IN THE COURT OF APPEALS OF IOWA

No. 2-504 / 11-1347
Filed August 8, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIEL ADAM MURRAY,
Defendant-Appellant.

Appeal from the Iowa District Court for Wapello County, Kirk A. Daily, District Associate Judge.

A defendant appeals his conviction for driving while barred. **AFFIRMED.**

Ryan J. Mitchell of Orsborn, Milani, Mitchell & Goedken, L.L.P., Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, Lisa Holl, County Attorney, and Stephen Swanson, Assistant County Attorney, for appellee.

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

VOGEL, P.J.

Daniel Murray appeals from his conviction for driving while barred in violation of Iowa Code section 321.561 (2009). He asserts the district court should have granted his motion to suppress as he claims the officer who approached his vehicle lacked reasonable suspicion to do so. We affirm.

I. Background Facts and Proceedings

This court must determine whether there was reasonable suspicion that a criminal act was occurring to legally approach Murray's motorcycle and detain him under the Fourth Amendment of the United States Constitution and article I, section 8 of the Iowa Constitution.

On August 25, 2010, Ottumwa Police Officer Cody McCoy was on duty and observed Murray drive a motorcycle past him on East Main in Ottumwa, Iowa, and drive up behind a bus. While unable to testify as to an exact distance between Murray and the bus, Officer McCoy testified that based on his experience Murray was following the bus too closely. Officer McCoy was approximately a "football field" distance away from Murray during this observation. The bus then slowed down and Murray pulled his motorcycle over to the curb and parked his motorcycle because he was close enough to his destination to walk.[1] At that point Officer McCoy approached Murray and requested to see his license and registration. After running Murray's license through the system, Officer McCoy was notified Murray's license was barred and

[1] Neither party has contested that a seizure occurred. The fact Murray stopped the motorcycle on his own rather than because of an officer initiated the stop is irrelevant. See *State v. Wilkes*, 756 N.W.2d 838, 842–43 (Iowa 2008) ("Whether a seizure occurred is determined by the totality of the circumstances and there must be 'objective indices of police coercion.'").

there was a resulting warrant issued for his arrest. Officer McCoy proceeded to arrest Murray for driving while barred, but not cite him for driving too close.

Murray filed a motion to suppress evidence alleging, "[t]he stop and investigation were without probable cause and in violation of defendant's Constitutional rights under the 4th Amendment of the U.S. Constitution and Article I, Section 8 of the Iowa Constitution." After a hearing held on March 9, 2011, the district court overruled the motion. On June 29, 2011, Murray stipulated to a trial on the minutes of evidence, and the district court found him guilty as charged. Murray appeals.

II. Scope of Review

Our review of a constitutional challenge is de novo, independently evaluating the claim under the totality of the circumstances. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). We give deference to the district court's fact findings due to its opportunity to assess the credibility of witnesses, but are not bound by those findings. *State v. McGrane*, 733 N.W.2d 671, 676 (Iowa 2007). Although Murray asserts a violation of his rights under both the United States and the Iowa Constitutions, he makes no distinction as to how we should differentiate or treat his claims separately. Therefore, our review applies equally to the state and federal claims. *See State v. Griffin*, 691 N.W.2d 734, 737 (Iowa 2005).

III. Vehicle Stop

Murray asserts the district court should have granted his motion to suppress evidence. He claims there was no "specific and articulable cause to support a reasonable belief that criminal activity may have occurred" for Officer McCoy to initiate the traffic stop. The court in *Terry v. Ohio*, 392 U.S. 1 (1968),

recognized a police officer's authority to stop an individual on less than probable cause for the purpose of investigating unusual behavior that reasonably causes the officer to believe criminal activity is afoot. *Terry*, 392 U.S. at 21. To justify the stop, *Terry* required that the police officer "be able to point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id*. In making this determination, we look at the facts available to the officer at the time of the stop. *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995). An objective standard is utilized in reviewing the officer's chosen actions. *See State v. Predka*, 555 N.W.2d 202, 205 (Iowa 1996) (noting that we consider the reasonableness of the stop based on an objective standard, and do not depend upon the actual motivation of the individual officer).

It is the State's burden to show by a preponderance of the evidence that Officer McCoy had specific and articulable facts to reasonably believe criminal activity may be afoot. *See State v. Richardson*, 501 N.W.2d 495, 496–97 (Iowa 1993) (quoting *United States v. Sokolow,* 490 U.S. 1, 8, (1989)) ("An officer may make an investigatory stop with "considerably less than proof of wrongdoing by a preponderance of the evidence."). Mere suspicion, curiosity, or hunch of criminal activity is not enough. *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002). However, reasonable suspicion must be determined considering the totality of the circumstances confronting the officer at the time the officer makes the decision to stop the vehicle. *Id*. at 642.

Murray asserts that at the time of the stop, the facts known to Officer McCoy did not justify an investigatory *Terry* stop because Officer McCoy was too far away and could not testify as to an exact distance between the motorcycle

and the bus. Officer McCoy is a certified police officer for the State of Iowa, having worked for the City of Ottumwa for fifteen years. On August 25, 2010, he was assigned as a traffic safety officer. He testified that in the daytime hours of August 25, 2010, he observed Murray driving a motorcycle at a distance that he felt was too close behind a bus. Officer McCoy testified at the suppression hearing that Murray "was at a distance that [he] felt as if the bus made a sudden stop [Murray] wouldn't be able to stop in time." Murray testified he was "probably twenty feet" behind the bus before he pulled over. Section 321.307 provides: "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent." Officer McCoy believed Murray was violating this law when he initiated the traffic stop.

In denying Murray's motion to suppress the district court reasoned,

> The officer's observation of [Murray] following too closely did give reasonable grounds to stop the vehicle, and the stop was not in violation of the Fourth Amendment of the United States Constitution or Article I, section 8, of the Iowa Constitution. The officer's observations of [Murray's] violations do provide this reasonable belief that a violation of Iowa Code section 321.307 occurred.

(Citation omitted.)

Whether the officer cited Murray for a violation of Iowa Code section 321.307 is irrelevant. *See State v. Richardson*, 501 N.W.2d 495, 496–97 (Iowa 1993) ("An officer may make an investigatory stop with considerably less than proof of wrongdoing by a preponderance of the evidence."). The fact that an officer's suspicion may turn out to be incorrect does not invalidate the stop. *State v. Kinkead*, 570 N.W.2d 97, 101 (Iowa 1997).

While our review is de novo, we give deference to the district court's fact findings due to its opportunity to assess the credibility of witnesses. *McGrane*, 733 N.W.2d at 676. We find the district court's assessment of Officer McCoy persuasive and find that there was reasonable suspicion Murray was following the bus too closely in violation of the law. Because there was sufficient reasonable suspicion for the traffic stop based on the possible traffic violation, we need not determine whether the stop was proper under the district court's alternate reasoning—the community caretaking exception. We affirm the denial of Murray's motion to suppress and affirm his conviction.

AFFIRMED.