STATE OF IOWA, Plaintiff-Appellee, vs. JON ERIC SCANLON, Defendant-Appellant.

2013 | Cited 0 times | Court of Appeals of Iowa | March 13, 2013

IN THE COURT OF APPEALS OF IOWA

No. 3-025 / 12-0741 Filed March 13, 2013

STATE OF IOWA, Plaintiff-Appellee,

vs.

JON ERIC SCANLON, Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Cynthia Moisan, Judge.

Jon Scanlon challenges the district court s denial of his motion to suppress. REVERSED.

William G. Brewer and Daniel J. Rothman, of McEnroe, Gotsdiner, Brewer, Steinbach, P.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, John Sarcone, County Attorney, and Joseph Crisp, Assistant County Attorney, for appellee.

Heard by Eisenhauer, C.J., and Danilson and Bower, JJ. DANILSON, J.

Jon Scanlon appeals the denial of his motion to suppress. Because the officers unreasonably expanded the traffic stop, we reverse.

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I. Background Facts and Proceedings.

On August 19, 2011, Windsor Heights Police Officer Andrew Nissen and his training officer Lieutenant Rupiper initiated a traffic stop for an improper rear lamp on Jon Scanlon s vehicle in the southbound lanes of 73rd Street in Windsor Heights in the vicinity of the entrance and exit ramps to the I-235 freeway. The traffic stop was recorded by the on-board camera of the police car. A review of the camera recording shows the police car s lights were activated before reaching the northern on- and off-ramps for I-235. Scanlon proceeded at a legal speed under I-235 and pulled his car over south of the on- and off-ramps on the south side of I-235. Officer Nissen did not note any suspicious movements inside the vehicle. Both police officers approached Scanlon s vehicle; Officer Nissen obtained Scanlon s license, insurance, and registration, and the officers returned to the patrol vehicle. The officers conversation was captured on the recording; one officer can be heard saying, I mean, they didn t do anything, he wasn t moving around. The records check indicated Scanlon had a 2009 drug conviction, and the two officers discussed strategies to elicit consent to search, including calling in K-9 unit. Following the in-car conversation, Officer Nissen asked Scanlon to get out his vehicle to show him the faulty rear light and then the following occurred:

Officer Nissen: And then, also, I noticed it took you about two blocks to pull over. Scanlon: Yea, and again that was just I didn t want to go off on the underpass. Officer Nissen: No illegal contraband in the vehicle? Scanlon: No. Officer Nissen: What was your drug-related conviction a couple years ago?

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Scanlon: Growing marijuana. Officer Nissen: Nothing in the vehicle now? Scanlon: No. Officer Nissen: Mind if I look real quick? Scanlon: No, I d prefer you didn t look. Officer Nissen: Okay here s the deal, you didn t pull over in time you have to pull over like that (snaps his fingers). Scanlon: You gotta understand here when you put your lights on I was coming under an underpass. Officer Nissen: Um, ve been here 2 weeks and I ve have had cars pull under there just fine. Scanlon: Okay, well, I ll certainly keep that in mind next time. Officer Nissen: Well, actually I m going to have you hang tight real quick. And then you don t have anything on your person do ya? Mind if I search ya? (Officer Nissen has Scanlon turn around place his hands behind his back. The officer holds onto Scanlon s hands and pats him down.) Okay, well here s the deal, I m not threatening you but I m just going to request a K9 to come walk around your vehicle due to fact that you have a previous drug conviction and you didn t come to stop right away. So that s just the route we re going to go. So you re nervous. I know there s something in there. I wasn t born yesterday. If ya got a little weed I ll kick you loose probably with a citation. I m assuming that s what you have. Scanlon: Um, yea. Officer Nissen: Where is it at? Scanlon: In my center console. Officer Nissen: Okay, that s probably why you didn t pull over right away? Scanlon: No, not at all. I literally did not pull over because of the underpass, and I m really freaked out and let me tell you, this girl I m dating has no idea.

Following this exchange, Scanlon was told to stand with Officer Rupiper

while Officer Nissen searched his vehicle. At the conclusion of the search, the

officers allowed Scanlon s date to drive his car away, and Scanlon was placed

under arrest and taken to the Windsor Heights Police Department. Scanlon was charged with possession of a controlled substance. He filed

a motion to suppress, contending the officer did not have probable cause or

reasonable suspicion to detain him or justify the request to search the vehicle

and any consent to search was not voluntarily given. He also asserted the

principles set out in a recent supreme court opinion had been violated.

At the hearing on the motion, Scanlon s counsel acknowledged the stop

for the equipment violation was valid. Defense counsel stated that the issue

we re attacking is whether or not there was reasonable suspicion for the officer to

continue in his detainment of Mr. Scanlon for the purpose of conducting a

narcotics investigation.

Officer Nissen testified that when Scanlon pulled over, He was very nervous. He had rapid eye movements and he was visibly shaking. Nissen stated this wasn t your typical reaction. He also stated that in running Scanlon s information through dispatch, [h]e had previous drug convictions. Officer Nissen eventually acknowledged that Scanlon had one conviction in 2009, and besides the one conviction in 09, there [were] no physical signs, symptoms or indicators that specifically there was a narcotics related concern.

The district court denied the motion to suppress. It found that Officer Nissen s decision to request to search was based upon specific and articulable facts, not just a hunch, and in any event, there is nothing that prevents an officer during a valid, routine traffic stop from asking to search the vehicle. The court the business related to the traffic stop had been concluded at the time of the request to search voluntarily admitted controlled substances were in the vehicle, which provided probable cause for the officer to search the vehicle.

Scanlon appeals.

II. Scope and Standard of Review.

We review constitutional issues de novo. State v. Pals, 805 N.W.2d 767, 771 (Iowa 2011). This review requires an independent evaluation of the totality of the circumstances as shown by the entire record. The court gives deference to the factual findings of the district court due to its opportunity to evaluate the

credibility of the witnesses, but [is] not bound by such findings. Id. (citations omitted).

III. Discussion.

There is no dispute that Scanlon did not expressly consent to the search. 1 consent, but the State insists this is not a consent case and does not aver implied consent. The questions before us are (1) whether the expansion of the traffic stop was reasonable, the presence of controlled substance in his vehicle was voluntarily made. We find the first dispositive and, therefore, do not address the second.

The Fourth Amendment of the United States Constitution and article I, section 8 of the Iowa Constitution provide protection to individuals against

1 The Pals case discusses the voluntariness of consent. See 805 N.W.2d at 777-84. The district court and the parties analyzed the defendant s admission using the principles of voluntariness discussed in Pals. unreasonable searches and seizures. State v. Kinkead, 570 N.W.2d 97, 100 (Iowa 1997). Warrantless searches and seizures are per se unreasonable unless the State proves by a preponderance of the evidence that a recognized exception to the warrant requirement applies. State v. Howard, 509 N.W.2d 764, 766 (Iowa 1993).

Scanlon argues that Officer Nissen improperly expanded the scope of the initial valid traffic stop. We agree.

A traffic stop is more analogous to an investigative detention than a custodial arrest, and the United States Supreme Court and our supreme court

treat a traffic stop based on probable cause or reasonable suspicion under the standard set forth in Terry v. Ohio, 392 U.S. 1, 19 (1968). See Berkemer v. McCarty, 468 U.S. 420, 439 (1984); Pals Terry emphasized that the scope of the search must be strictly tied to and justified by the circumstances which rendered its initiation permissible. Pals, 805 N.W.2d at 775 (internal quotation marks omitted).

As a result, under traditional application of the exclusionary rule, evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation. Id. at 775 76 (quoting Terry, 392 U.S. at 29). A valid traffic stop may become unlawful if it is prolonged beyond the time reasonable required to complete [its] mission. Florida v. Royer, 460 U.S. 491, 500 (1983). This means the seizure must be limited both in scope and duration. Id. So long as inquiries unrelated to the traffic stop do not measurably extend the duration of the stop they do not run afoul with the constitution. Arizona v. Johnson, 555 U.S. 323, 333 (2009). 2

Here, the issue relates to the scope of the seizure, although if the scope or authority of the officer is exceeded, the duration of the seizure is unlawful.

The State responds to Scanlon s claim that the officer unreasonably expanded the scope of the detention by contending that the officer was still in the process of resolving the ambiguity with which he was faced and the possibility that criminal activity was afoot. This claim, however, is directly

contradicted by Officer Nissen s testimony at the suppression hearing:

On cross examination, defense counsel asked the officer:

Q. When exactly did you find out that he had prior convictions for narcotics? A. When I had went back to my vehicle to run his driver s license and his passenger information and the vehicle registration. Q. Sounds pretty early on. Would you say how early on is that? A. It would have been after my initial contact with the vehicle at which point I asked Mr. Scanlon to exit the vehicle to show him

2 One state court has quite recently discussed the reasonableness of continued detention. See State v. Klamar, 823 N.W.2d 687 (Minn. Ct. App. 2012). Relying on Terry, the Minnesota appellate court wrote: The analysis of an investigative seizure involves a dual inquiry. First, we ask whether the [seizure] was justified at its inception. Second, we ask whether the actions of the police during the [seizure] were reasonably related to and justified by the circumstances that gave rise to the [seizure] in the first place. The second prong of the inquiry constrains the scope and methods of a search or seizure. A seizure that is initially valid may become invalid if it becomes intolerable in its intensity or scope. [E]ach incremental intrusion during a [seizure] must be strictly tied to and justified by the circumstances which rendered [the initiation of the [seizure] permissible. Klamar, 823 N.W.2d at 691-92 (citations omitted). The Klamar To be reasonable, the basis for an intrusion must satisfy the following objective test: would the facts available to the officer at the moment of the seizure . . . warrant a person of reasonable caution in the belief that the action taken was appropriate. Id. at 693. (internal quotation marks, alterations, and citation omitted). the equipment violation and then requested permission to search his vehicle. Q. When you showed him the violation, which you said is your typical activity in a traffic ticket case, was there anything else that you had left to do as far as issuing a citation or investigation the citable offenses of the traffic violation. A. No. Q. So after that point he was being detain completely on the suspicion that he potentially had narcotics in his car? A. After can you repeat the question? Q. After you showed him the taillight or whatever the reason for the stop was, you were done with the ticket at that point, correct? A. Correct. Q. You weren t investigating the ticket charge any more right? A. No.

(Emphasis added.) Significantly, even the district court noted the business

related to the traffic stop had been concluded at the time of the request to

search.

Scanlon had a right to refuse to consent to a search and did so. See Pals,

805 N.W.2d at 783 (noting that the subject s knowledge of a right to refuse is a

factor to be taken into account). At that point or earlier, Scanlon should have

been free to leave. See Klamar, 823 N.W.2d at closely related to the initial justification for the seizure is invalid unless there is

detention after this point was unreasonable.

Absen there was not probable cause to

search the vehicle. when the facts and circumstances would lead a reasonably prudent person to

believe that the vehicle contains cont State v. McConnelee, 690 N.W.2d

27, 32 (Iowa 2004) (internal quotation marks and citation omitted). As

acknowledged by Officer Nissen at the suppression hearing, Scanlon exhibited no physical signs, symptoms, or indicators to arouse a narcotics-related concern.

He made no furtive movements. The prior drug conviction Scanlon had on his

record was from 2009 two years prior. A single prior drug conviction may

provide a hunch that an individual may possess illegal controlled substances in

the future, but does not provide reasonable suspicion or probable cause. 3

convincing and the area of the traffic stop involves on- and off-ramp traffic from the freeway

under a concrete overpass.

The video also does not appear to support the conclusion that Scanlon

was more nervous than anyone might feel during a traffic stop, although we

acknowledge the limitations of the video and better vantage point of the trained

officer. However, even if we could agree with the officer, a nervousness without some other indicator of criminal activity does not provide

sufficient reason to conduct a warrantless search. Cf. State v. Carter, 696

rummag veered across three lanes of traffic while his

head was down, and struck the curb while his attention was focused on the

console area rather than driving quickly exit s door

3 We note that even those individuals with a prior conviction and on parole are entitled to the protections of the Iowa Constitution in that a reasonable suspicion is necessary to le not his home. See State v. Ochoa, 792 N.W.2d 260, 291 (Iowa 2010) (concluding that a enforcement officer without any particularized suspicion or limitations to the scope of the open, and appeared ; see also United States v. Guerrero, 374 F.3d

584, 590 (8th exhibit signs One authority has

noted that nervousness alone does not even justify a patdown search. See 4 W.

LaFave, Search and Seizure § 9.4(f), at 180 81 (3rd ed. 1996) (noting that

sufficient basis for a stop).

During arguments before this court, the State conceded that probable

cause to search the vehicle did not exist until Sca . The State

also concedes that the continued detention cannot be supported to allow for time

for a drug dog to arrive on the scene as the officer had not yet summoned the

drug dog. Moreover, there is nothing in this record regarding the availability of a

drug dog and, if available, how long it would take for the dog to arrive.

Even if it is permissible under our Iowa Constitution to ask a citizen

questions unrelated to the traffic stop, and even if it is constitutional under these

facts for the officer to ask Scanlon for consent to search his vehicle, after

Scanlon refused consent, the continued detention of the defendant was

unreasonable. intrusive and resembled an interrogation. The routine traffic stop was

transformed into a drug interdiction investigation. See United State v. Peralez,

526 F.3d 1115, 1121 (8th Cir. 2008) (concluding a traffic stop was unlawfully

of conducting a

). At that point, and considering the totality of the circumstances, the officer had neither probable

cause to search or a reasonable suspicion that criminal activity was afoot.

Accordingly, the traffic stop was unlawfully extended. Under these facts, we

be suppressed. 4

We reverse.

REVERSED.

4 We acknowledge there is authority that after a Fourth Amendment violation a search may be valid if the consent to search was valid. See State v. Holt, 229 F.3d 931, 940 (10th Cir. 2000). However, the State insists that this is not a consent case, so we do not , if his statements constitute implied consent.