

**IN THE COURT OF APPEALS OF IOWA**

No. 8-067 / 07-0487  
Filed March 14, 2008

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

**vs.**

**EUGENE HENRY MANN,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Woodbury County, Patrick C. McCormick, District Associate Judge, (motion to suppress) and John C. Nelson, Judge, (trial and sentencing).

The defendant appeals following his convictions for operating while intoxicated (third offense) and possession of marijuana. **AFFIRMED.**

Robert Tiefenthaler of Tiefenthaler Law Office, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney General, Patrick Jennings, County Attorney, and Amy Ellis, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

**VOGEL, J.**

Eugene Mann appeals following his convictions for operating while intoxicated (OWI), third offense, and possession of marijuana, in violation of Iowa Code sections 321J.2 and 124.401(5)<sup>1</sup> (2005). We affirm.

**Background Facts and Proceedings.**

The facts in this case are essentially undisputed. As Officer Mark Covey sat in his patrol car at Fourteenth and Pierce Streets in Sioux City, he heard the sound of an engine revving. After determining the sound had come from a pickup truck traveling southbound on Pierce Street, Officer Covey pulled out and began to follow the truck. Pierce Street consists of three marked lanes of traffic, all traveling south.

When Officer Covey began to follow the vehicle, it was in the far left lane. He immediately observed the vehicle move from the left lane to the center lane without signaling. Next, he saw the vehicle twice attempt to merge from the center to the right lane. Officer Covey described the vehicle as swaying or drifting over toward the right lane and that both times its tires actually touched the white lane dividers, and then abruptly jerked back to the center lane. Eventually, the pickup merged into the right lane, again without using a turn signal, and came to a stop at a stoplight at the intersection of Sixth and Pierce Streets. When the light turned green, the vehicle turned right onto Sixth Street.

---

<sup>1</sup> While Mann was charged under chapter 124, the district court's "Bench Trial Ruling" finds Mann guilty under chapter 123. It is apparent this is merely a clerical error, and that Mann was indeed found guilty of a violation of section 124.401(5) as earlier referenced in the ruling.

Officer Covey then activated his lights, pulled the vehicle over and discovered that Eugene Mann was its driver. In speaking with Mann, Officer Covey detected an odor of alcohol, that Mann's eyes were watery, and that he was speaking loudly. Mann initially claimed that he had not been drinking, but upon further questioning admitted that he had drank "a couple of beers" prior to getting into his vehicle. To a second officer on the scene, Mann admitted to having consumed two shots of Southern Comfort. After Mann failed sobriety tests, he was arrested and charged with OWI and possession of marijuana. A search of the vehicle led to the discovery of a baggie, which was later determined to contain 8.8 grams of marijuana.

Prior to trial on the charges, Mann moved to suppress the evidence obtained following what he argued was an illegal traffic stop. After a hearing, the court denied the motion. Mann then elected to proceed to a bench trial on stipulated minutes of evidence. The court found him guilty as charged. Mann appeals, claiming the court erred in denying his motion to suppress.

### **Scope and Standards of Review.**

Mann challenges the district court's denial of his motion to suppress, which implicates his constitutional rights; as a result, our review is de novo. *State v. Otto*, 566 N.W.2d 509, 510 (Iowa 1997). We make an independent evaluation of the totality of the circumstances as shown by the entire record. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001).

### **Motion to Suppress.**

The Fourth Amendment to the United States Constitution guarantees a person's right to be free from unreasonable search and seizure. Evidence

obtained in violation of this provision is inadmissible in a prosecution, no matter how relevant or probative the evidence may be. *State v. Manna*, 534 N.W.2d 642, 643-44 (Iowa 1995). To stop an individual for investigatory purposes the Fourth Amendment requires that a police officer have reasonable cause to believe that a crime has occurred or is occurring. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968); *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002). An automobile stop is governed by these Fourth Amendment protections and will be upheld only when it is reasonable. *Whren v. United States*, 517 U.S. 806, 810, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89, 95 (1996).

When a person challenges a stop on the basis that reasonable suspicion did not exist, the State must show by a preponderance of the evidence that the stopping officer had specific and articulable facts, which taken together with rational inferences from those facts, [reasonably warrant a belief that] criminal activity may have occurred. Mere suspicion, curiosity, or hunch of criminal activity is not enough. Whether reasonable suspicion exists for an investigatory stop must be determined in light of the totality of the circumstances confronting the officer, including all information available to the officer at the time the officer makes the decision to stop the vehicle. The legality of the stop does not depend on the actual motivations of the officer involved in the stop.

*State v. Tague*, 676 N.W.2d 197, 204 (Iowa 2004) (internal citations omitted).

In concluding that Officer Covey had observed a traffic violation--careless driving--the district court determined the officer was justified in stopping Mann's vehicle. The Iowa Code defines careless driving as intentionally "caus[ing] the vehicle to unnecessarily turn abruptly or sway." See Iowa Code § 321.277A(4). In particular, the district court rejected Mann's contention that no evidence supported that his abrupt swaying had been unnecessary.

We agree with the State that the appropriate question is not whether Mann actually violated 321.277A, but rather whether the State could establish by a preponderance of the evidence that Officer Covey had reasonable cause to believe Mann violated the prohibition against careless driving. Here, in the late evening hours of November 23, 2005, Officer Covey observed a vehicle make two lane changes without using his turn signal. While perhaps not illegal, they certainly did give rise to a certain level of suspicion. He also observed Mann's vehicle twice drift over towards the right lane of traffic and onto the lane-dividing line, then abruptly jerking back to the center of the lane. If those two incidents were attempts to change lanes, both were attempted without signaling. Officer Covey explained that when Mann was making these abrupt maneuvers, there was another vehicle "halfway even up with" and "partially beside him" in the right lane. Officer Covey's understandable and expressed concern was that if Mann had continued drifting to the right, he would have struck that other vehicle. There were also other vehicles "in the vicinity," with which the officer was concerned for their safety. Based on these facts, we believe the evidence supports that Mann intentionally caused his vehicle to turn abruptly and sway. Iowa Code § 321.277A(4).

However, Mann further claims there was no evidence to support that his turns and sways were "unnecessary." See *id.* He asserts an abrupt lane change was necessary because he intended to turn right on Sixth Street and he needed to be in the correct lane. We reject this argument. The term "unnecessarily" obviously connotes some measure of necessity. Other than the simple desire to turn right, we agree with the district court that there was no apparent

circumstance that compelled Mann to make such abrupt and jerking lane changes. Accordingly, we conclude the district court properly found that Officer Covey reasonably believed Mann committed a traffic offense, careless driving, such that a stop of Mann's vehicle was justified. We therefore affirm the denial of Mann's motion to suppress the evidence obtained as a result of the stop.

**AFFIRMED.**