

IN THE COURT OF APPEALS OF IOWA

No. 7-199 / 06-0945

Filed May 9, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANDREIA CRISTINA FAGA,
Defendant-Appellant.

Appeal from the Iowa District Court for Adair County, Martha L. Mertz
(suppression) and Paul R. Huscher (trial), Judges.

Defendant appeals from the denial of her motion to suppress and her
conviction of drug-related charges. **AFFIRMED.**

Catherine K. Levine, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Richard Bennett, Assistant Attorney
General, and Clint Hight, County Attorney, for appellee.

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

SACKETT, C.J.

Defendant-appellant, Andreia Faga, appeals from her conviction of possession of marijuana with intent to deliver and failure to affix a drug tax stamp. She contends the district court erred in not granting her motion to suppress. She argues the state trooper who stopped her vehicle for speeding lacked a reasonable suspicion drug trafficking was occurring, and the extended detention tainted her consent to the search of her vehicle. We affirm.

I. Background Facts and Proceedings

The defendant was stopped by a trooper in June 2005. He was at a rest area when the defendant passed, driving over the speed limit. The trooper clocked the truck's speed first at seventy-five miles per hour, then at seventy miles per hour, pulling out of the rest area to follow the truck. Before stopping the defendant, the trooper radioed another trooper and told him: "You're not going to believe what I have here. Where are you at? I have seen this vehicle before. I have seen this exact same configuration." The truck drew his attention because the design of the truck bed was like one used to transport drugs that he had seen previously. The truck used "an unusually large amount of metal" in the flatbed portion of the truck, "appearing to be more than twelve inches from top to bottom." He also ran a check of the plates on the vehicle and learned they were registered to a man in Pennsylvania.

After stopping the defendant, the trooper asked her for her driver's license, the vehicle's registration, and proof of insurance. The defendant provided him with the documents and accompanied him to the patrol car to process the speeding ticket. The trooper testified the defendant was nervous and shaking as she handed

him the documents, and this nervousness continued throughout the stop. The defendant admitted she had been speeding. After further conversation while the trooper ran checks on the defendant and the vehicle, he gave the defendant the ticket and the documents she had provided to him and said goodbye.

After the defendant stepped out of the patrol car and started back to her truck, the trooper called to her asking whether there were any weapons or drugs in the truck. She stopped and replied in the negative. He then asked her for consent to search the truck. The defendant consented to the search and signed a written consent form after the trooper explained it to her. The search of the truck revealed approximately 170 pounds of marijuana hidden in a compartment beneath the truck bed, between the rails of the truck.

The defendant was charged by trial information with possession with intent to deliver and failure to affix a drug tax stamp. The defendant filed a motion to suppress the evidence discovered in the search, alleging 1) she was unreasonably detained past the period of time needed to process the traffic stop and issue a speeding ticket, and 2) her consent to search the vehicle was tainted because it was the result of an unlawful detention. The district court denied the motion and the defendant was convicted of both charges.

II. Scope of Review

Appellate review of claimed violations of constitutional rights under the Fourth Amendment is *de novo* in light of the totality of the circumstances. In undertaking our review, we assess the entire record, including evidence presented during the suppression hearing and by way of stipulation. While [w]e are not bound by the district court's determinations, . . . we may give deference to its credibility findings.

State v. Lovig, 675 N.W.2d 557, 562 (Iowa 2004) (citations omitted).

III. Discussion

Initial Stop and Detention. The defendant first contends the length of her detention was unreasonably long merely to issue a traffic citation and the trooper lacked a reasonable suspicion drug trafficking was occurring to continue the stop.

When a law enforcement officer stops a car and temporarily detains an individual, the temporary detention is a “seizure” within the meaning of the Fourth Amendment. *State v. Predka*, 555 N.W.2d 202, 205 (Iowa 1996). Therefore, the stop of a vehicle must “not be ‘unreasonable’ under the circumstances.” *Whren v. United States*, 517 U.S. 806, 810, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89, 95 (1996). Generally, “the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” *Id.* at 810, 116 S. Ct. at 1772, 135 L. Ed. 2d at 95.

Although the defendant claims the stop was pretextual and based on the configuration of the truck, the trooper stopped the truck after the defendant violated state law by failing to obey the posted speed limit. See *State v. Aderholdt*, 545 N.W.2d 559, 563 (Iowa 1996) (noting pretextual stops are permissible in cases where an officer observes an actual traffic violation). Furthermore, “the constitutional reasonableness of traffic stops does not depend on the actual motivation of the individual officers involved.” *Predka*, 555 N.W.2d at 205 (citing *Whren*, 517 U.S. at 810, 116 S. Ct. at 1774, 135 L. Ed. 2d at 97). The traffic violation provided probable cause to stop the defendant’s truck.

In addition, a law enforcement officer may ask an individual for various documents related to driving, including a driver’s license and registration, may perform various information checks during a routine traffic stop, and may question

an individual about the purpose of her travel and destination. *See 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.*

The exact duration of the stop is uncertain because of a break in the videotape recording. However, it took somewhere between thirty and fifty minutes to process the defendant's documents and issue the speeding ticket. As the district court noted, our supreme court has previously upheld a detention of fifty minutes as reasonable following a routine traffic stop. *Id.* at 559. We recognize this may have been a long time to issue a speeding ticket; however, it was not unreasonable under the circumstances. The length of the detention and the action of the trooper were justified by the traffic violation, the time needed to perform routine checks on the truck and the defendant, the trooper's reasonable suspicion based on the unusual configuration of the truck, his past experience with a nearly identical truck, the implausibility of the defendant's account of her use of the truck, and the defendant's nervousness. We find no violation of the defendant's rights based on the length of the stop.

Extended Detention and Consent to Search. The defendant contends the detention was continued when the trooper called out to her while she was returning to her truck and her subsequent consent to the search was tainted by or coerced by the detention.

We, like the district court, have reviewed the videotapes of the stop and heard the interaction of the trooper and the defendant. We find clear evidence the traffic stop had ended, the defendant had exited the patrol car and started back to the truck, and there was no coercion or intimidation or misunderstanding that might

taint her subsequent verbal and written consent to the search. See *United States v. Werking*, 915 F.2d 1404, 1407-09 (10th Cir. 1990) (questions followed return of documents); compare *United States v. Guerrero*, 374 F.3d 584, 587-89 (8th Cir. 2004) (language barrier misunderstand, defendant was still in patrol car). The trooper's questions were not improper and did not constitute detention or an extension of the defendant's earlier detention. See *Aderholt*, 545 N.W.2d at 563-64. Although the defendant is a native of Brazil, her verbal interaction with the trooper and responses to his questions and comments reveal no failure in communication based on language.

Under the totality of the circumstances before us, we conclude the defendant's consent to search the truck was voluntary, not coerced, and was not tainted by any detention, intimidation, or coercion. We affirm the denial of her motion to suppress.

AFFIRMED.