IN THE COURT OF APPEALS OF IOWA

No. 1-649 / 00-1839
Filed December 12, 2001

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellant,

vs.

CHARLOTTE ANN ROOS,
Defendant-Appellee.

Appeal from the Iowa District Court for Osceola County, Frank B. Nelson, Judge.

The State seeks discretionary review of a district court's grant of defendant's motion to suppress. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Kristin Mueller, Assistant Attorney General, and Robert Hansen, County Attorney, for appellant.

Randy Waagmeester of De Waay & Waagmeester, Rock Rapids, for appellee.

Considered by Vogel, P.J., and Zimmer and Hecht, JJ.

HECHT, J.

The State seeks discretionary review of the district court's grant of defendant's motion to suppress. It claims the police officer had reasonable cause to stop defendant's vehicle. We reverse and remand.

On May 13, 2000, deputy sheriff Daniel Minten observed Charlotte Roos driving on 230th Street in May City. Roos failed to stop at a stop sign before turning right onto a dirt road. Minten did not stop Roos at that time, but followed her for about two and one-half miles. At one point, Roos crossed the center of the roadway, but Minten thought this might have been due to the wind. When Roos turned left from the dirt road onto Osceola County Road M-12, a blacktop, she did not use her turn signal. Roos stopped for a stop sign on M-12, before turning right onto A-48, but again did not use her turn signal.

Minten stopped Roos's vehicle. He noticed Roos had a strong odor of alcohol and needed to hold onto her car in order to maintain balance while walking back to the patrol car. Roos failed field sobriety tests. She was arrested and charged with operating while intoxicated, in violation of Iowa Code section 321J.2 (1999).

Roos filed a motion to suppress, claiming Minten did not have reasonable cause to make a traffic stop. At the suppression hearing, Minten testified he stopped Roos because of her failure to use a turn signal before turning onto A-48. He stated he did not consider her failure to stop at the stop sign in May City to be important because it was not at an intersection, but was at a bend or turn in the dirt road.

The district court granted the motion to suppress. The court determined that under section 321.314, a driver needs to use a turn signal prior to a turn only if "any other vehicle may be affected by such movement." Minten was driving the only other car in the vicinity of Roos, and he testified he was driving behind her and was not affected by her turn. The court concluded Minten had no reasonable ground to stop Roos based on her failure to use a turn signal. The court also stated:

> As argued by the State, the record confirms the fact that the defendant did not stop when she entered M-12. That may have been probable cause to stop her then, but cannot be relied on to show probable cause to stop her two-and-one-half miles down the road.

The State filed an application for discretionary review of the ruling on the motion to suppress. The supreme court granted the application and stayed proceedings in the district court.

When constitutional rights are implicated, we review a court's ruling on a suppression motion de novo. *State v. Reinier,* 628 N.W.2d 460, 464 (Iowa 2001). 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).

The Fourth Amendment requires that an officer have reasonable cause or suspicion to stop a vehicle for investigatory purposes. *Delaware v. Prouse,* 440 U.S. 648, 663, 99 S. Ct. 1391, 1401, 59 L. Ed. 2d 660, 673 (1979). An investigatory stop of a vehicle is constitutionally permissible only if the officer who has made the stop has specific and articulable cause to reasonably believe

criminal activity is afoot. *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968); *State v. Walshire*, ___ N.W.2d ___ (Iowa 2001). Circumstances raising mere suspicion or curiosity are not enough. *State v. Heminover*, 619 N.W.2d 353, 358 (Iowa 2000).

In *Heminover* our supreme court stated:

> [I]n *Terry* stop cases the motivation of the officer stopping the vehicle is not controlling, and the officer is not bound by the real reasons for the stop. The test for a *Terry* stop and one based on probable cause is the same: objective. The State is therefore not limited to the reasons stated by the investigating officer in justifying a *Terry* stop.

Id. at 361. Thus, we use an objective test, whether a reasonable officer in those circumstances would have reasonably believed defendant was committing a traffic offense. *See id.*

In the present case, the State is not limited to Minten's stated reasons for stopping Roos. The State is not limited to Minten's statement he stopped Roos for failing to use a turn signal. The State may also urge that Minten was justified in stopping Roos due to her failure to stop at the stop sign in May City. An officer has reasonable cause to stop a vehicle if he or she observes a traffic offense. *State v. Gillespie*, 619 N.W.2d 345, 352 (Iowa 2000) (citing *Whren v. United States*, 517 U.S. 806, 810, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89, 95 (1996)).

We find Minten had reasonable cause to stop Roos's vehicle. Not only did Minten observe Roos commit a traffic offense, failure to stop at a stop sign,[1] but within a two and one-half mile drive she failed to use her turn signal when making

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[1] Vehicles are required to stop at stop signs. Iowa Code § 321.322(1).

two separate turns,[2] and drove across the center of the roadway once.[3] Under these circumstances, a reasonable officer would have reasonably believed criminal activity was afoot.

The fact Minten did not immediately stop Roos after she failed to stop at the stop sign is immaterial. The general rule is that in the absence of a warrant:

> The arrest must be made at the time the offense, or some part of it, is being committed, or within a prompt and reasonable time after its commission, or upon fresh and immediate pursuit of the offender.

5 Am. Jur. 2d Arrest § 55 (1995) (footnotes omitted). Here, Roos was arrested within a prompt and reasonable time. The deputy reasonably decided to follow Roos for a short distance and observe her driving patterns. He saw that she continued to disobey traffic rules. Based on the totality of the circumstances in this case, we conclude the stop was reasonable.

The motion to suppress should have been denied. We reverse the decision of the district court and remand for further proceedings.

Appellee filed a motion for leave to file a late brief. She offered no reasons or justifications for the late filing. We deny the motion.

REVERSED AND REMANDED.

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[2] Vehicles are required to give a signal when turning from a direct course if "any other vehicle may be affected by such movement." Iowa Code § 321.314.

[3] Vehicles are required to drive on the right hand side of the road, with certain exceptions not applicable here. Iowa Code § 321.297(1).