IN THE COURT OF APPEALS OF IOWA

No. 0-094 / 99-0573
Filed May 31, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES C. EAGLEFEATHER,
Defendant-Appellant.

FILED
MAY 31 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith, III, Judge.

James C. Eaglefeather appeals from his conviction and sentencing for the offense of robbery in the first degree in violation of Iowa Code sections 711.1(1) and 711.2 (1997). He contends the court erred by overruling his motion to suppress on the basis of Fourth Amendment violations. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Richard Crowl, County Attorney, and Christopher Wilson, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

000400

MILLER, J.

Defendant James Eaglefeather appeals the denial of his motion to suppress, contending the initial stop of the vehicle in which he was a passenger was not based upon a "specific and articulable cause to support a reasonable belief" criminal activity may have occurred. We affirm.

Officer Budd of the Council Bluffs Police Department received a dispatch that a convenience store had just been robbed in the early morning hours of October 6, 1998 by "a black male carrying a shotgun or rifle." Officer Budd then began to patrol the streets, looking for a vehicle that matched the description of prior, similar robberies that had recently occurred, thinking the current crime and past crimes were related. About twelve blocks from the robbery, while stopped at a traffic light about three minutes after the robbery, Officer Budd observed a vehicle stopped at the intersection headed away from the scene of the robbery. The vehicle contained two black males wearing dark clothing. When Officer Budd looked at the two men, neither would look at him. This raised the officer's suspicions. He then decided to turn around and follow the vehicle. Officer Budd testified it was possible he followed them because he was suspicious they were involved in the robbery, but did not decide to pull them over until he noticed neither occupant of the car was wearing a seat belt. On cross-examination, Officer Budd testified he probably would not have pulled the vehicle over had he not noticed the seat belt infraction.

After stopping the vehicle, Officer Budd advised the driver of the seat belt infraction, and requested identification. The officer then ran the driver's name for any outstanding warrants and discovered none. The officer decided he was not

going to issue a citation because he was looking for the robbery suspects. The officer then decided to explain to the driver he was looking for a robbery suspect, and asked if he could search the car for weapons. The driver consented to the search.

By this time, a back-up officer had arrived. Officer Budd quickly searched the vehicle for weapons, as the dispatcher had advised a weapon was used in the robbery. Officer Budd discovered a white plastic bag with cash and a check made out to the convenience store that had been robbed lying in plain view on the passenger floorboard. Officer Budd then took the driver to his police cruiser, and the other officer took Eaglefeather to his police car. A further search of the vehicle revealed a sweatshirt that matched the description of the sweatshirt the suspect had worn during the robbery. Mr. Eaglefeather then voluntarily made some incriminating statements, both before and after being informed of his *Miranda* rights.

Eaglefeather was charged by trial information in Count I with Robbery in the First Degree and Count II with Unauthorized Possession of a Offensive Weapon. *See* Iowa Code §§ 711.1(1) and 711.2, and 724.1(2) and 724.3, respectively. Eaglefeather filed a motion to suppress, contending the initial stop of the vehicle was illegal. After suppression hearing, the trial court overruled the motion and Eaglefeather was brought to trial by jury on the two counts. At the conclusion of the State's case, Count II was dismissed. Eaglefeather was found guilty of Count I, and sentenced to a term not to exceed twenty-five years.

Eaglefeather appeals the denial of his motion to suppress, contending the officer's only reasons for stopping the vehicle in which he was a passenger were

that he and the other occupant were black, they were wearing dark clothing, and they failed to exchange glances with the passing police officer. He argues these facts and riding in a vehicle with no known connection to the crime are not "reasonable and articulable suspicions" of criminal activity that can justify a stop. He further contends because the stop was illegal, the evidence seized from the vehicle and his incriminating statements must be suppressed. *See State v. Waters*, 538 N.W.2d 862, 863 (Iowa App. 1995) (citing *State v. Lamp*, 322 N.W.2d 48, 51 (Iowa 1982)).

We review alleged constitutional violations under a de novo standard of review and make an independent evaluation of the totality of the circumstances as shown by the entire record. *State v. Jones*, 586 N.W.2d 379, 381 (Iowa 1998). The passenger of a vehicle may challenge the initial stop of the vehicle, as the occupants ordinarily have a legitimate expectation of privacy which is invaded when the vehicle is stopped by the government, provided the occupant's presence in the vehicle is rightful. *State v. Eis*, 348 N.W.2d 224, 226 (Iowa 1984). Evidence obtained through an unjustified investigatory stop must be suppressed. *Jones*, 586 N.W.2d at 382.

Both the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution protect against unreasonable searches and seizures by government officials. *Jones,* 586 N.W.2d at 382. Searches without a warrant are per se unreasonable unless the State establishes an exception to the warrant requirement. *Id.* Consistent with the above cited provisions of the United States Constitution and the Iowa Constitution, when the police stop a car and temporarily detain an individual, the temporary detention is a "seizure."

State v. Predka, 555 N.W.2d 202, 205 (Iowa 1996). This is true even though the detention is only for a brief period of time and for a limited purpose. *Whren v. United States*, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89, 95 (1996). Therefore "[a]n automobile stop is ... subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." *Id.* at 810, 116 S. Ct. at 1772, 135 L. Ed. 2d at 95. To justify such a stop, an officer need only have reasonable, not probable, cause to believe the traffic violation has occurred. *State v. Aderholdt*, 545 N.W.2d 559, 563 (Iowa 1996); *see also Jones*, 586 N.W.2d at 382 ("[t]he Fourth Amendment requires that an officer have reasonable cause or suspicion to stop a vehicle for investigatory purposes."); *but see Predka*, 555 N.W.2d at 205 ("the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."). We judge the reasonableness of the stop by an objective standard. *Predka*, 555 N.W.2d at 205.

For Fourth Amendment purposes, the constitutional reasonableness of traffic stops does not depend on the actual motivation of the individual officers involved. *Whren,* 517 U.S. at 812-13, 116 S. Ct. at 1774, 135 L. Ed. 2d at 97-98. In *Whren*, the Court rejected the argument that the Fourth Amendment test for traffic stops should be whether a police officer, acting reasonably, would have made the stop for the reason given. *Id.* at 813-16, 116 S. Ct. at 1775-76, 135 L. Ed. 2d at 98-100. Instead, the Court decided it made no difference that the officer's traffic violation ground for approaching the truck was pretextual. *Id.* at 812-13, 116 S. Ct. at 1774, 135 L. Ed. 2d at 97.

In ruling on the motion to suppress the trial court found neither the defendant nor the driver of the stopped vehicle was wearing a seat belt. This finding is supported by the testimony of Officer Budd, which the trial court found to be confirmed by a videotape taken from Officer Budd's police car. This failure to wear seat belts constitutes a traffic offense. *See* Iowa Code §§ 321.445(2) (requirement that seat belt be worn) and 321.482 (making violation of section 321.445(2) a simple misdemeanor) (1997). Our review of these circumstances convinces us Officer Budd had an objectively reasonable suspicion the occupants were violating a traffic law. Therefore, the stop was not violative of the Fourth Amendment to the United States Constitution or article 1, section 8 of the Iowa Constitution. We affirm.

AFFIRMED.