

IN THE COURT OF APPEALS OF IOWA

No. 6-373 / 05-1242
Filed August 9, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DEAN WILLIAM COSSEL,
Defendant-Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,
District Associate Judge.

Dean William Cossel appeals his conviction for operating while
intoxicated, third offense. **AFFIRMED.**

Gerald Feuerhelm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney
General, R. Steven Johnson, County Attorney, and Scott W. Nicholson, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

MILLER, J.

Dean William Cossel appeals his conviction for operating while intoxicated (OWI), third offense. He contends the district court erred in denying his motion to suppress for lack of reasonable suspicion to stop his vehicle. We affirm.

On January 14, 2005, at approximately 10:00 p.m. Iowa State Trooper Nathan Andrews and Cossel passed each other while driving in opposite directions on a street in the town of Reasnor, Iowa. Trooper Andrews testified he observed in his rearview mirror that Cossel's rear license plate light was not working. Andrews turned his vehicle around and followed Cossel's vehicle for a short distance to verify the license plate light was out and then stopped Cossel in front of Cossel's home for the equipment violation. Andrews told Cossel why he was stopping him. Cossel did not dispute Andrews's statement that the light was out or ask to get out and check the light.

During the conversation Andrews noticed Cossel smelled strongly of an alcoholic beverage and slightly of marijuana. Cossel admitted he had been drinking and had smoked some marijuana. He also told Andrews he did not have a driver's license. Cossel failed the horizontal nystagmus field sobriety test and tested over .08 on the preliminary breath test. Based upon these tests and his conversation with Cossel, Andrews arrested Cossel for OWI and driving while barred. There is no evidence in the record Cossel was ever issued a citation for not having his rear plate illuminated. Trooper Andrews then transported Cossel to the sheriff's office where he consented to a breath sample which showed an alcohol concentration of .216.

The State charged Cossel, by trial information, with OWI, third offense, in violation of Iowa Code section 321J.2 (2005). Cossel filed a motion to suppress, claiming Trooper Andrews did not have the requisite reasonable suspicion to stop his vehicle because his license plate light was in fact functioning. A hearing was held on the motion. Cossel testified his license plate light was working shortly before he left the bar on the evening in question and the light was working the next morning when he checked it. Allen Lundberg, who had been drinking at the same bar as Cossel on the night of the arrest also testified at the hearing. Lundberg testified that when he arrived at the bar that evening he noticed Cossel's light was working.¹

Lynnae Osterson, Cossel's niece, also testified for Cossel at the suppression hearing. She stated that on the same night she was also stopped by a state trooper in Reasnor at approximately 10:30 p.m. for allegedly crossing the center line. Osterson testified the trooper asked her whether there was any drinking going on, she answered no, and the trooper let her go without issuing her a citation. She did not identify the trooper who stopped her by name.

The district court denied the motion to suppress, finding Trooper Andrews's testimony that he had observed Cossel's license plate light was not working was more credible than Cossel's and Lundberg's testimony to the contrary, and thus Andrews had the authority to stop Cossel. In making this credibility determination the court noted that both Cossel and Lundberg had been drinking on the night in question which diminished the reliability of their

¹ Lundberg was also stopped and charged with OWI the same night as Cossel, also filed a motion to suppress challenging the stop, and the hearing on his motion was held together with Cossel's.

testimony, and that both had a penal interest in the outcome of their suppression motions.

Cossel appeals the district court's denial of his motion to suppress contending the stop of his vehicle violated his state and federal constitutional rights to be free from unreasonable search and seizure. He argues there was not reasonable suspicion for Trooper Andrews to stop his vehicle because his license plate light was functioning properly. He also suggests "Trooper Andrews was stopping vehicles on the hunch that they might be drinking and driving and then subsequently establishing a reason for the stop which would pass constitutional muster."

Cossel's challenge to the vehicle stop is based on his constitutional right to be free from unreasonable search and seizure, as guaranteed by the Fourth Amendment of the United States Constitution² and article I, section 8 of the Iowa Constitution. These federal and state provisions are usually deemed to be identical in scope, import, and purpose. *State v. Beckett*, 532 N.W.2d 751, 755 (Iowa 1995). We review this alleged constitutional violation de novo in light of the totality of the circumstances as shown by the entire record. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). "We give deference to the district court's fact findings due to its opportunity to assess the credibility of witnesses, but we are not bound by those findings." *Id.* In reviewing a district court ruling on a motion to suppress evidence we may give deference to its credibility findings. *State v. Lovig*, 675 N.W.2d 557, 562 (Iowa 2004).

² The rights guaranteed in the Fourth Amendment apply to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655-81 S. Ct. 1684, 1694, 6 L. Ed. 2d 1081, 1090 (1961).

An officer may “stop an individual or vehicle for investigatory purposes based on a reasonable suspicion that a criminal act has occurred or is occurring.” *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002). The purpose of such a stop is to “allow a police officer to confirm or dispel suspicions of criminal activity through reasonable questioning.” *Id.* “[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). Section 321.388 requires a vehicle’s rear license plate to be illuminated so as to render it visible from a distance of fifty feet at all times the head lamps are lighted. Officers are not bound by their true reasons for the stop as long as the objective facts available to the officers at the time provide a reasonable suspicion of criminal activity. *State v. Predka*, 555 N.W.2d 202, 205 (Iowa 1996). In addition, a defendant’s “direct interest in the outcome of the hearing” can weigh against the credibility of the defendant’s testimony. See *Missman v. Iowa Dept. of Transp.*, 653 N.W.2d 363, 367 (Iowa 2002) (citation omitted).

Based on our de novo review and after giving appropriate deference to the district court’s credibility determinations, we agree with its reasons for finding Trooper Andrew’s testimony more credible than contrary testimony by Cossel and witnesses testifying on his behalf. Andrews testified he observed that Cossel’s rear license plate was not illuminated, in violation of section 321.388. The evidence presented by Cossel did not give the court any persuasive, compelling reason to doubt Andrews’s veracity. Therefore, we conclude Trooper Andrews had a reasonable suspicion a traffic violation was occurring and thus

had probable cause to stop Cossel's vehicle. The district court did not err in denying Cossel's suppression motion. We affirm Cossel's conviction.

AFFIRMED.