

IN THE COURT OF APPEALS OF IOWA

No. 6-689 / 05-1873
Filed September 21, 2006

STATE OF IOWA,
Plaintiff-Appellant,

vs.

RAYMOND NIEVES-RIVERA,
Defendant-Appellee.

Appeal from the Iowa District Court for Woodbury County, Michael S. Walsh, Judge.

The State appeals the district court's order suppressing evidence obtained during a traffic stop. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Adams, Assistant Appellate Defender, for appellee.

Jennifer Solberg, Public Defender's Office, Sioux City, for appellee.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Brigit Barnes, Assistant County Attorney, for appellant.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

The State appeals the order of the district court granting defendant's motion to suppress evidence obtained during a traffic stop.

At approximately 1:40 a.m. on August 4, 2005, Officer Thad Boyer of the Sioux City Police Department observed a vehicle operating approximately 150 to 200 feet in front of him. He could not see that its rear license plate was illuminated. Boyer positioned his police car approximately 100 to 120 feet behind the vehicle and turned off his headlights momentarily, but he could still not see "any sort of light on the rear license plate." Boyer then activated his overhead lights and initiated a traffic stop pursuant to Iowa Code section 321.388 (2005), which requires that "[e]ither the rear lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear."

Boyer made contact with the driver, later identified as Raymond Nieves-Rivera, and told him the light was not working. Boyer and Nieves-Rivera went around to the back of the vehicle and Boyer cupped his hand over the light. Boyer observed the light was actually working, but was "very dim." When they observed the light, Boyer's car was positioned about twenty-five feet behind Nieves-Rivera's vehicle, and the car's overhead red lights, headlights, and floodlights were all activated. Boyer admitted he could not see the letters on the license plate because of the reflection.

Following Boyer's request for identification, Nieves-Rivera provided Boyer with a false name, but no identification. Boyer arrested Nieves-Rivera for no operator's license and subsequently searched the car incident to the arrest.

Methamphetamine was found in the vehicle during the search. Nieves-Rivera was charged with possession with intent to deliver a controlled substance; drug tax stamp violation; and driving while license barred.

Nieves-Rivera filed a motion to suppress the evidence obtained during the stop under the Fourth and Fourteenth Amendments to the U.S. Constitution and article 1, section 8 of the Iowa Constitution. The State resisted the motion, alleging that Boyer had probable cause to stop the vehicle and that even if Boyer was factually mistaken regarding a violation under section 321.388, such mistake did not invalidate the traffic stop.

Following a hearing on the motion, the district court found there was no evidence “as to any observation of the extent of the illumination of the rear plate from fifty feet or less as the vehicles were moving.” And, no reasonable inferences could be drawn from the officer’s observation from 100 to 120 feet away. Thus, the court found no showing of a violation under section 321.388 occurred, and the court sustained Nieves-Rivera’s motion to suppress. The State’s application for discretionary review was granted. On appeal, the State asserts the district court erred in granting the motion. Our review is de novo. *State v. Lloyd*, 701 N.W.2d 678, 680 (Iowa 2005).

The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution protect individuals against unreasonable searches and seizures by government officials. *State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997). An officer may stop an individual or vehicle for investigatory purposes based on a reasonable suspicion, supported by specific and articulable facts, that a criminal act has occurred or is occurring. *Id.* (citing

Terry v. Ohio, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968)). “The existence of a reasonable suspicion is based on 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.” *Id.*

As noted, Iowa Code section 321.388 requires legibility within fifty feet. At the hearing, Officer Boyer testified:

Q: How far back were you when you turned off your headlights to further investigate the lack of illumination in the rear license plate? A: I was probably about 100 to 120 feet.

Q: What happened after that? A: Once I determined that I did not see a license plate light in operation, I initiated a traffic stop by turning on my overhead lights.

Boyer also testified that once he stopped the vehicle and cupped his hand around the rear light, he discovered it was working, but it was “very dim.” There was no evidence the license plate was not legible from “fifty feet to the rear.”

“When the facts giving rise to an arrest do not constitute an offense, no reasonable cause exists to stop the defendant.” *State v. Malloy*, 453 N.W.2d 243, 245 (Iowa Ct. App. 1990). In *Malloy*, the defendant was stopped for failing to use his turn signal; however, this court found he was not required to use his turn signal under the circumstances that existed and therefore, the officers had no reasonable cause to stop his vehicle. And, in *State v. Baldwin*, 396 N.W.2d 192 (Iowa 1986), the Iowa Supreme Court found an officer who was mistaken in his understanding of the legal requirements for a temporary license card could not rely on an alleged violation of the mistaken requirements as a reasonable basis for impounding a vehicle. *Cf. Lloyd*, 701 N.W.2d at 681 (officer could rely on reasonable mistake of fact that defendant was operating his car without

license plates); *Kinkead*, 570 N.W.2d at 101 (muffler was later determined to be operating properly but such determination did not invalidate the otherwise lawful stop; court distinguished *Malloy* because the statute in *Malloy* was “clearly not applicable at the time of the stop under the circumstances presented”); *State v. Jackson*, 315 N.W.2d 766, 767 (Iowa 1982) (reasonable mistake of fact that vehicle did not have license plates displayed).

Here, Officer Boyer testified he could not see the license plate’s numbers or letters from 100 feet because the plate was not properly illuminated. After initiating the traffic stop and approaching the vehicle, he discovered the rear light was working. Nonetheless, there was no evidence Boyer observed the license plate from fifty feet away prior to the stop—a necessity in making a reasonable determination of a statutory violation under section 321.388. Thus, Boyer’s belief that Neives-Rivera was violating section 321.388 was not objectively reasonable given that Boyer did not get any closer than 100 feet to reasonably determine whether the light illuminated the plate enough to make it legible from fifty feet before initiating a traffic stop. There was no reasonable basis to stop Nieves-Rivera, and the district court did not err in granting the motion to suppress.

AFFIRMED.