IN THE COURT OF APPEALS OF IOWA

No. 3-266 / 12-1483
Filed June 26, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NOAH JAMES MASS,
Defendant-Appellant.

Appeal from the Iowa District Court for Cass County, Susan K. Christensen, District Associate Judge (motion to suppress), and Richard H. Davidson, Judge (trial).

Noah Mass appeals his convictions for operating while intoxicated and possession of marijuana. **REVERSED AND REMANDED.**

Bill Bracker, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Thomas H. Miller, Deputy Attorney General, and Daniel Fiestner, County Attorney, for appellee.

Heard by Doyle, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

Noah Mass appeals his convictions for operating while intoxicated and possession of marijuana. He contends (1) the initial traffic stop was neither supported by reasonable suspicion that a crime was being committed nor may be supported under the community caretaking exception, (2) after the investigation that triggered the stop was completed, continued seizure was unconstitutional, and (3) evidence obtained from administration of the preliminary breath test should have been suppressed. We conclude that even if we assume the initial stop was reasonable, the stop was unreasonably expanded. We reverse and remand.

I. Background Facts and Proceedings.

On July 17, 2011, Noah Mass was headed to his home in Carson after playing music in Des Moines when another car veered into his lane and caused him to drive into the ditch. It was almost midnight, and driving conditions were less than favorable, including rain, thunder, and lightning. Though his car suffered some damage, Mass drove back onto the highway and continued driving.

Another driver witnessed Mass driving into the ditch and called 911 to report the incident. The anonymous caller reported the vehicle was a green Grand Am, traveling westbound on Interstate 80, and that the vehicle drove back out of the ditch at a high rate of speed.

Deputy Kyle Quist positioned himself to watch for the reported vehicle and observed Mass's green Grand Prix. Deputy Quist decided it was similar enough

to follow the vehicle after being informed by other officers up the road that they had not observed any other green vehicles. He began observation around mile marker fifty-seven and stopped Mass near mile marker fifty-four. At the suppression hearing, Deputy Quist testified that he conducted a traffic stop because of

> [t]he previous call of the wreck, the caller also advised that the vehicle had been driving erratically, then I had the obvious weaving back and forth in between the lanes which could tell me a tired or impaired driver, and then I had the vehicle crossing the side right line.

Officer Quist also believed that Mass either touched or crossed the fog line two times.

Deputy Quist's vehicle's camera recorded the action of the Grand Prix and most of the stop. The in-camera video shows Mass move to the right side of his lane as a car passes him on the left side. The video also shows Mass's vehicle approach, but not touch or cross the fog line. Notwithstanding a replay of the video during the suppression hearing, the deputy claimed the vehicle crossed the fog line. Deputy Quist acknowledged the "second time" he observed Mass touch or cross the fog line was not shown in the video and must have occurred before he turned on his vehicle's camera.

Deputy Quist activated his lights after following Mass for approximately three miles. Mass pulled over promptly. He rolled down his window and began an exchange with Deputy Quist. Mass was informed that the officers had a report of a vehicle in the ditch and was asked by Deputy Quist if Mass had been in the ditch. Mass explained that he had been forced off of the road into the

ditch. After some discussion, Deputy Quist asked Mass to exit the vehicle. They proceeded to walk around the car to survey the damage, including the driver's side tire, which was losing some air. Mass cooperated with the questioning. Deputy Quist testified that during this interaction, Mass exhibited no signs of intoxication, fatigue, or other impairment. Quist did not notice a smell of alcohol.

Three additional officers arrived at the scene. Although Deputy Quist testified that he had concluded his inquiry into the driving mishap, he requested permission to search the interior of the vehicle. By the time of the request to search, eleven minutes had elapsed and no officer had observed any signs of impairment. Deputy Quist had also returned "his information back" to Mass.[1] Deputy Quist testified that at that point in time, he believed his contact with Mass was a "consensual encounter." Mass did not consent to the search, saying there was no reason to search the vehicle. Ultimately Mass was asked at least four times for permission to search and never consented.

Deputy Quist testified that Mass's failure to acquiesce led him to believe there was something illegal in the vehicle. Only then, upon closer examination during the dialogue regarding searching the vehicle, did the deputy claim to notice that Mass's pupils were dilated and his eyes were bloodshot. He then determined further testing was necessary to make sure Mass was not under the influence of narcotics.

Deputy Kent Gries shone his flashlight inside the vehicle, but did not observe anything illegal in plain sight. Deputy Quist then began to conduct field

---

[1] We presume the "information" was his driver's license, registration papers, and proof of insurance.

sobriety tests, and during the testing, he directed Deputy Gries to run the drug dog around the vehicle.[2] During his testimony Deputy Gries acknowledged being present during some of the exchange between Deputy Quist and Mass as they assessed the condition of the vehicle. Deputy Gries also acknowledged that he observed no signs of impairment until after Deputy Quist requested consent to search.

Deputy Quist conducted sobriety tests and concluded Mass failed the horizontal gaze nystagmus test and the walk and turn test, but "passed" the one-leg-stand test.

Deputy Quist testified none of his observations of Mass led him to believe that Mass was under the influence of alcohol though he suspected narcotics. Mass nonetheless was administered the preliminary breath test (PBT), which measures only alcohol. Deputy Quist testified that even if the PBT had registered zero, he would not have allowed Mass to leave. Based upon the PBT results, Deputy Quist arrested Mass. Further testing at the station indicated his blood alcohol content was over the legal limit.

Mass was charged with operating while intoxicated in violation of Iowa Code Section 321J.2 (2011) and possession of marijuana in violation of Iowa Code Section 124.401(5). He filed a motion to suppress on August 25, 2011, which was denied after a hearing by an October 14, 2011 order.

Following the supreme court's decision in *State v. Pals*, 805 N.W.2d 767 (Iowa 2011), Mass asked the district court to reconsider his motion to suppress

---

[2] The canine alerted during the sniff. The subsequent search revealed a small amount of marijuana.

and determine that the expansion of the investigation unrelated to the stop was illegal. The court declined.

Mass renewed his motion to suppress prior to submission of evidence at the bench trial. The court denied the motion and found Mass guilty on both counts. Mass requested and was given a deferred sentence on the possession charge.

On appeal Mass asserts (1) the initial traffic stop was not supported by reasonable suspicion or probable cause that a crime was being committed, (2) after the investigation that triggered the stop was completed, continued seizure was unconstitutional, and (3) evidence obtained from administration of the PBT should have been suppressed as the officer had no reasonable suspicion that Mass was intoxicated. We find the second contention dispositive.

II. Scope and Standard of Review.

Because Mass contends the stop violated his rights under the Fourth Amendment of the United States Constitution and article I, section 8 of the Iowa Constitution, we review his claims de novo. *See Pals,* 805 N.W.2d at 771. We make an independent evaluation of the totality of the circumstances as shown by the entire record. *Id*. We give deference to the district court's fact findings regarding the credibility of witnesses, but we are not bound by those findings. *Id*.

III. Discussion.

We begin with the understanding that both the Fourth Amendment of the United States Constitution and article 1, section 8 of the Iowa Constitution prohibit unreasonable searches and seizures. *State v. Tyler*, 830 N.W.2d 288,

___, 2013 WL 1785988, at *2 (Iowa 2013). With respect to the federal constitution:

> The United States Supreme Court has considered the constitutionality of traffic stops under the Fourth Amendment in a number of cases. A traffic stop is unquestionably a seizure under the Fourth Amendment. *Berkemer v. McCarty*, 468 U.S. 420, 436–37 (1984); *State v. Heminover*, 619 N.W.2d 353, 357 (2000) ("When the police stop a car and temporarily detain an individual, the temporary detention is a 'seizure' within the meaning of the Fourth Amendment."), *abrogated on other grounds by State v. Turner*, 630 N.W.2d 601, 606 n.2 (Iowa 2001).
>
> Under the Fourth Amendment, the United States Supreme Court has recognized that allowing law enforcement unbridled discretion in stopping vehicles "'would invite intrusions upon constitutionally guaranteed rights.'" *Delaware v. Prouse*, 440 U.S. 648, 661, (1979) (quoting *Terry v. Ohio*, 392 U.S. 1, 22 (1968)). When there is no probable cause or reasonable suspicion for a stop, an officer has the "kind of standardless and unconstrained discretion [that] is the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some extent." *Id.* Moreover, the Court recognized that individuals frequently spend significant time traveling in automobiles and must be entitled to protection against unreasonable searches and seizures when traveling. *Id.* at 662–63. "Were the individual subject to unfettered governmental intrusion every time [she or] he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed." *Id*.

Id. at ___, 2013 WL 1785988, at *3.

To properly analyze the detention after the stop we must consider the purpose of the stop. The State contends the stop was justified as Deputy Quist had an objectively reasonable suspicion of impaired driving or failure to have control.[3] The State also contends the stop was justified under the community-

[3] Iowa Code section 321.288(1) provides, "A person operating a motor vehicle shall have the vehicle under control at all times."

caretaking exception to the Fourth Amendment. We will first address the detention as it relates to impaired driving or failure to have control.

As for the scope of article 1, section 8 of the Iowa Constitution in a traffic stop context, "[i]n *State v. Tague*, we held that briefly crossing the edge line on a divided roadway did not provide reasonable suspicion of intoxication to support a traffic stop or probable cause that a violation of Iowa Code section 321.297 occurred under article I, section 8. 676 N.W. 2d 197, 205–06 (Iowa 2004)." *Tyler*, 830 N.W.2d at ___, 2013 WL 1785988, at *3.

> Indeed, our own jurisprudence notes the unsettled nature of the law regarding when reasonable suspicion justifies traffic stops. *See Pals*, 805 N.W.2d at 774 ("Federal courts are divided on the issue of whether the Fourth Amendment per se prohibits police from stopping a vehicle based only on reasonable suspicion of a completed misdemeanor or civil infraction."). Additionally, there is a school of thought that *Terry* compels a balancing test to justify the stop.[footnote omitted]
>
> Perhaps the greatest distinction between a probable cause analysis and a reasonable suspicion analysis is the purpose of the stop. Our decisions have universally held that the purpose of a *Terry* stop is to investigate crime. *See, e.g.*, *Tague*, 676 N.W.2d at 204 (noting that the police need only have reasonable suspicion to detain "for investigatory purposes"). Conversely, the purpose of a probable cause stop is to seize someone who has already committed a crime. *See, e.g.*, *id.* at 201 ("Probable cause exists if the totality of the circumstances as viewed by a reasonable and prudent person would lead that person to believe that a crime has been or is being committed and that the arrestee committed or is committing it." (Citation and internal quotation marks omitted.)).

Tyler, 830 N.W.2d at ___, 2013 WL 1785988, at *4.

In the case before us, the proper analysis is as a *Terry* stop because Deputy Quist was investigating "a possible tired or impaired driver." As explained in *Tyler*,

Here, Tyler was ostensibly stopped in order to investigate an *ongoing* traffic offense. Officer Lowe claims to have observed an ongoing violation of Iowa law—operation of a motor vehicle with an obscured license plate.

In *Terry*, the United States Supreme Court found that law enforcement could stop citizens if swift action was required, "predicated upon the on-the-spot observations of the officer on the beat." 392 U.S. at 20. In deciding whether a stop is appropriate based on reasonable suspicion, a court must engage in a balancing test—balancing the governmental interest advanced by the seizure against the "intrusion upon the constitutionally protected interests of the private citizen" to be free from unnecessary seizure. *Id*. at 21. "Under *Terry*, police may stop a moving automobile in the absence of probable cause to investigate a reasonable suspicion that its occupants are involved in criminal activity." *Pals*, 805 N.W.2d at 774.

We have described a stop based on reasonable suspicion under *Terry* as an "investigatory stop." *E.g.*, *State v. Vance*, 790 N.W.2d 775, 781 (Iowa 2010); *Tague*, 676 N.W.2d at 204. Professor LaFave has noted that the purpose of a *Terry* stop is "to allow immediate investigation through temporarily maintaining the *status quo*. If reasonable suspicion exists, but a stop cannot further the purpose behind allowing the stop, the investigative goal as it were, it cannot be a valid stop." 4 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 9.3, at 482 (5th ed. 2012) (citation and internal quotation marks omitted). The *purpose* of a *Terry* stop, then, is to *investigate* a crime.

> [I]f the officer has a legitimate expectation of investigatory results, the existence of reasonable suspicion will allow the stop—if the officer has no such expectations of learning additional relevant information concerning the suspected criminal activity, the stop cannot be constitutionally permitted on the basis of mere suspicion.

Id. at 4.

We have said that "'[t]he principal function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot.'" *Vance*, 790 N.W.2d at 780 (quoting *State v. Richardson*, 501 N.W.2d 495, 497 (Iowa 1993)). Though Officer Lowe testified he initially believed the plate to be obstructed due to it being tinted, he also testified that he was able to clearly read and relay the plate information to dispatch as soon as he attempted to do so. *Once this ambiguity was resolved, there was no longer a need for further investigation.* If the State wants to rely on reasonable suspicion as justification for this stop, it must show that Officer Lowe was attempting to actively investigate whether a crime was occurring

> and that seizure was required in order to accomplish that purpose. The State did *not* make that showing. As a result, the State has not shown reasonable suspicion to justify the stop either under the Fourth Amendment or article I, section 8 of the Iowa Constitution. Because of our conclusion that reasonable suspicion was not present, we need not resolve the question of whether reasonable suspicion of a completed misdemeanor may support a stop under the Fourth Amendment or Article I, section 8 of the Iowa Constitution.

Tyler, 830 N.W.2d at ___, 2013 WL 1785988, at *8 (emphasis added).

Deputy Quist's report and initial testimony indicate that he observed Mass's vehicle "swerving" and crossing the white fog line "on multiple occasions." Assuming the deputy did observe behavior causing him to suspect the driver was impaired,[4] an investigatory stop was reasonable only to "resolve the ambiguity as to whether criminal activity is afoot." *See id.*

Once Deputy Quist stopped Mass, he interviewed Mass and assessed the condition of the vehicle. Deputy Quist testified repeatedly that prior to requesting consent to search he observed no signs of an impaired driver. Mass informed the deputy that he did indeed go into a ditch, but he did so to avert an accident because another vehicle moved into his lane forcing him to take evasive action. Once the deputy's investigation showed no signs that criminal activity was afoot and he returned Mass's documents back to him, the investigatory stop ceased to be reasonable.

---

[4] After reviewing the video at the suppression hearing, the deputy agreed that the video only shows one moment when Mass's vehicle approaches the fog line, but he testified that in his opinion the vehicle crossed the line. He then posited that the other incident must have not been captured on the recording because of an equipment delay. In our review of the video, the vehicle never crossed the fog line.

Alternately, the State argues the stop and detention were lawful as the officer was serving a community-caretaking function in response to the citizen's 911 call. A review of all of the applicable principles of this exception to the warrant requirement need not be repeated here as they are thoroughly discussed in *State v. Kurth*, 813 N.W.2d 270 (Iowa 2012). Suffice it to say that to determine whether the community-caretaking exception applies, our courts apply a three-step analysis. *See Kurth*, 813 N.W.2d at 277. We must consider "'(1) was there a seizure within the meaning of the Fourth Amendment?; (2) if so, was the police conduct bona fide community caretaker activity?; and (3) if so, did the public need and interest outweigh the intrusion upon the privacy of the citizen?'" *Id*. (quoting *State v. Crawford*, 659 N.W.2d 537, 541 (Iowa 2003)). We review community caretaking cases and make a reasonableness assessment according to the unique facts of each case. *Id.* We conduct an objective analysis of the circumstances and information available at the time of the stop to determine whether the exception applies; subjective motivations of the individual officer involved do not control. *Crawford*, 659 N.W.2d at 542. The State has the burden to establish "reasonableness" with specific and articulable facts that demonstrate state action was proper. *Kurth*, 813 N.W.2d at 277.

The parties agree that a seizure took place within the meaning of the Fourth Amendment. We will also assume the officer was serving a bona-fide caretaking function.[5] The third prong of the analysis involves "balancing the

[5] We assume a bona-fide caretaking function exists although we question whether an emergency can still exit after the operator has driven his vehicle nineteen miles down the

public need and interest furthered by the police conduct against the degree and nature of the intrusion upon the privacy of the citizen." *Crawford*, 659 N.W.2d at 542. However, the officer is limited to do no more "'than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance.'" *Kurth*, 813 N.W.2d at 278 (quoting *State v. Carlson*, 548 N.W.2d 138, 142 (Iowa 1996)).

Here, at least at the time Deputy Quist first requested to search Mass's vehicle if not earlier, the deputy was no longer determining if Mass needed assistance and was no longer exercising a caretaking function. At this juncture, we determine the degree and nature of the intrusion upon Mass's privacy outweighed the public's need and interest for safety. Accordingly, the traffic stop was no longer lawful and all evidence collected thereafter should have been suppressed. We reverse and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

---

road before being stopped, and where the video of the last three miles gives little indication of any emergency or the need for aid.