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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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STATE OF IOWA,	)	
Plaintiff-Appellant,	)	
vs.	)	
JONATHON WARD ELLIS,	)	8-491 87-1775
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Wright County (No. 4866-1087) - Newt Draheim, Judge.

State seeks to overturn a pretrial order. **REVERSED.**

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; and Mary Schlicher, Assistant County Attorney, for plaintiff-appellant.

Robert Brinton, of Brinton & Bordwell, Clarion, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

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OXBERGER, C.J.

The State of Iowa brings with the Iowa Supreme Court's permission, an application for discretionary review seeking to overturn a district court pretrial order suppressing evidence obtained by a police officer after he stopped a car driven by defendant Jonathon Ward Ellis. The State contends the officer had the reasonable cause to stop the defendant's vehicle. We reverse the district court.

The police officer testified at approximately 2:00 a.m. on September 21, 1987, in Goldfield, Iowa, he observed defendant's car make a large circular turn from Locust Street onto State Highway 3. He followed defendant's car on Highway 3 for two and one-half miles. Once or twice he saw defendant's car go to the center line and back to the shoulder of the road. Defendant's wheels went off the shoulder to the gravel portion. He did not cross the center line. The officer stopped the car, observed the defendant and performed field sobriety tests. He subsequently arrested defendant for operating a motor vehicle while intoxicated in violation of Iowa Code section 321J.2(1) (1987).

Defendant filed a motion to suppress all evidence stating the officer did not have a reasonable belief criminal activity had occurred and therefore could not make the investigatory stop. At the hearing defendant denied driving on Locust Street or ever traveling onto the

shoulder that night. The district court granted defendant's motion finding the wide turn and traveling from the center to the edge of the highway were not sufficient circumstances to support reasonable cause to stop the vehicle.

The fourth amendment requires reasonable cause to stop a vehicle for investigatory purposes. Terry v. Ohio, 392 U.S. 1,21, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889, 906 (1968); State v. Cooley, 229 N.W.2d 755, 759 (Iowa 1975). Reasonable cause exists when an officer observes unusual conduct leading the officer to conclude that criminal activity may be afoot. State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982) (citing State v. Ponnell, 239 N.W.2d 575, 577 (Iowa 1976)). We find activity such as that of the defendant making a wide turn in his car and weaving on the road at 2:00 a.m. to amount to reasonable cause. The officer would have been justified in believing it was possible that the defendant was asleep. Thus, we find the investigatory stop in this case to be proper.

REVERSED.

Donielson, J. concurs; Sackett, J. dissents.

SACKETT, J. (dissenting)

I dissent. The officer testified defendant's car made a wide turn and on a two and one-half mile stretch, while staying in his lane, went from the center line to the shoulder once or maybe twice. No traffic laws were broken. The officer did not testify defendant's car was weaving.

The trial court heard the officer testify, assessed his credibility and determined the officer did not have reasonable cause to stop the defendant's vehicle.

I would affirm the trial court.