

**IN THE COURT OF APPEALS OF IOWA**

No. 9-1013 / 09-0577  
Filed January 22, 2010

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

**vs.**

**TIMOTHY SHANE KLINGHAMMER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar, Judge.

The defendant appeals from his convictions for possession of a controlled substance with intent to deliver, drug tax stamp violation, and carrying weapons.

**AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Adams, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad P. Walz, Assistant County Attorney, for appellee.

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

**VOGEL, P.J.**

Timothy Klinghammer appeals from his convictions for possession of a controlled substance with intent to deliver, drug tax stamp violation, and carrying weapons. He claims the district court erred in finding the stop of the vehicle in which he was a passenger was supported by both reasonable suspicion and probable cause, and consequently erred in denying his motion to suppress. Upon our de novo review, we conclude the district court properly denied Klinghammer's motion and affirm the district court.

**I. Background Facts & Proceedings.**

On January 17, 2008, Waterloo Police Officer Matt McGeough was in his patrol car surveilling the Broadway Street Liquor Store. He was parked across the street from the store in an alley with his patrol car out of view and was using binoculars. This store was known as a place where minors were able to purchase alcoholic beverages and had previously been cited for such sales. Police officers had received citizen complaints of underage sales of alcohol and drug activity occurring at the store. At approximately 9:20 p.m., Officer McGeough observed a gray Chevy Impala pull into the parking lot of the store. Two passengers, who appeared to be under the age of twenty-one and were later identified as Cody Langen and Demontae O'Donnell, got out of the vehicle and went into the store. While inside, O'Donnell appeared nervous and was acting suspiciously. Officer McGeough described his behavior:

He repeatedly would come up to the front door, start blatantly looking from side to side scanning the whole area and then he would walk back in, pace around, walk back up to the door, continuing to look[ ] around like he was looking for something. And he did this several times.

Officer McGeough later testified that this behavior was consistent with an individual acting as a lookout where illegal activity is occurring. After Langen purchased an item, both Langen and O'Donnell left the store with Langen carrying a small bottle with a paper sack over the bottle. Officer McGeough subsequently testified that generally liquor sold at Broadway Liquor was placed in paper sacks.

The vehicle drove out of the parking lot and Officer McGeough followed. At a red stop light, Officer McGeough stopped directly behind the vehicle and attempted to read the license plate as he was planning on running it through dispatch as part of his investigation to determine the owner and the age of the owner of the vehicle. However, he was unable to read the license plate because of snow partially covering it. Officer McGeough stopped the vehicle. As he was stopping the vehicle, he called into dispatch to report the stop, his location, and because he could not read the license plate, he described the vehicle.

After he approached the vehicle, one of the passengers rolled down a window and Officer McGeough noticed a strong odor of marijuana coming from the vehicle. He identified the four people in the vehicle: Mindy Edgar as the driver, and Klinghammer, Langen, and O'Donnell as the passengers. Officers discovered a bottle of liquor in a paper sack, a large amount of marijuana, scales, baggies, and two guns. Additionally, the officers determined that Langen, age nineteen, and O'Donnell, age eighteen, were under the legal age to purchase alcohol.

On April 2, 2008, Klinghammer filed a motion to suppress all evidence obtained as a result of the stop of the vehicle, citing violations of both the United States and the Iowa Constitutions. On May 5, 2008, following a hearing, the district court found that Officer McGeough had reasonable suspicion that minors were in possession of alcohol to conduct an investigatory stop and had probable cause to stop the vehicle for a violation of Iowa Code section 321.38 (2007). Consequently, Klinghammer's motion to suppress was denied.

Following a jury trial, Klinghammer was convicted of possession of a controlled substance (marijuana) with intent to deliver in violation of Iowa Code section 124.401(1)(d) and (e), drug tax stamp violation in violation of Iowa Code section 453B.12, and carrying weapons in violation of Iowa Code section 724.4. Klinghammer appeals and argues the district court should have granted his motion to suppress.

## **II. Standard of Review.**

Because Klinghammer alleges a violation of his constitutional rights, our review is de novo. *State v. Kinkead*, 570 N.W.2d 97, 99 (Iowa 1997). This review requires us to “make an independent evaluation of the totality of the circumstances as shown by the entire record.” *Id.* We give deference to the factual findings of the district court due to its opportunity to evaluate the credibility of the witnesses, but we are not bound by such findings. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). “In our review of the district court’s ruling on defendant’s motion to suppress, we consider both the evidence presented during the suppression hearing and that introduced at trial.” *State v. Jackson*, 542 N.W.2d 842, 844 (Iowa 1996).

### III. Analysis.

Klinghammer argues that the initial stop of the vehicle in which he was a passenger was in violation of his constitutional right to be free from unreasonable searches and seizures.<sup>1</sup> “Searches and seizures conducted by governmental officials without prior court approval are per se unreasonable unless they fall within one of the few exceptions to the Fourth Amendment’s warrant requirement.” *Id.* at 845. The district court determined two exceptions applied in the present case: (1) the officer’s observation of a traffic offense (of an obscured license plate in violation of Iowa Code section 321.38) resulted in probable cause to stop the vehicle, and (2) reasonable suspicion (of the sale of alcohol to a minor and the possession of alcohol by a minor in violation of Iowa Code section 123.47) supported an investigatory stop to determine if criminal activity was afoot. *See State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004) (discussing one exception is probable cause that a traffic violation occurred); *Kinkead*, 570 N.W.2d at 100 (“One of the well-established exceptions to the warrant requirement is that formulated in *Terry v. Ohio*, which allows an officer to stop an individual or vehicle for investigatory purposes based upon reasonable suspicion, supported by specific and articulable facts, that a criminal act has occurred or is occurring.”).

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<sup>1</sup> Although the defendant cites both the Fourth Amendment of the United States Constitution and Article I, section 8 of the Iowa Constitution, the defendant has not asserted that the state constitutional provision should be interpreted differently than the Fourth Amendment. As a result, for prudential reasons, we assume for the purposes of this case that the Iowa Constitution should be interpreted in the same fashion as its federal counterpart.

*State v. Brooks*, 760 N.W.2d 197, 205 n.1 (Iowa 2009) (citing *State v. Wilkes*, 756 N.W.2d 838, 842 n.1 (Iowa 2008)).

We first examine whether probable cause justified the stop of the vehicle. “When a peace officer observes a traffic offense, however minor, the officer has probable cause to stop the driver of the vehicle.” *State v. Mitchell*, 498 N.W.2d 691, 693 (Iowa 1993); *see also Tague*, 676 N.W.2d at 201.

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. The State has the burden to prove by a preponderance of the evidence that the officer had probable cause to stop the vehicle.

*Tague*, 676 N.W.2d. at 201 (citations omitted).

Iowa Code section 321.38 provides in part, “Every registration plate shall at all times be securely fastened . . . in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.” Klinghammer does not challenge the fact that the license plate was obstructed by snow. Rather, he argues that it was unreasonable for Officer McGeough to stop the vehicle for a violation of section 321.38, as it is virtually impossible to keep a license plate “clearly legible” given winter driving conditions. We readily acknowledge that a license plate may become obstructed by such elements as snow, ice, or mud as a result of weather or road conditions. However, section 321.38 does not allow an exception to accommodate blowing snow, accumulating ice, or splattering mud. Rather, the statute plainly requires that a license plate “*at all times* . . . be maintained free from foreign materials and in a condition to be clearly legible.” Iowa Code § 321.38 (emphasis added). However impractical it may seem to have a license plate “clearly legible” at all times, no exceptions appear from the language of the statute. Iowa Code

§ 321.38; *cf.* Iowa Code § 321.306 (requiring a vehicle to “be driven *as nearly as practical* entirely within a single lane” (emphasis added)); *see also* *State v. Welton*, 300 N.W.2d 157, 160 (Iowa 1981) (stating, “when a statute is plain and its meaning is clear, courts are not permitted to search for meaning beyond its expressed terms”). As Klinghammer acknowledged, a license plate is the primary means by which police may identify a vehicle and its owner. Therefore, a license plate obscured for any reason, defeats its very function.

In this case, the officer was stopped directly behind the vehicle and observed that the license plate was obstructed such that he could not read all of it. We agree with the district court that the officer had probable cause to stop the vehicle for a violation of Iowa Code section 321.38.<sup>2</sup> *See Whren v. U.S.*, 517 U.S. 806, 810, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89, 95 (1996) (“As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.”). Because we find the stop of the vehicle was supported by probable cause, we need not address Klinghammer’s argument that the stop was not supported by reasonable suspicion related to the sale of alcohol to a minor and the possession of alcohol by a minor. Accordingly, we affirm the district court’s denial of Klinghammer’s motion to suppress.

**AFFIRMED.**

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<sup>2</sup> Although the obscured license plate gave the officer probable cause to stop the vehicle, the individual officer has discretion to give a warning, issue a citation, or make an arrest for a violation of section 321.38. *See* Iowa Code § 805.1 and *State v. Meyer*, 543 N.W.2d 876, 878 (Iowa 1996), *abrogated on other grounds by Knowles v. Iowa*, 525 U.S. 113, 115, 119 S. Ct. 484, 487, 142 L. Ed. 2d 492, 496-97 (1998).