IN THE COURT OF APPEALS OF IOWA

No. 3-452 / 12-1855
Filed July 10, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KYLE R. STANLEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Butler County, Peter B. Newell, District Associate Judge.

A defendant convicted of operating while intoxicated contends the district court erred in failing to suppress evidence obtained during a traffic stop. **REVERSED AND REMANDED.**

David R. Johnson of Brinton, Bordwell & Johnson, Clarion, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, and Gregory M. Lievens, County Attorney, for appellee.

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

VAITHESWARAN, J.

Kyle Stanley appeals his judgment and sentence for operating a motor vehicle while intoxicated (first offense). He contends the district court should have suppressed evidence obtained following a stop of his vehicle.

I. Background Facts and Proceedings

At approximately 1:15 one spring morning, a deputy sheriff observed a vehicle enter the town of New Hartford and proceed west. He thought the driver, Kyle Stanley, might not have slowed down to the twenty-five mile-per-hour in-town speed, but he "was not able to get him on radar." He followed the vehicle through town and watched as the car took the second of two routes to Highway 57. Believing Stanley made an improper turn onto Highway 57, the deputy stopped the car.

Based on Stanley's demeanor, the deputy suspected he was intoxicated. He administered field sobriety tests and arrested him for operating while intoxicated.

The State charged Stanley with OWI first offense. Stanley moved to suppress evidence obtained following the stop on the ground that the stop violated the Fourth Amendment to the United States Constitution.[1] Following an evidentiary hearing, the district court denied the motion. Stanley subsequently agreed to a trial on the minutes of testimony. The court found him guilty and imposed sentence. This appeal followed.

---

[1] Stanley did not cite the comparable provision of the Iowa Constitution.

II. Analysis

The Fourth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, protects citizens against unreasonable searches and seizures. "A traffic stop is unquestionably a seizure under the Fourth Amendment." *State v. Tyler*, 830 N.W.2d 288, 292 (Iowa 2013). The stop is reasonable if it is supported by a warrant or if it falls within an exception to the warrant requirement. *State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997). The State relies on the probable cause exception or, alternately, on reasonable suspicion that criminal activity was afoot. Stanley contends neither doctrine applies. Our review of this constitutional issue is de novo. *Id.* at 99.

A. Probable Cause

"When a peace officer observes a violation of our traffic laws, however minor, the officer has probable cause to stop a motorist." *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004). The State asserts the deputy had probable cause to believe Stanley violated Iowa Code section 321.297 (2011), which, as a general matter, requires a vehicle to be driven on the right half of the roadway. We disagree.

The deputy followed Stanley for at least six blocks and observed no violations except a possible failure to slow down to the posted in-town speed limit. The deputy did not corroborate that observation with radar or by pacing the vehicle and did not support his claim of a speeding violation with even the most rudimentary investigation such as an estimate of the speed at which Stanley was

traveling.[2] When Stanley arrived at a stop sign preceding the sign at which he turned onto Highway 57, the deputy faulted him for failing to take an easy right onto Highway 57 and for sitting "at this stop sign for longer than what [he] would consider for a stop sign." The deputy did not assert that Stanley was obligated to take that route to the highway[3] or that his pause at the stop sign violated a rule of the road. As he pulled forward, so did Stanley.

At the next stop sign, Stanley made a sharp fishhook turn onto Highway 57. The deputy deemed this turn improper. In making this assessment, he relied on the manner in which Stanley's headlights came around "and shined back towards" the officer. He also relied on "the fact that to make that turn . . . is difficult, if you stop behind the stop sign; to make that turn and stay in your own lane." The deputy admitted he could not see Stanley's vehicle "totally the whole time" because the curve of the road onto which Stanley turned was banked. He also agreed that, because the highway was banked, he could not see the painted lines on the road. He conceded it was possible to make the turn as the defendant did and stay within one lane. Finally, the deputy agreed he was simply stating "the vehicle must have crossed over the center line."

---

[2] *See*, *e.g.*, *Evans v. State*, 93 So.3d 62, 64–65 (Miss. Ct. App. 2012) ("The record shows Officer Marolt witnessed Evans's vehicle traveling 105 miles per hour, which was in violation of the 65 miles-per-hour speed limit. The officer's observations were enough for him to determine that a speeding violation occurred. Thus, probable cause clearly existed for the traffic stop. This issue is without merit."); *State v. Dunham*, ___ A.3d ___, ___ , 2013 WL 765370, at *4 (Vt. 2013) ("Here, defendant Tatham was observed traveling forty miles per hour in a twenty-five-miles-per-hour zone—roughly 60% above the limit. Defendant Dunham was also observed traveling at a high rate of speed—forty-five miles per hour in a posted thirty-miles-per-hour zone. Because both defendants were estimated to be traveling in significant excess of the posted speed limits, where the speed differential would be obvious to a casual observer, we find such facts give strong indicia of reliability to support the trial court's findings.").

[3] He admitted he was not aware of any statute that was violated by failing to take that route.

We conclude the officer lacked probable cause to believe a traffic violation was committed. Accordingly, the warrantless stop of Stanley's vehicle cannot be premised on this exception.

B. Reasonable Suspicion

An officer may also stop a moving automobile "in the absence of probable cause if the police have reasonable suspicion to believe criminal activity is taking place." *State v. Pals*, 805 N.W.2d 767, 774 (Iowa 2011).

> When a person challenges a stop on the basis that reasonable suspicion did not exist, the State must show by a preponderance of the evidence that the stopping officer had specific and articulable facts, which taken together with rational inferences from those facts, to reasonably believe criminal activity may have occurred.

Tague, 676 N.W.2d at 204. The State contends the officer had reasonable suspicion to stop the vehicle based on the possibility of speeding, the longer-than-usual pause at the stop sign, and the fact that Stanley elected to bypass the first approach to Highway 57 and proceed to the approach that required a sharp turn onto the highway. These facts, without more, do not point to the need for further investigation to determine whether criminal activity was afoot. See *State v. Melohn*, 516 N.W.2d 24, 24 (Iowa 1994) ("The principal function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot."). The claimed speeding violation should have been investigated as it happened. As discussed, it was not. Stanley's failure to take the first approach to the highway signaled nothing about possible criminal activity, as the deputy eventually conceded. Finally, the so-called improper turn could have been an indicator of intoxication if the deputy saw it. As discussed, he did not. He simply speculated that there must have been a problem with the turn given the angle of

the headlights and the tightness of the maneuver. A "suspicion, curiosity, or hunch" that criminal activity may be occurring does not amount to reasonable suspicion. *Tague*, 676 N.W.2d at 204; *see also State v. Tyler*, 830 N.W.2d 288, 292–93, 298 (Iowa 2013) (stating the reasonable suspicion standard "may or may not be appropriate to apply to smaller offenses such as traffic violations" and stating "'[i]f 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'" (quoting 4 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 9.3, at 482 (5th ed. 2012)); *c.f. State v. Kreps*, 650 N.W.2d 636, 648 (Iowa 2002) (finding investigatory stop appropriate where vehicle made evasive maneuvers late at night and where a passenger was seen fleeing the vehicle); *State v. Melohn*, 516 N.W.2d 24, 25 (Iowa 1994) (stating investigatory stop appropriate when vehicle pulled over after it was seen fleeing an area where gunshots had been heard).

We conclude the officer lacked reasonable suspicion to believe criminal activity was afoot. The stop cannot be upheld on this basis.

III. Disposition

Because the stop was an unconstitutional seizure under the Fourth Amendment, all evidence obtained as a result of the stop was inadmissible. We reverse the district court's denial of Stanley's motion to suppress and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.