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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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CITY OF DES MOINES,)

Plaintiff-Appellee,) Filed February 5, 1980

vs.)

LEONARD FRANTZ,) 356
63055

Defendant-Appellant.)

Appeal from Polk District Court - Gibson C. Holliday, Judge.

Defendant appeals district court's judgment finding him guilty of operating a motor vehicle without a functioning rear lamp in violation of a Des Moines, Iowa city ordinance alleging the court erred: 1) in its application of the ordinance when one rear lamp was functioning; and 2) in sustaining his citation for the offense, which occured during daylight hours, when another section of the municipal code requires a rear lamp from sunset to sunrise only. REVERSED.

Leonard Frantz, pro se, Des Moines, Iowa.

Thomas P. Slater, Assistant City Attorney, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

130743

PER CURIAM

Defendant, Leonard Frantz, appeals district court's judgment finding him guilty of operating a motor vehicle without a functioning rear lamp in violation of city ordinance. Des Moines, Iowa, Code § 27-1748 (1975). He alleges district court erred: 1) in its application of the ordinance when one rear lamp was functioning and 2) in sustaining his citation for the offense during daylight hours when section 27-1745 requires a rear lamp from sunset to sunrise only. We reverse.

I. The Facts. On July 27, 1978, at approximately 6:40 p.m., Leonard Frantz was operating a 1978 Chrysler stationwagon near the intersection of East Nineteenth and Walnut Streets in Des Moines, Iowa. Although the record fails to clearly indicate, defendant apparently was driving with his exterior lights in operation, all of which were functioning properly except the left rear lamp. Because of this malfunction, defendant was stopped and issued a citation for an improper rear lamp in violation of section 27-1748, Des Moines, Iowa Municipal Code (1975).

Defendant was found guilty of the offense in Polk County Associate District Court on October 3, 1978. He appealed to district court and again was found guilty on December 19, 1978. From that ruling, defendant made application for discretionary review to this court which was granted March 7, 1979. Defendant contends district court erred in finding him in violation of the ordinance because 1) the auto he was driving had one functioning red tail lamp and 2) the ordinance was not in effect because he was cited for the offense before sunset.

II. The Ordinance. Section 27-1748 of the Des Moines, Iowa Municipal Code (1975), provides "[e]very motor vehicle and every vehicle which is being drawn at the end of a train of vehicles shall be equipped with a lighted rear lamp, exhibiting a red lamp plainly visible from a distance of 500 feet to the rear."[1] In our review we must sensibly and fairly construe the ordinance with the view carrying out the legislature's intent. Doe v. Ray, 251 N.W.2d 496, 504 (Iowa 1977). We will search for the legislative intent as shown by what the legislature said, rather than by what it should or might have said. Lindstrom v. Aetna Life Insurance Co., 203 N.W.2d 623, 624 (Iowa 1973).

The city attorney argues the best interpretation of the ordinance requires two functioning rear lamps at all times. In support of this proposition he cites the Federal Motor Vehicle Safety Standards Act[2] which recommends two rear lamps.

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[1] This ordinance is the same as section 321.387, The Code 1977, and The Code 1979.

[2] 49 C.F.R. § 571.108, Table III (1978).

While we agree from a safety standpoint two functional rear lamps are preferable, failure to comply with these regulations does not constitute violation of the instant ordinance which only requires every motor vehicle be equipped with "a light," not two or more lights. If the drafters of the ordinance had intended vehicles be equipped with more than one rear lamp, they could easily, and should specifically, have stated that requirement. We can only base our interpretation on what was clearly stated in the ordinance. A malfunctioning left rear lamp is not, of itself, a violation of the ordinance. See Mathews v. Beyer, 254 Iowa 52, 66, 116 N.W.2d 477, 485 (1962). (Snell, J., dissenting). The facts disclose defendant's right rear lamp was functioning properly.

Defendant also alleges it was a bright, clear summer evening when he was cited for the offense and consequently the ordinance was not in effect. While defendant's contentions on this issue also may be correct, we will not review this assignment of error because defendant failed to preserve the issue for appeal. State v. Uebberheim, 263 N.W.2d 710, 712 (Iowa 1978).

Judgment of district court is reversed with an order dismissing the charge against defendant. All costs of this action are assessed against the city.

REVERSED.