IN THE COURT OF APPEALS OF IOWA

No. 7-863 / 07-0446
Filed November 29, 2007

STATE OF IOWA,
Plaintiff-Appellant,

vs.

JAMIS COLE CHRISTENSEN,
Defendant-Appellee.

Appeal from the Iowa District Court for Marion County, Terry Wilson, District Associate Judge.

The State appeals from the district court's ruling on defendant's motion to suppress all evidence seized and statements made after a traffic stop. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Terry E. Rachels, County Attorney, and Marc Wallace, Assistant County Attorney, for appellant.

Gerald B. Feuerhelm, Des Moines, for appellee.

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

HUITINK, P.J.

The State appeals from the district court's ruling on Jamis Christensen's motion to suppress all evidence seized and statements made after a traffic stop. The State claims the reasonable suspicion and community caretaking exceptions to the Fourth Amendment's warrant requirement apply to this case and the district court erred by concluding otherwise. Because we conclude the stop was supported by reasonable suspicion, we confine our opinion to that issue and reverse and remand.

I. Background Facts and Proceedings.

The suppression record includes evidence of the following: At approximately 2:00 a.m. on November 18, 2006, Pella Police Officer John Van Haaften saw Christensen's vehicle drift from the north travel lane of Pella's Main Street into the parking lane, nearly strike the curb, and drift back into the north lane of travel. Van Haaften followed Christensen, and some blocks later he saw Christensen's vehicle again drift to the right and continue to travel on the white line marking the edge of the roadway. Van Haaften initiated a traffic stop after he concluded Christensen's vehicle was going to run off of the road and into the ditch. Christensen initially denied but later admitted he had been drinking. Christensen also submitted to and failed field sobriety tests. He submitted to a later breath test, which indicated his blood alcohol content was .119.

Christensen was charged with operating while intoxicated in violation of Iowa Code section 321J.2 (2005). Christensen filed a motion to suppress all evidence seized and statements made after the traffic stop, arguing Van Haaften

did not have reasonable suspicion to stop him. The district court granted the motion, stating:

> In the present case, the police officer observed the defendant move from the center lane going north to the right [parking] lane and then later move back to the center lane. Some blocks later the defendant moved to where his right tires were on the white line at the edge of the road. Without more information, the officer established only a mere suspicion or hunch that criminal activity had occurred. The officer's information did not rise to the level of specific or articulable facts to establish a reasonable suspicion. There was no evidence of any jerking movements, and there were only two incidents where the vehicle did not follow a straight line. Because there is no reasonable suspicion to stop Christensen's vehicle, the evidence attained from the stop should be suppressed.

The State was granted discretionary review, resulting in this appeal.

II. Standard of Review.

We review constitutional issues, such as this Fourth Amendment claim, de novo. *State v. Crawford*, 659 N.W.2d 537, 541 (Iowa 2003).

III. Reasonable Suspicion.

To justify a traffic stop, reasonable suspicion, not probable cause, to believe criminal activity has occurred or is occurring is all that is required. *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968). Mere suspicion, curiosity, or hunch of criminal activity, however, is insufficient. *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002). The State must show by a preponderance of the evidence that the officer had specific and articulable facts, which taken together with rational inferences from those facts, to reasonably believe criminal activity may have occurred. *State v. Heminover*, 619 N.W.2d 353, 357 (Iowa 2000), *overruled on other grounds by State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001).

In *State v. Tompkins*, 507 N.W.2d 736, 740 (Iowa Ct. App. 1993), we held an officer's observations of a vehicle weaving within its own lane of traffic give rise to reasonable suspicion. In *State v. Otto*, 566 N.W.2d 509, 511 (Iowa 1997), our supreme court stated:

> We do not believe *Tompkins* should be read to hold that observation of a vehicle weaving within one's own lane of traffic will always give rise to reasonable suspicion for police to execute a stop of a vehicle. Rather, the facts and circumstances of each case dictate whether or not [reasonable suspicion] exists to justify stopping a vehicle for investigation.

The court in *State v. Tague*, 676 N.W.2d 197, 205 (Iowa 2004), however, held a vehicle crossing over the left edge line of the roadway one time for a brief period was not sufficient to give rise to reasonable suspicion.

Based on our de novo review, we determine Van Haaften had the requisite reasonable suspicion to stop Christensen's vehicle for further investigation. As noted earlier, Van Haaften saw Christensen's vehicle cross from the designated lane of travel on Main Street into the parking lane and nearly hit the curb. He also saw Christensen again drift to the right and was concerned that Christensen was going to run off the road. The time of day is also a factor supporting Van Haaften's suspicion of criminal activity. *See Kreps*, 650 N.W.2d at 646. Even if these factors could independently be considered innocent, they collectively amount to a reasonable suspicion of criminal activity. *See id.* We accordingly reverse the district court's ruling and remand for further proceedings in conformity with our opinion.

REVERSED AND REMANDED.