general standards as outlined by the United States Supreme Court for addressing a search and seizure challenge under the Iowa Constitution." *Tyler*, 830 N.W.2d at 292.

circumstances which justified the interference in the first place.'" *State v*. *Aderholdt*, 545 N.W.2d 559, 563 (Iowa 1996) (citations omitted). "'This reasonable investigation includes asking for the driver's license and registration, requesting that the driver sit in the patrol car, and asking the driver about his destination and purpose.'" *Id.* at 563-64 (citations omitted). Applying these principles, we conclude the trooper acted well within constitutional bounds in escorting Hanrahan to his squad car and engaging him in conversation while typing a warning ticket.

This brings us to the trooper's conduct after the traffic stop ended. Police cannot "unduly prolong their detention of an individual to secure a drug dog or for any other reason without additional suspicion of wrongdoing that warrants expansion of the stop." *State v*. *Bergmann*, 633 N.W.2d 328, 335 (Iowa 2001). If "the detainees' responses or actions raise suspicions unrelated to the traffic offense, the officer's inquiry may be broadened to satisfy those suspicions." *Aderholdt*, 545 N.W.2d at 564. Where the purpose of the stop has concluded, the officer must have "reasonable suspicion of criminal wrongdoing" to "expand the scope further." *Bergmann*, 633 N.W.2d at 338.

There is no question the purpose of the traffic stop had concluded before the trooper detained Hanrahan pending the arrival of the drug dog. The trooper conceded this fact, stating he "printed off the traffic warning, then had the defendant sign [his] computer, gave the defendant all of his documents back, along with his driver's license, registration and stuff like that, along with his copy of the warning, and told him to have a safe trip." The question is whether the

trooper had reasonable suspicion to detain Hanrahan and to search his vehicle after the traffic stop ended.

We begin with the substance of the "motorist interview." The State asserts that the interview furnished reasonable suspicion of criminal activity to support the detention and search because Hanrahan paused before answering questions and seemed deceptive. On our review of the audio recording, we discern nothing untoward in the cadence or tenor of the conversation. If anything, Hanrahan appeared more forthcoming with details than the questions required.

The State also asserts that Hanrahan appeared to redirect the focus of the conversation. It is true that, after the trooper asked about Hanrahan's family, Hanrahan made a similar inquiry of the trooper. This exchange did not reflect obfuscation but polite repartee between strangers.

The trooper additionally claimed the fact Hanrahan was traveling to California "raised question marks," because "California is one of the largest marijuana producing places in the U.S." But, as Hanrahan's attorney pointed out in searing cross-examination, Hanrahan was not returning from the drug-source state but going to that state. The trooper responded to this cross-examination by stating that he "was expecting [Hanrahan] was driving to California and bringing marijuana back." This response was inconsistent with the trooper's initial assertion that he expected to find drugs in the trunk of Hanrahan's car. In any event, the trooper painted with a broad and unconstitutional brush in suggesting that travelers to or from the State of California must be engaged in drug smuggling. *See United States v*. *Beck*, 140 F.3d 1129, 1138 (8th Cir. 1998) ("[W]e do not think that the entire state of California, the most populous state in

the union, can properly be deemed a source of illegal narcotics such that mere residency in that state constitutes a factor supporting reasonable suspicion.").

We conclude the "motorist interview" did not generate reasonable suspicion of criminal activity. The trooper conceded as much, stating the conversation only raised a generalized suspicion of criminal activity. *See State v*. *Tague*, 676 N.W.2d 197, 204 (Iowa 2004) (stating a "suspicion, curiosity, or hunch" that criminal activity may be occurring does not amount to reasonable suspicion).

Other factors on which the State relies are equally unavailing. The trooper found it suspicious that Hanrahan's vehicle contained a cooler, food, and maps indicative of "long travel." If these circumstances were indicative of suspicious activity, "a substantial portion of the public would be subject each day to an invasion of [its] privacy." *Id.* at 205-06 (quoting *United States v*. *Lyons*, 7 F.3d 973, 976 (10th Cir. 1993)); *see also Beck*, 140 F.3d at 1138 ("[T]he mere presence of fast-food wrappers in the Buick is entirely consistent with innocent travel such that, in the absence of contradictory information, it cannot reasonably be said to give rise to suspicion of criminal activity.").

The trooper next cited Hanrahan's failure to turn off his right turn signal after he was pulled over, an omission he characterized as "common behavior in someone that is nervous." The video recording reveals that the signal briefly remained on while the trooper approached Hanrahan's vehicle and spoke to him from the passenger side of the car. As soon as the trooper told Hanrahan to go to the squad car, Hanrahan turned off the signal light and turned on his hazard

lights, revealing a presence of mind that undercuts the State's reliance on this factor.

As for the trooper's assertion that Hanrahan was still nervous even after he was told he would only receive a warning, nervousness alone, under these circumstances, did not generate reasonable suspicion of criminal activity to provide grounds for a warrantless search. *See United States v*. *Guerrero*, 374 F.3d 584, 590 (8th Cir. 2004) ("[I]t cannot be deemed unusual for a person to exhibit signs of nervousness when confronted by an officer."); *Beck*, 140 F.3d at 1129 (same). The trooper's reliance on this factor is particularly questionable to the extent it was based on Hanrahan's apology for speeding and his statement that "he would absolutely slow down." In the trooper's view, Hanrahan's response was suspicious because "most people that aren't doing something wrong, they are almost offended that you stopped them for a minor violation instead of someone else." In our view, nothing in Hanrahan's courteous and respectful answer could be construed as suspect.

On our de novo review, we conclude the trooper lacked a reasonable suspicion of criminal activity to support the detention and search following the conclusion of the traffic stop. While we acknowledge the precept cited by the State that "a combination of factors which, when taken by themselves are not incriminating . . . when taken together [may] raise a reasonable suspicion," the factors in combination were as innocent as the factors individually. *Beck*, 140 F.3d at 1139-40. In the absence of reasonable suspicion, the vehicle search violated the Fourth Amendment to the United States Constitution and article 1

section 8 of the Iowa Constitution and all evidence garnered in the search should have been suppressed.

III*. *Forfeiture Proceeding

Hanrahan next contends "[b]ecause there is no other evidence to support the forfeiture, the non-contraband property that was illegally seized must be returned." The State agrees that if the district court's order denying Hanrahan's motion to suppress is reversed in the criminal proceeding, then the court's order denying Hanrahan's motion to suppress in the forfeiture proceeding should be reversed for the same reasons. In light of that concession, we reverse the ruling in the forfeiture proceeding.

VI*. *Conclusion

We reverse the district court's rulings on Hanrahan's motions to suppress, vacate Hanrahan's conviction and sentence and the order of forfeiture, and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED ON BOTH APPEALS.