

**IN THE COURT OF APPEALS OF IOWA**

No. 2-231 / 11-1065  
Filed May 9, 2012

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TOMMY TYLER JR.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, William A. Price, District Associate Judge (suppression hearing) and Scott D. Rosenberg (trial), Judge.

Defendant appeals from his conviction for operating while intoxicated asserting the district court erred in not granting his motion to suppress based on a lack of probable cause to justify the traffic stop. **AFFIRMED.**

Gary Dickey of Dickey & Campbell Law Firm, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, John P. Sarcone, County Attorney, and David Porter, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

**VOGEL, P.J.**

Defendant, Tommy Tyler Jr., appeals from his conviction for operating a motor vehicle while intoxicated, second offense, in violation of Iowa Code section 321J.2 (2009). Tyler contends the district court should have suppressed the evidence obtained following the traffic stop of his vehicle because the police officer did not have probable cause to justify the stop. Upon our review of the record, we affirm Tyler's conviction.

**I. BACKGROUND AND PROCEEDINGS.**

In the early morning hours of October 13, 2010, Officer Lowe was on duty in his marked police vehicle located in the parking lot of a car wash. Lowe observed a vehicle, driven by Tyler, execute a turn and saw what appeared to be a tinted license plate cover on the front license plate of Tyler's vehicle, which obstructed Lowe's view of the plate. Lowe pulled his vehicle behind Tyler's and observed the back license plate also had a cover over it which caused the plate to be obstructed or blurred. Lowe initiated a traffic stop and as the vehicles came to a stop, Lowe was able to read out Tyler's license plate to dispatch.

Lowe informed Tyler the reason for the stop was the obstructing license plate covers. Lowe smelled alcohol coming from Tyler and inquired whether Tyler had been drinking. Tyler initially admitted to drinking two beers and then claimed he had not been drinking at all. Lowe summoned Officer Hanssen to the scene to conduct field sobriety tests, which Tyler failed. A subsequent breathalyzer test indicated Tyler had a blood alcohol content of .147.

Tyler was charged on November 9, 2010, with operating a motor vehicle while under the influence of alcohol, second offense. Tyler filed a motion to

suppress all evidence following the stop of his vehicle claiming the officer did not have probable cause to believe a traffic violation had been committed. At the suppression hearing, Officer Lowe testified as to the details of his observations and the stop. Tyler also testified and offered testimony from Donna Irvin, a friend who was driving just ahead of Tyler on the night in question in a vehicle with the same license plate covers, and Delbert King, a private investigator who performed a re-creation of the night in question and concluded Tyler's license plates were at all times visible and unobstructed. On February 8, 2011, the district court denied Tyler's motion to suppress finding each of the obscured plates would constitute a violation of Iowa Code section 321.37(3)<sup>1</sup> and this provided Officer Lowe with reasonable grounds to stop Tyler's vehicle.

The case proceeded to a bench trial on May 6, 2011, and the district court found Tyler guilty as charged. Tyler was sentenced on June 17, 2011, to a two-year term of incarceration, with all but seven days suspended. Tyler was placed on probation for two years, and ordered to pay a fine of \$1850. Tyler appeals claiming the district court erred in denying his motion to suppress.

## **II. SCOPE OF REVIEW.**

As Tyler claims his constitutional rights were violated when the officer stopped his vehicle without probable cause, our review is de novo. *State v. Louwrens*, 792 N.W.2d 649, 651 (Iowa 2010). We conduct an independent evaluation of the totality of the circumstances as shown in the entire record,

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<sup>1</sup> Iowa Code section 321.37(3) provides: "It is unlawful for the owner of a vehicle to place any frame around or over the registration plate which does not permit full view of all numerals and letters printed on the registration plate."

giving deference to the trial court's findings regarding the credibility of witnesses. *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004).

### III. MOTION TO SUPPRESS.

Tyler claims this case boils down to two choices, either: (1) his vehicle had a tinted license plate cover that obstructed its view, in which case the officer had probable cause to initiate the traffic stop; or (2) his vehicle did not have a tinted cover, in which case the officer had no valid reason to stop his vehicle. He asserts because the overwhelming evidence in the record establishes his vehicle did not have a tinted license plate cover, the State cannot meet its burden to prove the stop was constitutional.<sup>2</sup>

The Fourth Amendment of the United States Constitution and article I, section 8 of the Iowa constitution provide protection to individuals against unreasonable searches and seizures. *State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997). Generally a search or seizure must be conducted pursuant to a warrant in order to comply with these constitutional provisions, unless an exception applies. *Louwrens*, 792 N.W.2d at 651. One such exception permits police officers to stop a vehicle when the officer observes a traffic violation, no matter how minor. *Tague*, 676 N.W.2d at 201. The burden is on the State to

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<sup>2</sup> Tyler asserts to the extent his claim is not sustained by the federal constitution, we ought to grant him relief under the Iowa constitution, citing the supreme court's statement in *State v. Pals*, 805 N.W.2d 767, 771 (Iowa 2011) that "we jealously protect this court's authority to follow an independent approach under our state constitution." While we do reserve the right to interpret article I, section 8 of the Iowa constitution differently from the Fourth Amendment of the United States Constitution, Tyler has not asserted how the state constitutional provision should be interpreted differently from its federal counterpart. We will therefore interpret the provisions simultaneously. *Pals*, 805 N.W.2d at 772.

prove by a preponderance of the evidence that the officer had probable cause<sup>3</sup> to stop the vehicle. *Louwrens*, 792 N.W.2d at 651. “Probable cause exists if the totality of the circumstances as viewed by a reasonable and prudent person would lead that person to believe that a crime has been or is being committed and that the arrestee committed or is committing it.” *Tague*, 676 N.W.2d at 201. If the State fails to sustain its burden, the evidence obtained as a result of the stop must be suppressed. *Louwrens*, 792 N.W.2d at 651–52.

In this case, Officer Lowe testified at the suppression hearing that he stopped Tyler due to what he observed to be tinted license plate covers on both the front and rear of Tyler’s vehicle, which obstructed his view of the license plates. Having a cover or frame that does not permit a full view of the license plate is a violation of Iowa Code section 321.37(3). Tyler asserts the overwhelming evidence he submitted at the hearing established he did not have tinted license plate covers. He offered into evidence: (1) photos taken of his license plate with the cover; (2) the testimony of a friend who had the same plate covers on her vehicle as Tyler had on his, and who was driving just ahead of Tyler on the night in question; and (3) the testimony of a private investigator who

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<sup>3</sup> The parties dispute whether the officer in this case was required to have probable cause or reasonable suspicion in order to stop Tyler’s vehicle. Upon our review of the relevant case law, it appears the issue of whether a stop for a misdemeanor or civil infraction can be based only on reasonable suspicion is unresolved. See *Pals*, 805 N.W.2d at 774–75 (noting the “[f]ederal courts are divided on this issue of whether the Fourth Amendment per se prohibits police from stopping a vehicle based only on a reasonable suspicion of a completed misdemeanor or civil infraction”). However, like *Pals*, we need not resolve this issue as we find the stop of Tyler’s vehicle was constitutional based on probable cause of an ongoing civil infraction. *Id.* at 774. As probable cause is a higher standard than reasonable suspicion, our determination that the stop was justified by probable cause subsumes a determination of reasonable suspicion. See *State v. Kreps*, 650 N.W.2d 636, 642 (Iowa 2002) (noting reasonable suspicion requires considerably less proof of than probable cause).

conducted a re-creation of the night in question concluding Tyler's license plates were at all times visible and unobstructed. Because of this evidence, he asserts the officer lacked probable cause to stop him.

We agree with the district court the State satisfied its burden to prove Officer Lowe had probable cause the plate covers constituted a violation of section 321.37(3). The district court found Officer Lowe's testimony credible, and we give deference to that determination. See *Tague*, 676 N.W.2d at 201. The district court also found the private investigator's testimony not persuasive as he observed Tyler's vehicle under different conditions and lighting than existed on the night in question. While Tyler would like to boil this case down to a question of whether or not his license plate covers were in fact tinted, we note "an officer's reasonable mistake of fact supporting his belief that a traffic violation or other criminal activity is underway will suffice as probable cause for a stop." *Louwrens*, 792 N.W.2d at 652.

We find based on the objective probable cause standard, the totality of the circumstances would give a reasonable and prudent person observing Tyler's vehicle on the night in question probable cause to believe Tyler's license plate covers obstructed the view of the plates in violation of section 321.37(3). We therefore affirm the district court's denial of Tyler's motion to suppress, and thereby affirm his conviction.

**AFFIRMED.**