

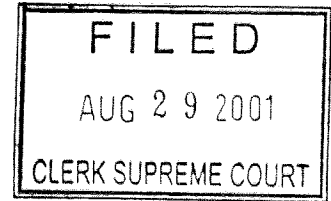
IN THE COURT OF APPEALS OF IOWA

No. 1-427 / 00-942
Filed August 29, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

GUY LEE WILLIAMS,
Defendant-Appellant.



Appeal from the Iowa District Court for Henry County, John G. Linn (suppression hearing), and William L. Dowell (trial and sentencing), Judges.

Defendant appeals from the judgment and sentence entered upon jury verdicts finding him guilty of possession of cocaine with intent to deliver, in violation of Iowa Code section 124.401(1) (1999), operating while intoxicated in violation of section 321J.2, and failure to affix a drug tax stamp in violation of section 453B.12. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, Michael A. Riepe, County Attorney, and Rose Ann Mefford, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Guy Williams appeals his conviction following a jury trial of possession of cocaine with intent to deliver, operating while intoxicated, and failure to affix a drug tax stamp. He contends the district court erred in failing to grant his motion to suppress. Finding no merit in his contention, we affirm.

I. Background Facts and Proceedings.

On September 2, 1999, New London chief of police Ty Thompson received a radio dispatch regarding a possible erratic driver in the area. The dispatch advised that a red Ford Explorer was being driven erratically heading east-bound on Highway 34. Thompson spotted the Explorer and observed other motorists pointing towards the suspect's vehicle. Motorists in the vicinity maneuvered so that Chief Thompson could turn around, which allowed him to follow the vehicle for about ten blocks. Chief Thompson observed no erratic driving; however, he noticed the Explorer's windshield was broken on the passenger's side and that cracks from an apparent impact to the windshield had "spider webbed" across the entire width of the windshield, including the driver's side. Chief Thompson stopped the vehicle. Immediately after the stop, the passenger got out of the Explorer and came toward the patrol car. Chief Thompson ordered the passenger to return to the vehicle.

Thompson approached the driver's side of the vehicle and asked the driver to roll down his window. As soon as the driver complied, Thompson noticed a strong odor of alcohol emanating from the vehicle. Guy Lee Williams was the driver of the Explorer. Neither Williams nor the passenger could produce a driver's license or other identification. Williams initially identified himself as

Terry Lee Jackson. He could not produce a vehicle registration or name the owner of the Explorer. Eventually, the passenger produced a vehicle registration. Chief Thompson called the listed owner, who stated he could not remember who he had loaned the vehicle to, but stated one guy's name was Mike. The passenger in the vehicle indicated his name was Michael Warfield. Chief Thompson had both occupants exit the vehicle and sit on the curb. He conducted a pat-down search for weapons on the occupants.

Williams and Warfield then gave consent to search the vehicle. Using a narcotics detection police dog, Thompson discovered a baggie of marijuana in the console between the front seats of the Explorer. The passenger admitted the marijuana was his. Thompson returned to his patrol vehicle and began to write a citation. While doing so, he noticed Williams reach into his pants pocket and toss a piece of clear plastic containing an off-white substance into a nearby grassy ditch. Williams then pulled up some grass, walked over to where the package was, and dropped the grass on top of it. He placed his foot over the package and pushed downward. Thompson asked Williams to return to the curb and sit down.

Deputy Dean Walter arrived on the scene as a back-up to Thompson. Thompson handed a traffic citation to Williams and asked him to sign it. Williams began to sign the citation but then scratched out what he had written and signed the name "Terry Lee Jackson."

After Deputy Walter arrived both occupants were arrested, searched and taken in to custody. Defendant Williams was arrested for operating while intoxicated, and Warfield was arrested for possession of marijuana. At the time

of his arrest, Williams had an unsteady walk, stumbled, mumbled his speech, smelled of alcohol, and had blood-shot, watery eyes. Williams was carrying approximately \$1400 in cash. Williams and the passenger were transported to jail.

Chief Thompson stayed at the scene and used the drug detection police dog to search the area where Williams had tossed the package. The dog located a plastic baggie containing 13 rocks of crack-cocaine. Behind the driver's seat of the Explorer, Thompson also found a small bowl containing cognac and a partially consumed bottle of cognac. A subsequent intoxilizer test revealed that defendant Williams had a blood alcohol level of .197.

The State charged Williams with several offenses. The defendant filed a motion to suppress asking the court to suppress all evidence seized as a result of the stop and seizure. The district court denied his motion to suppress. A jury returned guilty verdicts to charges of possession of cocaine with intent to deliver in violation of Iowa Code section 124.401(1)(c) (1999), operating while intoxicated in violation of section 321J.2, and failure to affix a drug tax stamp in violation of section 453B.12. Williams appeals.

II. Scope of Review.

In our review of Fourth Amendment claims, we evaluate the totality of the circumstances. See *State v. Kinkead*, 570 N.W.2d 97, 99 (Iowa 1997) (citation omitted).

III. Analysis.

Williams contends the district court erred in overruling his motion to suppress evidence. He alleges the search and seizure were illegal because they

were done without probable cause to believe he was involved in criminal activity. He maintains there was not probable cause to stop and search the automobile he was driving. He also argues the windshield was not sufficiently cracked to be a violation.

The Fourth Amendment to the United States Constitution, and article I section 8 of the Iowa Constitution, protect individuals against unreasonable searches and seizures. *Kinkead*, 570 N.W.2d at 100. Searches conducted without a warrant are per se unreasonable unless an exception to the warrant requirement applies. *Id.* (citations omitted). One such exception, first recognized in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), allows an officer to stop an individual or vehicle for investigatory purposes based on a reasonable suspicion that a criminal act has occurred or is occurring. *Kinkead*, 570 N.W.2d at 100 (citing *Terry*, 392 U.S. at 21-22, 88 S. Ct. at 1880, 20 L. Ed. 2d at 906).

In determining whether an officer had a reasonable suspicion sufficient to permit a *Terry* stop, we consider whether the officer had “specific and articulable cause to support a reasonable belief that criminal activity may have occurred.” *Kinkead*, 570 N.W.2d at 100 (citations omitted). In making this determination, we look at the facts available to the officer at the time of the stop. *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995). The officer must be acting on facts relating to a suspect’s guilt, not just on circumstances describing a broad category of innocent persons. *State v. Rosentiel*, 473 N.W.2d 59, 62 (Iowa 1991). An unarticulated suspicion or hunch is not enough. *Haviland*, 532 N.W.2d at 768. However, officers may make *Terry* stops with considerably less than proof of

wrong doing. *State v. Richardson*, 501 N.W.2d 495, 496-97 (Iowa 1993) (quoting *United States v. Sokolow*, 490 U.S.1, 7, 109 S. Ct. 1581, 1585, 104 L. Ed. 2d 1, 10 (1989)). When a peace officer observes a traffic offense, however minor, the officer has probable cause to stop the driver of the vehicle. *Pennsylvania v. Mimms*, 434 U.S.106, 111, 98 S. Ct. 330, 333, 54 L. Ed. 2d 331, 337 (1997). The State bears the burden to show the validity of the *Terry* stop. *State v. Wiese*, 525 N.W.2d 412, 414 (Iowa 1994) (citations omitted).

Our de novo review of the record reveals reasonable suspicion to support the stop of the vehicle driven by Williams. Reasonable suspicion is supplied by the visual observation of the car by an experienced officer who noticed a broken front windshield. Contrary to the defendant's contention that it was only a hair-line crack, Chief Thompson and Deputy Walter testified the windshield was shattered on the passenger side, with a "shadow crack" extending to the driver's side. Both testified the driver's view would be affected, whether looking out the passenger side of the windshield, or the driver's side. Driving with a windshield that may have obstructed the driver's view is a violation of Iowa Code section 321.438(1) (1999). The observation of this statutory violation alone provided a valid reason for making an investigative stop.

The State also contends Thompson had reasonable cause to stop Williams based upon the radio dispatch describing a vehicle being driven erratically, coupled with other motorists pointing out the vehicle to Chief Thompson. This argument raises a question concerning whether *State v. Markus*, 478 N.W.2d 405 (Iowa Ct. App. 1991) (anonymous tip that provided vehicle's license plate number, detailed description, and direction of travel and

was corroborated by the officer who viewed the vehicle going in the direction described was sufficient to provide probable cause for a stop) has been overruled by *Florida v. J. L.*, 529 U.S. 266, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000) (anonymous tip that a young black man standing at particular bus stop and wearing a plaid shirt had a gun lacked sufficient indicia of reliability to establish reasonable suspicion for investigatory stop). Because we find Thompson's observation of the broken windshield provided reasonable grounds to believe a traffic violation occurred, we need not resolve the issue presented by the State's second argument.

The record establishes that the officers complied with governing standards during their encounter with defendant Williams. Chief Thompson had reasonable grounds to stop the vehicle driven by Williams. Once he encountered Williams, Thompson developed probable cause to arrest him for operating while intoxicated and driving without a license. The search conducted of the passenger portion of the vehicle was justified either as a consent search or as a search incident to arrest. After discovering contraband in the passenger portion of the vehicle, the officers had authority to search the remainder of the vehicle. Defendant Williams abandoned any Fourth Amendment interest in the package of cocaine that he tossed in the grass. In summary, we find nothing in the record to support Williams's claims regarding a Fourth Amendment violation. We conclude the district court properly denied the defendant's motion to suppress.

AFFIRMED.