IN THE COURT OF APPEALS OF IOWA

No. 7-864 / 07-0447
Filed November 29, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID WAYNE CROW,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James D. Coil, District Associate Judge (Motion to Suppress), Walter W. Rothschild, Judge (Trial), and Nathan A. Callahan, District Associate Judge (Sentencing).

Defendant appeals from his conviction of possession of methamphetamine. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and James G. Tomka, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brett Schilling, Brook Jacobsen, and Michelle Wagner, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

VOGEL, P.J.

David Crow appeals from his conviction of possession of methamphetamine. On appeal, Crow asserts that the district court erred in not granting his motion to suppress. Because we agree with the district court that the stop of the vehicle Crow was driving was supported by reasonable suspicion, we affirm.

I. *Facts and Proceedings*

On December 19, 2005 at approximately 1:30 a.m., Waterloo police officer, Robert Michael, observed a vehicle traveling in front of him and ran a routine license plate and driver's license check. The information revealed the car was registered to Billie Heasley, who was under the age of eighteen and prohibited to drive after 12:30 a.m., subject to some exceptions. Because the vehicle was traveling in front of Officer Michael, he could not see who was driving the vehicle but observed that the vehicle had two occupants. Officer Michael pulled over the vehicle to determine if the restrictive license statute was being violated. After stopping the vehicle, Officer Michael told the occupants why he had pulled over the vehicle and the passenger explained that Heasley was the passenger's girlfriend's daughter.

Officer Michael, observing the driver Crow to be nervous and breathing rapidly, ran both Crow's and the passenger's information through dispatch. He learned that Crow did not have a valid driver's license and that both Crow and the passenger had a history of narcotics arrests. Meanwhile, Officer Fangman and his drug dog arrived to provide backup due to the time of night. Officer Fangman twice walked the drug dog around the outside of the vehicle Crow was

driving and both times the dog indicated a narcotics odor on the driver's handle of the car. Officer Michael searched Crow's person and a vial of methamphetamine in a cigarette box was found in his pocket. The car was then searched but no other contraband was found.

Prior to trial, Crow filed a motion to suppress that alleged the stop of the vehicle he was driving violated his Fourth Amendment rights.[1] The district court denied his motion finding that Crow's rights had not been violated by the stop of the vehicle. After a bench trial, Crow was found guilty of possession of methamphetamine, enhanced as a second offense, in violation of Iowa Code section 124.401(5) (2005).

II. *Scope of Review*

Crow alleges that his constitutional rights have been violated; therefore our review is de novo. *State v. McGrane*, 733 N.W.2d 671 (Iowa 2007). This review requires us to "make an independent evaluation of the totality of the circumstances as shown by the entire record." *State v. Simmons*, 714 N.W.2d 264, 271 (Iowa 2006). We give deference to the factual findings of the district court due to its opportunity to evaluate the credibility of the witnesses, but we are not bound by such findings. *McGrane*, 733 N.W.2d at 675-76.

III. *Analysis*

The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution protects individuals against unreasonable searches and seizures. The Fourth Amendment to the Federal Constitution is

[1] The motion to suppress alleged multiple Fourth Amendment violations. However, on appeal Crow only challenges the stop of the vehicle he was driving.

binding on the states through the Fourteenth Amendment to the Federal Constitution. *State v. Carter*, 696 N.W.2d 31, 37 (Iowa 2005) (citing *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691, 6 L. Ed. 2d 1081, 1090 (1961)). The temporary detention of an individual during an automobile stop by police is a seizure under the Fourth Amendment. *State v. Heminover*, 619 N.W.2d 353, 357 (Iowa 2000) (citing *Whren v. United States*, 517 U.S. 806, 809-810, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89, 95 (1996)).

The Fourth Amendment imposes a general standard of reasonableness on all searches and seizures. *State v. Scott*, 409 N.W.2d 465, 467 (Iowa 1987). A warrantless search is per se unreasonable, unless the search falls within one of the recognized exceptions to the warrant requirement. *McGrane*, 733 N.W.2d at 676. One exception to the warrant requirement is set forth in *Terry v. Ohio*, which allows police officers to conduct an investigatory stop of an individual or a vehicle if supported by reasonable suspicion that criminal activity has occurred or is occurring. *State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997) (citing *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968)). Further, the United States Supreme Court specifically held that officers may conduct an investigatory stop of a vehicle to check the driver's license and the registration of the automobile if an officer has an articulable and reasonable suspicion that the driver is unlicensed, the automobile is not registered, or a passenger of the vehicle is subject to seizure for violation of the law. *Delaware v. Prouse*, 440 U.S. 648, 663, 99 S. Ct. 1391, 1401, 59 L. Ed. 2d 660, 673 (1979).

"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." *State v. Tague*, 676 N.W.2d 197, 204 (Iowa 2004) (citations omitted). An objective standard is used to judge whether the facts known to the officer at the time of the stop lead a reasonable person to believe the stop was appropriate. *Heminover*, 619 N.W.2d at 357 (citing *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880, 20 L. Ed. 2d at 906). If the State fails to carry its burden, any evidence obtained through the investigatory stop is inadmissible, regardless of its relevancy or probative value. *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002).

The sole question presented to us on appeal is whether the traffic stop of the vehicle driven by Crow complied with the Fourth Amendment, and specifically whether the officer had a reasonable suspicion to conduct an investigatory stop. In this case, the stop was not random, but rather the officer had particularized and objective information to justify the stop. Officer Michael conducted a license plate and driver's license check, which led to the discovery that the owner of the vehicle had a restricted driver's license. *See generally United States v. Ellison*, 462 F.3d 557, 561 (6th Cir. 2006) (holding "that a motorist has no reasonable expectation of privacy in the information contained on his license plate under the Fourth Amendment"). The vehicle owner's restrictive driver's license generally prohibited driving after 12:30 a.m. and at the time the officer stopped the vehicle it was approximately 1:30 a.m. *See Kreps*, 650 N.W.2d at 646 (noting that a curfew prohibited minors from being out past 11:00 p.m., which "would lead a reasonable police officer to suspect that persons in the vehicle he was following might be violating the curfew law."). It was reasonable for the officer to conclude

the driver of the car was the owner of the car. *United States v. Cortez-Galaviz*, 495 F.3d 1203, 1207 (10th Cir. 2007) ("[C]ommon sense and ordinary experience suggest that a vehicle's owner is, while surely not always, very often the driver of his or her own car."); *State v. Mills*, 458 N.W.2d 395, 397 (Iowa Ct. App. 1990). These facts give rise to a reasonable suspicion that the driver of the car was violating the conditions of a restricted driver's license; therefore it was reasonable for the officer to conduct an investigatory stop. *See Mills*, 458 N.W.2d at 397 ("Once the officers determined the vehicle's owner has a suspended driver's license, they had a reasonable suspicion sufficient to justify a stop."); *State v. Ewoldt*, 448 N.W.2d 676, 678 (Iowa Ct. App. 1989) (finding reasonable suspicion when the officers ran the car's license plates and discovered the vehicle owner's driver's license was revoked); *compare Cortez-Galaviz*, 495 F.3d at 1207 (holding officers had reasonable suspicion after an officer ran the vehicle's license plate and discovered the owner of the vehicle did not have automobile insurance); *and Ellison*, 462 F.3d at 563 (upholding a vehicle stop after an officer ran the vehicle's license plate and discovered the registered owner had a warrant for his arrest); *with United States v. Hayden*, 740 F. Supp. 650, 653 (S.D. Iowa 1989) (holding an officer did not have reasonable suspicion after running a license plate and finding no indication the defendant was unlicensed or the car unregistered).

Crow argues that the officer did not have a reasonable suspicion because the officer did not know the identity of the driver of the vehicle at that time. Because the function of an investigatory stop is to determine whether criminal activity is occurring, an officer is only required to have reasonable suspicion that

the driver of the vehicle was violating the law. *Kreps*, 650 N.W.2d at 642; *State v. Melohn*, 516 N.W.2d 24, 25 (Iowa 1994). The possibility that someone else was driving the vehicle does not negate reasonable suspicion. *Kreps*, 650 N.W.2d at 642 ("Clearly, the officers were not required to rule out all possibility of innocent behavior before initiating a brief stop and request for identification."); *Kinkead*, 570 N.W.2d at 101 ("[T]he function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot and, therefore, that the 'possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion.'"). Requiring Officer Michael to know that the registered owner of the vehicle had a restricted license *and* the registered owner was the driver of the vehicle would rise to requiring probable cause for an investigatory stop. *Cortez-Galaviz*, 495 F.3d at 1207; *Kinkead*, 570 N.W.2d at 101. "Requiring a more specific finding by law enforcement officials before a stop could be made would unduly hinder the enforcement of our laws." *Kinkead*, 570 N.W.2d at 101

We agree with the findings of the district court that reasonable suspicion justified the stop of the vehicle Crow was driving. Therefore the motion to suppress was properly overruled and we affirm.

AFFIRMED.