

IN THE COURT OF APPEALS OF IOWA

No. 8-036 / 97-0804

000441

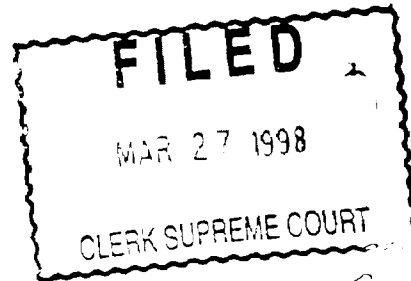
STATE OF IOWA,

Plaintiff-Appellee,

vs.

SAMUEL G. MORRIS,

Defendant-Appellant.



Appeal from the Iowa District Court for Lucas County, David L. Christensen and Gary G. Kimes, Judges.

Defendant appeals from his convictions for possession of marijuana with intent to manufacture or deliver in violation of Iowa Code section 124.401(1)(d) (1995) and failure to affix a drug tax stamp in violation of Iowa Code section 453B.12.

REVERSED AND REMANDED.

Mark S. Pennington of Kutmus and Pennington, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Alan M. Wilson, Special Prosecutor, and Paul M. Goldsmith, County Attorney, for appellee.

Considered by Cady, C.J., and Sackett and Mahan, JJ.

PER CURIAM.

Defendant-appellant Samuel Morris appeals from his conviction following a trial to the court on stipulated minutes of testimony for possession of marijuana with intent to manufacture or deliver in violation of Iowa Code section 124.401(1)(d) (1995) and failure to affix a drug tax stamp in violation of Iowa Code section 453B.12. He asserts on appeal the court erred in denying his motion to suppress evidence from the vehicle stop and in imposing consecutive sentences. We reverse and remand.

On April 21, 1996, a state trooper stopped the car in which defendant was a passenger. The trooper had followed the vehicle for some distance with his video camera activated. The stated reason for stopping the car was that it was weaving within its lane, crossing the center line, and moving out to the fog line.¹ After the stop, the trooper found marijuana on defendant and in the car. Following a hearing on defendant's motion to suppress evidence from the stop because the stop was improper, the court denied the motion. Defendant was tried to the court and convicted.

We review constitutional claims de novo. *State v. Predka*, 555 N.W.2d 202, 204 (Iowa 1996). In reviewing the trial court's decision to deny defendant's motion to suppress, we may consider evidence from the trial in addition to evidence from the

¹ The solid white line marking the outside edge of the pavement.

suppression hearing. *State v. Jackson*, 542 N.W.2d 842, 844 (Iowa 1996). We may affirm the trial court's decision on any basis appearing in the record. *State v. Green*, 540 N.W.2d 649, 655 (Iowa 1995).

A vehicle stop is a "seizure" within the meaning of the Fourth Amendment. *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, ___, 66 L. Ed. 2d 621, 628 (1981). An officer must have reasonable cause to stop a vehicle for investigatory purposes. *State v. Wiese*, 525 N.W.2d 412, 414 (Iowa 1994). Generally, a vehicle stop is reasonable "when the police have probable cause to believe a traffic violation has occurred." *Predka*, 555 N.W.2d at 205 (quoting *Whren v. United States*, 517 U.S. ___, ___, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89, 95 (1996)). The reasonableness of the stop is measured by an objective standard, "whether the facts available to the officer at the moment of the stop would warrant a person of reasonable caution to believe the action taken was appropriate." *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995) (citing *State v. Wiese*, 525 N.W.2d 412, 414 (Iowa 1994)). Weaving within one's own lane may provide reasonable cause to stop a vehicle. *State v. Tompkins*, 507 N.W.2d 736, 740 (Iowa App. 1993).

After repeated viewings of the videotape from the trooper's camera, we find the car did not cross the center line nor the fog line. The slow, gentle drift of the vehicle toward the center line or toward the fog line in the curve is not sufficient to support an investigatory stop. The trooper's remarks recorded on the videotape show

he was seeking some basis for stopping the vehicle but observed the vehicle obeying speed laws and seat belt laws. We do not find the movement of the car within its lane constitutes “weaving” as described in *Tompkins*. Consequently, we find the trooper did not have reasonable cause for an investigatory stop. The trial court erred in not suppressing the evidence from the stop.

Because we conclude the court erred in not suppressing evidence from the stop, and we have reversed and remanded, we need not address defendant’s claim concerning consecutive sentences.

REVERSED AND REMANDED.