

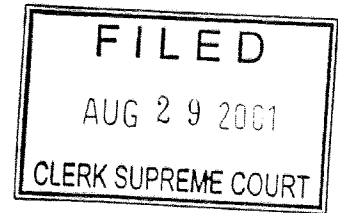
IN THE COURT OF APPEALS OF IOWA

No. 1-450 / 00-1332
Filed August 29, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RONALD LEE SCHOON,
Defendant-Appellant.



Appeal from the Iowa District Court for Franklin County, Bryan H. McKinley, Judge and Peter B. Newell, District Associate Judge.

The defendant appeals from his conviction and sentence for operating while intoxicated (first offense) in violation of Iowa Code section 321J.2 (1999).

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, and Brent J. Symens, County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

Ronald Lee Schoon appeals his judgment and sentence for operating while intoxicated (first offense). He contends the district court should have suppressed evidence obtained following a police stop of his vehicle because, in his view, the stop was unconstitutional. We affirm.

I. Background Facts and Proceedings

A private citizen contacted the Franklin County Sheriff's office to report two men driving a white van away from the site of an anhydrous ammonia tank. A patrolman with the Hampton Police Department received the report and followed the van.¹ Deputies advised the patrolman to stop the van to "get [the driver's] side of the story" about "where he came from." As the patrolman got closer to the van, he noticed the license plate light was out; he then stopped the van. Schoon was the driver.

The patrolman advised Schoon he was investigating a report that he left the site of an anhydrous ammonia tank. The patrolman did not recall whether he also mentioned the missing license plate light, but stated Schoon was later given a copy of a citation for that equipment violation. During this conversation, the patrolman detected a strong odor of alcohol coming from Schoon.² He had another officer administer field sobriety tests and a preliminary breath test, all of which Schoon failed.

¹The patrolman later testified to his knowledge that ammonia tanks had been stolen from other parts of the state to use in the manufacture of methamphetamine, and there had been recent burglaries in that rural area.

² Schoon consented to a search of the van which disclosed an open container of alcohol. The constitutionality of the search is not at issue.

Officers took Schoon into custody. An intoxilyzer test registered a breath alcohol concentration of .126. The State charged Schoon with operating while intoxicated (first offense), in violation of Iowa Code section 321J.2.

Schoon moved to suppress the evidence obtained as a result of the stop. Following a hearing, a district court judge denied the motion, holding that the missing license plate light gave the officer probable cause to arrest Schoon. A second judge then conducted further proceedings focused on the missing light. An investigator with the public defender's office testified she attempted to obtain a copy of the citation for the equipment violation and was told by the police and sheriff's offices that the citation was missing. After this supplemental hearing, the second judge also denied Schoon's motion to suppress.

The case proceeded to trial before the court on the minutes of testimony. The district court adjudged Schoon guilty of OWI (first offense) and sentenced him to two days in jail. This appeal followed.

II. The Stop

Schoon argues the officer's stop of his vehicle was unconstitutional because: (1) there was no traffic violation to justify it; (2) the traffic violation was, in any event, only a pretext for the stop; and (3) the citizen's tip did not afford the officer reasonable suspicion to believe criminal activity was afoot. Our review of constitutional questions is *de novo*. *State v. Cline*, 617 N.W.2d 277, 280 (Iowa 2000).

The Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution protect persons from unreasonable searches and seizures. See U.S. Const. amend. IV; Iowa Const. art. I, § 8. A police stop

of a vehicle is a seizure within the meaning of these constitutional provisions. *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S. Ct. 1391, 1396, 59 L. Ed. 2d 660, 667 (1979); *State v. Heminover*, 619 N.W.2d 353, 357 (Iowa 2000). A seizure is reasonable where the officer has probable cause to believe a traffic violation has occurred. *Whren v. United States*, 517 U.S. 806, 810, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89, 95 (1996); *State v. Becker*, 458 N.W.2d 604, 608 (Iowa 1990). A traffic violation, however minor, gives an officer probable cause to stop a motorist. *Whren*, 517 U.S. at 813, 116 S. Ct. at 1771, 135 L. Ed. 2d at 97; *State v. Aderholdt*, 545 N.W.2d 559, 563 (Iowa 1996).

Schoon's first argument that there was no traffic violation turns on the credibility of the patrolman's testimony relative to the van passenger's testimony. The patrolman testified the rear license plate light was out. Schoon's passenger, on the other hand, testified the patrolman never mentioned the missing light as a basis for the stop and further stated the stop took place during daylight hours when there was no need for a light.

Both district court judges found the patrolman's testimony credible. We give weight to those credibility determinations. *State v. Predka*, 555 N.W.2d 202, 207 (Iowa 1996). On our de novo review of the record, we agree with the district court judges that there was a traffic violation. As the district court pointed out, the patrolman testified twice under oath that he observed the license plate light to be non-functioning. The defense presented no evidence to establish the light was in fact working. Additionally, the patrolman testified he advised the dispatcher of this equipment violation. Finally, the defense investigator testified she was told the patrolman wrote the citation and he was also looking for it but

could not find it in the files. Based on this evidence we find there was a traffic violation. See Iowa Code §§ 321.388 (illuminating plates requirement); 321.385A (authorizing citation for failure to have rear registration plate light, subject to expungement if repaired within seventy-two hours); 321.482 (failure to perform any acts required by chapter is simple misdemeanor unless otherwise specified); *State v. Anderson*, 479 N.W.2d 330, 333 (Iowa Ct. App. 1991). This violation afforded the patrolman probable cause to stop the van. *State v. Gillespie*, 619 N.W.2d 345, 351 (Iowa 2000); *Predka*, 555 N.W.2d at 206.

Schoon next argues the traffic violation was pretextual. We have stated a stop is constitutional if there is probable cause to believe a traffic offense has occurred, regardless of an officer's actual motivation for the stop. *Gillespie*, 619 N.W.2d at 351-52 (Iowa 2000); accord *State v. Heminover*, 619 N.W.2d 353, 360 (Iowa 2000); *Predka*, 555 N.W.2d at 206. Therefore, we reject this argument.

Finally, Schoon argues in the alternative that the State cannot justify an investigative stop of the van because the citizen's tip did not furnish reasonable suspicion to believe criminal activity was afoot. See *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1858, 1880, 20 L. Ed. 2d 889, 906 (1968); *Heminover*, 619 N.W.2d at 357. Having concluded that the traffic violation furnished probable cause to stop the van, we need not address this alternate basis for the stop.

We affirm the district court's denial of Schoon's motion to suppress as well as his judgment and conviction.

AFFIRMED.