IN THE COURT OF APPEALS OF IOWA

No. 0-310 / 09-0979
Filed May 26, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIELLE ELIZABETH CASEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Kossuth County, Don E. Courtney, Judge, and Donald J. Bormann, District Associate Judge.

Danielle Casey appeals her conviction and sentence for operating while intoxicated, first offense, following the district court's denial of her motion to suppress. **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, and Todd Holmes, County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J., takes no part.

DANILSON, J.

Danielle Casey appeals her conviction and sentence for operating while intoxicated (OWI), first offense, in violation of Iowa Code section 321J.2 (2007). Casey contends the district court erred in denying her motion to suppress and finding the arresting officer had reasonable grounds to stop her vehicle. We reverse and remand.

I. Background Facts and Proceedings.

At around 2:45 a.m. on November 19, 2007, Algona Police Officer Kendall Pals was parked in his patrol car in a residential area on East Lucas Street, just west of Highway 169 when he observed defendant Casey's vehicle driving "kind of slow" southbound on Highway 169, and turn east onto Lucas Street. A few minutes later, Casey's vehicle reappeared, again driving slow as it proceeded south on Highway 169 and again turned east onto Lucas Street. The vehicle pulled into the parking area of a residential driveway on Lucas Street. The vehicle stopped for approximately thirty seconds, but no one entered or exited, and the dome light was not observed. Officer Pals was familiar with the occupants of the residence at which Casey was parked, and did not recognize Casey's vehicle to be one of theirs. The vehicle then reversed and headed in the opposite direction, west on Lucas Street back to Highway 169.

At this point, Officer Pals pulled out to follow the vehicle, and activated his emergency lights. Casey stopped the vehicle immediately. Officer Pals approached the vehicle and asked Casey what she was doing. Casey was holding her cell phone in her hand, and responded that she was looking for someone's house in the neighborhood. Officer Pals noticed a beer can in the

console area of the front seat and detected the smell of alcohol. He also noticed that that Casey seemed a little slow and confused. Casey failed a preliminary breath test and field sobriety testing, and was arrested for OWI. Ultimately, a blood test revealed that Casey had a blood alcohol concentration of .287, more than three times the legal limit.

Casey filed a motion to suppress, alleging Officer Pals lacked reasonable grounds to stop her vehicle. Following a suppression hearing, the district court denied the motion. Pursuant to stipulation of the parties, the case was submitted to the district court for a bench trial on the minutes of testimony. The court found Casey guilty as charged and sentenced her on June 1, 2009. Casey now appeals from the district court's denial of her motion.

II. Standard of Review.

Our review of the district court's denial of defendant's suppression motion is de novo. *State v. Feregrino*, 756 N.W.2d 700, 703 (Iowa 2008). We make an independent evaluation of the totality of the circumstances as shown by the entire record. *State v. Crawford*, 659 N.W.2d 537, 541 (Iowa 2003). We consider both the evidence presented during the suppression hearing and that introduced at trial. *Id*. We give deference to the district court's fact findings due to its opportunity to assess the credibility of witnesses, but are not bound by those findings. *Id*.

III. Discussion.

Casey contends the record in this case reveals no legal basis for Officer Pals's decision to stop her vehicle. In denying Casey's motion to suppress, the district court determined that the stop was supported by reasonable suspicion

and under the community caretaking exception. The State concedes the stop was not supported by reasonable suspicion of criminal activity, and we agree. Therefore, we limit our review to the issue of whether Officer Pals was legitimately engaged in a community caretaking function at the time of the stop.

Under the Fourth Amendment of the United States Constitution, a search conducted without a search warrant is per se unreasonable unless the circumstances come within an exception to the warrant requirement. *State v. Christopher*, 757 N.W.2d 247, 249 (Iowa 2008). Unless the State demonstrates by a preponderance of the evidence that a recognized exception to the warrant requirement is applicable, evidence obtained through an illegal search is inadmissible. *State v. Lloyd*, 701 N.W.2d 678, 680 (Iowa 2005); *State v. Naujoks*, 637 N.W.2d 101, 107 (Iowa 2001).

An exception to the warrant requirement was enunciated by the United States Supreme Court in *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S. Ct. 2523, 2528, 37 L. Ed. 2d 706, 714-15 (1973), where the Court found police officers frequently "engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." When evidence is discovered in the course of performing legitimate community caretaking or public safety functions, the exclusionary rule is not applicable. *State v. Mitchell*, 498 N.W.2d 691, 694 (Iowa 1993).

In determining whether police officers' conduct comes within the community caretaking function, we consider a three-step analysis: (1) whether there was a seizure within the meaning of the Fourth Amendment; (2) if so,

whether the police were engaged in bona fide community caretaker activity; and (3) if the first two factors are met, then the court must balance the public's needs and interests against the intrusion upon the person's privacy. *Crawford*, 659 N.W.2d at 543.

We address each of these three factors in turn. The first issue is whether there was a "seizure" within the meaning of the Fourth Amendment. An investigatory stop of a vehicle, even though it is temporary and for a limited purpose, is a seizure for purposes of the Fourth Amendment. *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002). Furthermore, "[i]mplicit in any community caretaking case is the fact that there has been a seizure within the meaning of the Fourth Amendment. Otherwise there would be no need to apply a community caretaking exception." *Crawford*, 659 N.W.2d at 543.

The next factor is whether Officer Pals was engaged in a bona fide community caretaking activity when he stopped Casey's vehicle to see if she was lost and in need of assistance. There are three types of community caretaking activities: (1) emergency aid; (2) automobile impoundment/inventory; and (3) acting as a public servant. *Id.* at 541. An officer may be acting as a public servant in assisting a motorist with a flat tire, for example. *Id*. (citation omitted).

Under the community caretaking function, law enforcement officers may stop a vehicle without having witnessed a traffic violation or any other criminal activity if the stop is in the interest of public safety. *State v. Tague,* 676 N.W.2d 197, 204 (Iowa 2004). However, even for public safety issues, an officer must have a reasonable and articulable basis for a stop. *Crawford*, 659 N.W.2d at 543 ("The specific-and-articulable-facts standard is of course less than the probable-

cause requirement applied in criminal searches."). We review a stop based on the community caretaking function using an objective standard: "whether the facts available to the officer at the time of the stop would lead a reasonable person to believe that the action taken by the officer was appropriate." *Tague,* 676 N.W.2d at 204.

We note that in *State v. Bakewell*, 730 N.W.2d 335, 338-39 (Neb. 2007), the officer's stop was found to be an exercise of the community caretaking exception when the officer believed the defendant was lost, and the defendant's vehicle appeared to cross the center line, almost came to a complete stop in the middle of the highway, and eventually pulled onto the shoulder of the highway. On the other hand, in *U.S. v. Dunbar*, 470 F. Supp. 704, 706-08 (D. Conn. 1979), the court found there was not a valid public safety concern justifying the stop of the defendant's vehicle when the officer believed the defendant was lost. Similarly, in *Poe v. Commonwealth*, 169 S.W.3d 54, 58-59 (Ky. Ct. App. 2005), the officer was not justified under a community caretaking function in stopping the defendant based on the belief that the defendant was lost.

With the foregoing principles in mind, we now address the facts in this case. At the suppression hearing, Officer Pals testified that he saw Casey's vehicle drive slowly in a residential area and make the same exact turn twice within a matter of several minutes. According to Officer Pals, the vehicle then pulled into the parking area of a residence driveway for thirty seconds, but no one got out and the dome light did not turn on. Officer Pals testified that he was familiar with the owners of the residence and their vehicles and did not recognize Casey's vehicle. Officer Pals testified that the vehicle then backed out and drove

slowly in the opposite direction. At that point, Officer Pals pulled behind Casey's vehicle and activated his emergency lights. As Officer Pals testified:

> Well, I didn't really know what was going on there. I didn't know if someone was lost, if there was some criminal activity, I didn't know, you know, some sort of medical problem. I just didn't know, but I knew it was in this neighborhood, driving slowly, pulled into a parking space, so it was kind of a total—total of the circumstances there that I felt at least I should do a brief investigative stop to determine if some sort of problem whether medical, criminal, or what it might be.

Officer Pals further testified, however, that while Casey was driving she made no furtive movements and did not exit her vehicle. Officer Pals conceded that Casey committed no traffic violation. He testified that the residential area in which Casey was driving did not have frequent criminal activity. Further, the record does not reveal any indications that Casey was engaged in criminal activity or needed any kind of assistance at the time she was parked in the residential driveway. These facts are consistent with someone who was merely temporarily lost, approached the wrong house, and turned around. *See, e.g.*, *Dunbar*, 470 F. Supp. at 706-08; *Poe*, 169 S.W.3d at 58-59; *but see Bakewell*, 730 N.W.2d at 338-39.

These facts only provided Officer Pals with a hunch. Officer Pals had no objective reasonable belief that an emergency existed, or that something was wrong with either the vehicle or Casey based upon the facts submitted. The fact that Casey may have temporarily lost her way (albeit at 2:45 a.m.) cannot support a stop on the basis of the community caretaking function exception to the Fourth Amendment, at least without more supporting facts. Officer Pals's belief

that Casey may need directions is not a valid basis to turn on his emergency lights and stop her in these circumstances.

We conclude the evidence does not support a finding that Officer Pals had specific and articulable public safety concerns which created a sufficient reason for the stop. *Crawford*, 659 N.W.2d at 542-43. Accordingly, we reverse the district court's denial of Casey's motion to suppress and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.