IN THE COURT OF APPEALS OF IOWA

No. 0-110 / 08-1532
Filed March 24, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LESLIE PAUL RENAUD,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Don C. Nickerson, Judge.

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

Mark C. Smith, State Appellate Defender, and Thomas J. Gaul, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, John P. Sarcone, County Attorney, and , Mark Taylor, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

SACKETT, C.J.

Leslie Paul Renaud appeals from his conviction of possession of marijuana, third offense, in violation of Iowa Code section 124.401(5) (Supp. 2007). He contends the court erred in denying his motion to suppress. We affirm.

According to the minutes of testimony, on May 18, 2008, Clive police officer, Mike Colby, noticed a car's rear left brake light was not working and stopped the car. Officer Colby learned the driver, defendant Leslie Paul Renaud, did not have a driver's license. Colby issued a citation to Renaud for driving without a license and gave him a warning about the brake light. He then asked Renaud for consent to search the car, and Renaud agreed to the search. Officer Colby discovered a bag of marijuana under the passenger's seat. The passenger of the car, Ruth Barnett Graham, denied the marijuana was hers and stated that Renaud gave the marijuana to her to hide while the officer was issuing the ticket. When Colby asked Renaud about the marijuana, Renaud stated that there should not be any marijuana in the car but he knew it did not belong to Ruth. Officer Colby arrested Renaud and allowed Ruth to leave with the car.

Renaud was charged with possession of marijuana, third offense. He filed a motion to suppress and the matter came on for hearing on September 15, 2008. Renaud contended there was no reasonable suspicion or probable cause to stop the vehicle because all brake lights were working and any evidence seized during the illegal stop must be suppressed. Officer Colby, Renaud, Ruth,

and Ruth's husband, Richard, testified. Officer Colby stated that he saw Renaud's left rear brake light was not functioning when he was behind Renaud at a stop light two blocks prior to making the stop. Ruth testified that when she drove the vehicle to her house after the stop, another police officer was behind her and did not stop the car. Ruth's husband testified that when Ruth arrived home with the car, he immediately checked all of the brake lights and they were all working. Renaud testified that when he was released from police custody he also checked the brake lights with Richard, and also had another friend, who is a certified mechanic, check the lights and found them to be working. A video of the stop was admitted as an exhibit. All parties agreed that they could not discern whether the brake light was working from the recording.

The district court denied the motion to suppress. It reviewed the video and also could not determine from it whether the brake light was operational. It concluded that it would have to weigh the credibility of the witnesses to reach a decision. It found the officer more believable and denied the motion. Thereafter, Renaud agreed to a bench trial based on the minutes of testimony. The court found Renaud guilty. Renaud appeals the conviction claiming the court erred in denying the motion to suppress.

Renaud argues the stop violated his constitutional right to be free from unreasonable searches and seizures. We review a ruling on a motion to suppress based on alleged violations of the Fourth Amendment de novo. *State v. Freeman*, 705 N.W.2d 293, 297 (Iowa 2005); *State v. Walshire*, 634 N.W.2d 625, 626 (Iowa 2001). Under this review, we make an independent evaluation of

the totality of the circumstances shown by the record. *State v. Lane*, 726 N.W.2d 371, 377 (Iowa 2007). We give deference to the district court's fact findings because it had the opportunity to make credibility assessments, although we are not bound by its findings. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001); *State v. Reisetter*, 747 N.W.2d 792, 793 (Iowa Ct. App. 2008).

Our federal and state constitutions protect citizens against unreasonable searches and seizures. U.S. Const. amend IV; Iowa Const. art. I, § 8. Evidence obtained in violation of these provisions is inadmissible no matter how relevant or probative it is. *State v. Manna*, 534 N.W.2d 642, 643-44 (Iowa 1995). When a defendant claims evidence was obtained through an illegal traffic stop, the State must prove by a preponderance of the evidence that the officer had probable cause to make the stop. *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004). "[I]t is well settled that a traffic violation, however minor, gives an officer probable cause to stop a motorist." *State v. Aderholdt*, 545 N.W.2d 559, 563 (Iowa 1996). Iowa Code section 321.387 (2007) requires all lighting equipment on motor vehicles to "be kept in working condition or . . . replaced with equivalent equipment."

The parties agree that if Renaud's rear brake light was not working, this would be a traffic violation supplying probable cause for the officer to make a traffic stop. The parties disagree as to whether Renaud's rear brake light indeed was not working when the officer made the stop. We have reviewed the testimony of each witness and the videotape. Due to the quality of the video, we too cannot determine whether Renaud's or any other car depicted on the video

had operating brake lights. The district court specifically assessed the credibility of the witnesses and concluded the State met its burden of showing the officer had observed a traffic violation and therefore had probable cause to make the stop. We defer to this finding as we are not in a better position to reassess the credibility of the witnesses. *See State v. Predka*, 555 N.W.2d 202, 206 (Iowa 1996) (giving weight to the credibility assessment of the district court in its evaluation of whether an officer observed a traffic violation providing probable cause for a traffic stop). Accordingly, we affirm the district court's motion to suppress ruling and Renaud's conviction.

AFFIRMED.

Doyle and Danilson, JJ., each concur specially.

DOYLE, J. (concurring specially)

I concur specially. Under the record presented, I agree that Officer Colby was authorized to stop Renaud's car, but I do not believe Colby's request for consent to search the car was justified. Colby's expansion of the scope of the stop by his consent inquiry to search was not supported in the record by any reasonable articulable suspicion of criminal activity beyond the purpose of the stop. Without such reasonable articulable suspicion of criminal activity beyond the purpose of the stop, I believe the expansion of the scope of the stop by consent inquiry was in violation of Renaud's rights under the Fourth Amendment and Article I section 8 of the Iowa Constitution to be free from unreasonable searches and seizures.[1] Since the issue was not raised or litigated below, it cannot be decided here, but it is saved for another day, perhaps in a postconviction relief proceeding.

"Once a lawful stop is made, an officer may conduct an investigation 'reasonably related in scope to the circumstances which justified the interference in the first place.'" *State v. Aderholdt*, 545 N.W.2d 559, 563 (Iowa 1996) (citing *United States v. Cummins*, 920 F.2d 498, 502 (8th Cir. 1990) (quoting *Terry v. Ohio*, 392 U.S. 1, 20, 88 S. Ct. 1868, 1879, 20 L. Ed. 2d 889, 905 (1968)), *cert. denied*, 502 U.S. 962, 112 S. Ct. 428, 116 L. Ed. 2d 448-49 (1991)). In conducting this investigation, a law enforcement officer may ask the individual for

---

[1] The subject is not without controversy. Close to a thousand appellate decisions are annotated in Thomas Fusco, Annotation, *Permissibility Under Fourth Amendment of Detention of Motorist by Police, Following Lawful Stop for Traffic Offense, to Investigate Matters Not Related to Offense*, 118 A.L.R. Fed. 567 (Supp. 2009). For a spirited discussion of the issue, *see* 4 Wayne R. LaFave, *Search and Seizure* § 9.3(d) & (e), at 389-97 (4th ed. 2004).

various documents related to driving, including a driver's license and registration, may ask the individual to sit in the patrol car, and may question the individual regarding the purpose of his or her travel and destination.[2] *Aderholdt*, 545 N.W.2d at 563-64. When an officer forms a reasonable suspicion of other wrongdoing during a lawful traffic stop, the officer may broaden the investigation. *Id*. at 564 ("If . . . the detainees' responses or actions raise suspicions unrelated to the traffic offense, the officer's inquiry may be broadened to satisfy those suspicions.")

> If reasonably related questions raise inconsistent answers, or if the licenses and registration do not check out, a [police officer's] suspicions may be raised so as to enable him to expand the scope of the stop and ask additional, more intrusive, questions. If, however, no answers are inconsistent and no objective circumstances supply the [police officer] with additional suspicion, the [police officer] should not expand the scope of the stop.

United States v. Ramos, 42 F.3d 1160, 1163 (8th Cir. 1994) (holding continued detention after stop for failure to wear seat belts was unreasonable where driver and passenger both produced valid drivers' licenses, were cooperative, said they were going to visit a sick cousin, and the truck was not stolen), *cert. denied,* 514 U.S. 1134, 115 S. Ct. 2015, 131 L. Ed. 2d 1013 (1995). Additionally,

> while the concern for officer safety in [the] context [of a routine traffic stop] may justify the "minimal" additional intrusion of ordering a driver . . . out of the car, it does not by itself justify the often considerably greater intrusion attending a full field-type search.

Knowles v. Iowa, 525 U.S. 113, 117, 119 S. Ct. 484, 488, 142 L. Ed. 2d 492, 498 (1998).

---

[2] The United States Supreme Court has rejected a "search incident to citation" exception to the Fourth Amendment's warrant requirement. *See Knowles v. Iowa*, 525 U.S. 113, 117-18, 119 S. Ct. 484, 487-88, 142 L. Ed. 2d 492, 497 (1998).

Under the record presented to us, there is nothing in Colby's statement attached to the minutes of testimony and no testimony from Colby that he had any basis to believe that Renaud had any drugs in the car. It appears without dispute that the sole reason for Colby's stop of Renaud's car was for the inoperable rear brake light. The record is devoid of factual basis upon which Colby could have formed a reasonable articulable suspicion to broaden his investigation.

Renaud was still "seized" when Colby asked to search. The stop had not concluded. Renaud had not been told he was free to go. It is reasonable to assume that Renaud did not feel free to leave at the time the search request was made, and that this feeling on his part was reasonable under all the circumstances. *See United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877, 64 L. Ed. 2d 497, 509 (1980). I conclude the *Terry* protections were still in effect at the time Colby made his request to search.

I would adopt the analysis and rationale found in *State v. Smith*, 184 P.3d 890 (Kan. 2008). After a thoughtful and detailed analysis of *Illinois v.Caballes*, 543 U.S. 405, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005), *Muehler v. Mena*, 544 U.S. 93, 125 S. Ct. 1465, 161 L. Ed. 2d 299 (2005), and other United States Supreme Court cases, the *Smith* court concluded:

> In light of [the Supreme Court's] recent affirmation of *Terry* principles in *Hiibel* [*v. Sixth Judicial Dist Court of Nev., Humboldt Cty.*, 542 U.S. 177, 124 S. Ct. 2451, 159 L. Ed. 2d 292 (2004)] and the careful limitation of the issue in *Caballes* and *Mena* to the question of whether there was an additional search or seizure, we are not persuaded that *Mena* can be read as an alteration or abandonment of the rules regarding the limited scope of a *Terry* stop.

Smith, 184 P.3d at 902. The court held that it was error to rule "that *Mena* allows law enforcement officers to expand the scope of a traffic stop to include a search not related to the purpose of the stop, even if a detainee has given permission for the search." *Id*.

The well-reasoned dissent in *State v. Washington*, 898 N.E.2d 1200, 1213 (Ind. 2009) (Rucker, J., dissenting), also adopts a similar view. In *Washington*, Justice Robert Rucker recognized that a number of courts look to the scope of the detention as well as its duration in determining whether there has been a Fourth Amendment violation in the context of a traffic stop. *Washington*, 898 N.E.2d at 1213 n.1 (Rucker, J., dissenting). He endorsed "this more reasoned view" and concluded "[a] police officer asking a stopped motorist about the presence of illegal substances, with no basis whatsoever to believe they are present, is patently unreasonable and thus inconsistent with the protections afforded by the Fourth Amendment." *Id*. at 1213 (Rucker, J., dissenting). I agree.

Additionally, I believe Colby's request to search for drugs, with no reasonable articulable suspicion to do so, violated Article I, section 8 of the Iowa Constitution. Article I, section 8 of the Iowa Constitution also contains a right to be free from unreasonable searches and seizures. Iowa Const. art. I, § 8. "We zealously guard our ability to interpret the Iowa Constitution differently from authoritative interpretations of the United States Constitution by the United States Supreme Court." *State v. Wilkes*, 756 N.W.2d 838, 842 n.1 (Iowa 2008) (citing *In re Detention of Garren*, 620 N.W.2d 275, 280 n.1 (Iowa 2000)). In interpreting

other similar state constitutional provisions regarding this issue, I find persuasive *State v. Fort*, 660 N.W.2d 415, 416 (Minn. 2003) ("Exercising our independent authority to interpret our own state constitution, we conclude that in the absence of reasonable, articulable suspicion a consent-based search obtained by exploitation of a routine traffic stop that exceed the scope of the stop's underlying justification is invalid.), and *State v. Carty*, 790 A.2d 903, 905 (N.J. 2002) ("We hold that, in order for a consent to search a motor vehicle and its occupants to be valid, law enforcement personnel must have a reasonable and articulable suspicion of criminal wrongdoing prior to seeking consent to search a lawfully stopped motor vehicle.).

The state motto of Iowa is: "Our liberties we prize and our rights we will maintain." It is inscribed on the Great Seal of Iowa and on our state flag. *See* Iowa Code §§ 1A.1, 1B.1 (2009). It is not just some empty marketing slogan. I recognize the importance of drug interdiction in combating drug crimes. However, there must be a balance struck between drug interdiction efforts and preservation of our rights and liberties. Requiring an officer to articulate a reasonable suspicion to expand the scope of the officer's inquiry is a very minimal requirement to preserve our citizens' rights and liberties.

DANILSON, J. (concurring specially)

I concur specially to add that the officer could have bolstered his credibility by writing a repair ticket or citation for the broken brake light. The failure to do so gives reason to question the officer's credibility when the officer uses this same traffic violation as a basis for the stop. However, Renaud did not present evidence from an independent certified mechanic to contradict the officer's testimony that his brake light was inoperable. Rather, Renaud relied solely upon his own testimony and the testimony of his friends. In these circumstances, I agree that we should defer to the credibility finding of the district court.