

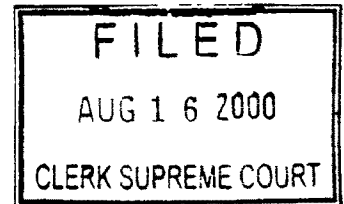
IN THE COURT OF APPEALS OF IOWA

No. 0-427 / 99-1668
Filed August 16, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JACK LEE RILEY,
Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Thomas A. Renda,
District Associate Judge, and Artis Reis, Judge.

Jack Riley appeals his conviction and sentence for operating while
intoxicated, third offense. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant
Attorney General, John P. Sarcone, County Attorney and Ralph Marasco,
Assistant County Attorney, for appellee.

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

ZIMMER, J.

Jack Riley appeals his conviction following a jury trial of operating while intoxicated, third offense. He contends the trial court: (1) erred in failing to grant his motion to suppress; and (2) abused its discretion in refusing to allow evidence regarding the arresting officer's credibility. We affirm.

1. Background Facts and Proceedings. On April 25, 1999, Officer Evan Kooiker was driving east on Southeast Magazine Street in Ankeny. As he approached an intersection, he observed Riley's car pass in front of him traveling south on Southeast Delaware. The officer estimated Riley's vehicle was traveling fifty to fifty-five miles per hour in a thirty-five-mile-per-hour zone. Kooiker pursued the vehicle and came close enough to get a radar reading of fifty-eight miles per hour in a thirty-five-mile-per-hour zone. After stopping the vehicle, Kooiker determined Riley was driving while intoxicated.

On May 10, 1999, the State filed a trial information charging Riley with operating while intoxicated, third offense in violation of Iowa Code section 321J.2 (1997) and driving while barred in violation of Iowa Code section 321.561. The State also alleged Riley was an habitual offender pursuant to Iowa Code section 902.8 based on prior felony convictions.

Riley filed a motion to suppress, contending the officer had no reasonable cause to make an investigatory stop. The motion was denied. At trial, Riley attempted to offer evidence which he contends would have challenged the credibility of the arresting officer. The district court refused to allow some of the offered testimony. A jury found Riley guilty of OWI and he stipulated he was an habitual offender by virtue of two prior convictions for OWI as a third offender.

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On October 6, 1999, Riley entered a stipulation of guilt to the driving while barred charge and was sentenced on both charges that day. Riley appealed both convictions. The OWI and driving while barred cases were consolidated for appeal by the Iowa Supreme Court. Riley's appellate brief addresses only issues relevant to his OWI conviction.

II. Scope of Review. In our de novo 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). Riley's challenge to the district court's evidentiary rulings is reviewed for an abuse of discretion. *State v. Hubka*, 480 N.W.2d 867, 868 (Iowa 1992).

III. Validity of Terry Stop. Riley contends the officer lacked reasonable suspicion to justify an investigatory stop under *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

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*, 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 a "specific articulable

cause to support a reasonable belief that criminal activity may have occurred.” *Kinthead*, 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. Rosenstiel*, 473 N.W.2d 59, 62 (Iowa 1991). An unparticularized 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 (1977). 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).

The crux of Riley’s claim is his belief that the officer was lying when he testified he was able to pursue Riley’s vehicle and come close enough to get a radar reading of fifty-eight miles per hour in a thirty-five-mile-per-hour zone. Whether the officer’s radar reading supported a reasonable suspicion that Riley was speeding boils down to a credibility issue. The trial court found the officer’s testimony to be credible.

Our de novo review of the record reveals reasonable suspicion to support the stop. Reasonable suspicion is supplied by the initial visual observation of Riley’s car by an experienced officer who concluded that the defendant appeared

to be speeding. This observation alone established reasonable suspicion for an investigatory stop. Additional evidence supporting the stop was supplied by a subsequent radar confirmation of Riley's excessive speed. We conclude the district court properly denied Riley's motion to suppress.

IV. Ruling on Relevancy. In his second assignment of error, Riley contends the district court abused its discretion when it excluded proffered testimony of private investigator Ray Presti, a former police officer who would have questioned whether the events prior to the stop took place as described by Kooiker. We conclude the trial court properly limited the testimony of Presti.

Presti was asked to make calculations concerning the speed and distance Officer Kooiker would have needed to travel to catch up to Riley and clock his speed. Presti's credentials to do so were not established in the record. Presti did not witness the pursuit and he was not qualified as an expert witness. Presti admitted he did not know how fast Riley was traveling before being clocked by radar or whether his speed was constant or variable. In addition, the precise distances traveled by the officer prior to the stop were uncertain. The district court did not err in excluding Presti's opinions seeking to reconstruct the officer's pursuit of Riley.

In addition, Presti's proffered testimony regarding the manner in which he would have handled the investigation was not relevant. Several different courses of action were available to Officer Kooiker to confirm Riley's speed. The fact Kooiker chose a course of action different than Presti would have sheds no light on Kooiker's credibility or any other material issue in the case. We note the defendant was permitted to cross-examine Officer Kooiker on the credibility of his

testimony about the pursuit and the radar reading. In addition, Presti was permitted to testify concerning other matters which were germane to issues before the jury.

V. Summary. We conclude the district court properly denied defendant's motion to suppress. We also conclude the trial court did not abuse its discretion in limiting the testimony of the defense witness Presti.

AFFIRMED.