IN THE COURT OF APPEALS OF IOWA

No. 3-1008 / 13-0237
Filed November 6, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSHUA CARMODY,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, James D. Birkenholz, District Associate Judge.

Joshua Carmody appeals from judgment and sentence entered following his convictions for operating a motor vehicle while intoxicated and possession of a controlled substance. **REVERSED AND REMANDED.**

Angela Campbell of Dickey & Campbell Law Firm, PLC, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Heather R. Quick, Assistant Attorney General, John P. Sarcone, County Attorney, and James T. Hathaway, Assistant County Attorney, for appellee.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

DOYLE, P.J.

Joshua Carmody appeals from the judgment and sentence entered following his convictions for operating a motor vehicle while intoxicated (OWI) and possession of a controlled substance. He argues the district court erred in denying his motion to suppress. We agree, and therefore, reverse and remand.

***I. Background Facts and Proceedings*.**

On September 12, 2012, Des Moines police officers observed an oncoming Cadillac DeVille without a front license plate. They turned their squad car around to initiate a traffic stop. Once behind the Cadillac, one of the officers observed a temporary plate displayed in the back window of the car. The Cadillac stopped, and the officers parked behind it. As the officers approached the car, they noticed a strong odor of marijuana coming from the car. One of the officers had Carmody, the driver, step out of the car. Another officer, called to the scene to assist, talked to Carmody. Carmody's speech was very slow and mumbled. The officer observed that his eyes were bloodshot. Not smelling any odor of an alcoholic beverage, the officer asked Carmody to stick out his tongue. Carmody complied, and the officer observed a heavy greenish/white coating on the tongue along with multiple heat bumps. When asked when the last time he had smoked marijuana, Carmody responded, "earlier today." During this time, another officer discovered a bag of marijuana in the glove box of the car. Carmody answered "yes" when he was asked if the marijuana was his.

Carmody was ultimately arrested and charged by trial information with operating a motor vehicle while under the influence of alcohol or a drug, a serious misdemeanor, in violation of Iowa Code section 321J.2 (2011), and with

possession of a controlled substance, a serious misdemeanor, in violation of Iowa Code section 124.401(5).

Carmody filed a motion to suppress challenging the legality of the stop. After the court denied the motion, Carmody waived his right to a jury trial and stipulated to a trial on the minutes. The court found Carmody guilty of OWI, first offense, and it sentenced him to one year of incarceration, with all but three days suspended, and with credit for one day served. The court also found Carmody guilty of possession of a controlled substance and sentenced him to one year of incarceration, with all but three days suspended, and with credit for one day served. The possession sentence was ordered to be served consecutive to the OWI sentence. Carmody was ordered to pay fines, surcharges, and court costs.

Carmody now appeals.

II. Discussion.

Because of the constitutional dimensions of Carmody's claims, our review is de novo. *State v. Pals*, 805 N.W.2d 767, 771 (Iowa 2011). Carmody contends the stop was not justified by any traffic violation and the seizure violated his rights under the Fourth Amendment of the United States Constitution and the laws and Constitution of the State of Iowa. Federal and state constitutional search and seizure principles applicable to traffic stops were thoroughly discussed recently in *State v. Tyler*, 830 N.W.2d 288, 291-94 (Iowa 2013). *See also Pals*, 805 N.W.2d at 773-74. It would serve no purpose to repeat them here.

In order to justify the stop of Carmody's car, the officers needed to have, at a minimum, reasonable suspicion to believe criminal activity had occurred or was occurring. *State v. Tague*, 676 N.W.2d 197, 204 (Iowa 2004). In other

words, the officers must have had "specific and articulable facts, which taken together with rational inferences from those facts, to reasonably believe criminal activity may have occurred. Mere suspicion, curiosity, or hunch of criminal activity is not enough." *Id.* (internal citations omitted). Determination of whether reasonable suspicion exists is made "in light of the totality of the circumstances confronting the officer, including all information available to the officer at the time the officer makes the decision to stop the vehicle." *Id.*

With certain exceptions, Iowa Code section 321.37(1) requires registration plates to be attached to a motor vehicle, "one in the front and the other in the rear." A violation of this statute gives an officer probable cause to stop a motorist. *See State v. Lloyd*, 701 N.W.2d 678, 681-82 (Iowa 2005). But:

> A vehicle may be operated upon the highways of this state without registration plates for a period of forty-five days after the date of delivery of the vehicle to the purchaser from a dealer if a card bearing the words "registration applied for" is attached on the rear of the vehicle. The card shall have plainly stamped or stenciled the registration number of the dealer from whom the vehicle was purchased and the date of delivery of the vehicle. . . .
>
> . . . Only cards furnished by the [Iowa Department of Transportation] shall be used.

Iowa Code § 321.25.

Carmody's vehicle was stopped for displaying a temporary registration card, because, as one officer explained at the suppression hearing: "[The Cadillac] didn't have any license plates on it, and we couldn't read the temporary tag." He further stated: "At the car length distance from the suspect vehicle, we could see a temp tag" but "couldn't make out the markings on it." However, the officer admitted that was "not real unusual" and "happen[ed] regularly." The officer did not claim he did not see the temporary registration card before

initiating the stop, nor did he assert the card was irregular, altered, improperly displayed, or in violation of any applicable statute or regulation. The officer advanced no reason for his inability to read the card. The officer articulated no mistake of fact in stopping the car, and the officer stated no reasonable grounds to believe the vehicle was not properly registered. Consequently, the officer had no specific and articulable facts upon which to reasonably believe criminal activity was afoot.

The officers' excuse for pulling Carmody over was merely that he could not make out the markings on the temporary tag, a regular occurrence in his experience. If the excuse made here, without more, met constitutional muster, officers would effectively have free reign to pull over any driver who is in full compliance with Iowa Code section 321.25. We conclude the excuse does not meet constitutional muster because our jurisprudence does not recognize an unbridled cart blanche authority on the part of officers to make random investigatory traffic stops.

> Under the Fourth Amendment, the United States Supreme Court has recognized that allowing law enforcement unbridled discretion in stopping vehicles would invite intrusions upon constitutionally guaranteed rights. When there is no probable cause or reasonable suspicion for a stop, an officer has the kind of standardless and unconstrained discretion that is the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some extent. Moreover, the Court recognized that individuals frequently spend significant time traveling in automobiles and must be entitled to protection against unreasonable searches and seizures when traveling. Were the individual subject to unfettered governmental intrusion every time she or he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed.

Tyler, 830 N.W.2d at 292 (quoting *Delaware v. Prouse*, 440 U.S. 648, 661 (1979) (internal quotation marks, citations, and alterations omitted).

III. Conclusion.

Having no reasonable suspicion, the officers' stop of Carmody's car violated Carmody's constitutional right to be free from unreasonable searches and seizures. Therefore, the motion to suppress should have been granted. Consequently, we reverse and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.