FILED
JAN 26 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

329

STATE OF IOWA,)
Plaintiff-Appellant,)
vs.)
DOUGLAS DWIGHT JOHNSON,) 8-480
87-1509
Defendant-Appellee.)

Appeal from the Iowa District Court for Carroll County (29840), R.K. Richardson, Judge.

In this OWI case the State seeks to overturn a pretrial order suppressing all evidence obtained from a deputy sheriff's Stop of the defendant's car. **REVERSED.**

Thomas J. Miller, Attorney General of Iowa, and Christie J. Scase, Assistant Attorney General, for plaintiff-appellant.

Raymond E. Rogers, Acting Chief Appellate Defender, and James F. Whalen, Assistant Appellate Defender, for defendant-appellee.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

SCHLEGEL, P.J 339

In this OWI case, the State seeks to overturn a pretrial order suppressing all evidence obtained from a deputy sheriff's stop of defendant Douglas Dwight Johnson's car. On discretionary review, see Iowa Code section 814.5(2)(b); Iowa R. Crim. P. 11(2), the State contends that this investigatory stop was supported by the requisite reasonable cause.

On June 5, 1987, at approximately 2:15 a.m. in Lanesboro, Iowa, Deputy Sheriff Stephen Crozier observed a 1970 silver Chevrolet throwing up loose gravel as the driver pulled out of a parking space near the city hall. Deputy Crozier stated that he then proceeded to follow the car in order to "chat" with the driver about throwing up the gravel in town. The deputy, however, lost sight of the vehicle momentarily, but proceeded on a route which he thought the subject might have taken out of town, Highway 286. Shortly thereafter, he testified that he saw a vehicle two- or three-tenths of a mile ahead of him cross the center line of the highway twice and proceeded to stop the vehicle for crossing the center line. Johnson testified that he did not cross the center line.

Deputy Crozier approached the vehicle and asked the driver, defendant Johnson, for his driver's license. It was at this point that the deputy suspected that Johnson had been drinking and asked Johnson to perform field

sobriety tests. When Johnson performed poorly on these tests, Deputy Crozier administered a preliminary breath test which revealed an alcohol concentration level of .15. Johnson was subsequently arrested for OWI. The district court sustained Johnson's evidentiary suppression motion, ruling that the deputy lacked reasonable cause to stop Johnson's car.

The sole issue we are called upon to resolve is whether Deputy Crozier had reasonable cause to stop Johnson. The fourth amendment requires that an officer have "reasonable cause" to stop an individual for investigatory purposes. Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968). When a stop is challenged on the basis that reasonable cause did not exist, the State must show that the stopping officer had specific and articulable cause to support a reasonable belief that criminal activity may have occurred. State v. Losee, 353 N.W.2d 876, 877 (Iowa App. 1984). Mere suspicion or curiosity is not sufficient to justify the stop for investigatory purposes. State v. Donnell, 239 N.W.2d 575, 577 (Iowa 1976). The officer is bound by the true reasons for making the stop; that is, the officer may not rely on reasons that he or she could have had but did not actually have. State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982).

Our review of the totality of the circumstances convinces us that the State carried its burden of proving

that reasonable cause existed for Deputy Crozier to stop Johnson's vehicle.

At the suppression hearing, Deputy Crozier testified that his original purpose in following Johnson was to "chat with him about throwing up the gravel in town." He later testified that he ended up stopping what he "assumed" was Johnson's vehicle, because he saw the vehicle cross the center line twice. In light of the fact that it was approximately 2:00 a.m. and the traffic in the area was described by Crozier as "clear," we believe Crozier's assumption was reasonable, despite the fact that he lost sight of Johnson's vehicle momentarily. Furthermore, despite Johnson's testimony to the contrary, on balance, we are more inclined to believe Deputy Crozier's testimony that Johnson's vehicle crossed the center line twice, than Johnson's testimony which is affected by strong evidence of his intoxication.

The Iowa Supreme Court has held that "[e]rratic driving such as weaving across the center line of the street is sufficient to justify an officer in stopping the vehicle and conducting an investigation." Saunders v. Commissioner of Public Safety, 226 N.W.2d 19, 21 (Iowa 1975) (quoting Shellady v. Sellers, 208 N.W.2d 12, 14 (Iowa 1973)). We hold that the State had specific and articulable cause to support a reasonable belief criminal activity may have occurred at the time Johnson's vehicle was stopped. We

reverse the district court's suppression ruling and hold that all evidence obtained following the investigatory stop is admissible at trial.

REVERSED.