

IN THE IOWA DISTRICT COURT FOR PLYMOUTH COUNTY

THE STATE OF IOWA,

Plaintiff,

vs.

SHANNE B. ARRE,

Defendant.

CRIMINAL NO. FECR0158163

**RULING ON DEFENDANT'S MOTION
TO SUPPRESS**

A hearing was held on December 22, 2014 on the Defendant Shanne Arre's Motion to Suppress filed December 3, 2014. The State of Iowa was represented by Plymouth County Attorney Darin Raymond. The Defendant appeared in person and was represented by Billy Oyadare. The hearing was reported by Rheanne Hawes. Following the hearing, the matter was taken under advisement and the Court now rules on the Motion to Suppress as follows.

FACTUAL BACKGROUND

The Defendant is charged with the crime of Possession with Intent to Deliver a Controlled Substance - marijuana, a Class D Felony in violation of Iowa Code Section 124.401(1)(d) in Count One of the Trial information. In Count Two he is charged with the crime of Drug Tax Stamp Violation, a Class D Felony in violation of Iowa Code Chapter 453B. In Count Three he is charged with Delivery of a Controlled Substance – marijuana, a Class D Felony in violation of Iowa Code Section 124.401(1)(d). In Count Four he is charged with Operating a Motor Vehicle While License Barred in violation of Iowa Code Section 321.560 and 321.561. Finally under Count Five the Defendant is charged with Operating While Under the Influence, a First Offense, a Serious Misdemeanor in violation of Iowa Code Section 321J.2(2)(A). He has entered a plea of

not guilty to each charge. The Defendant has filed a timely Motion to Suppress Evidence which challenges the constitutionality of the traffic stop. The State has filed a written resistance to the Motion.

The charges stem from a traffic stop which occurred on July 31, 2014 near Hinton, Iowa. The stop was made by Plymouth County Sheriff's Deputy Jacob Wingert. Deputy Wingert was on routine patrol on July 31, 2014 and at or around 1:00 a.m. he was traveling southbound on Highway 75 (a four lane highway which generally runs north and south between Le Mars and Sioux City Iowa). While on patrol, Deputy Wingert observed a vehicle (a car) behind him on Highway 75 traveling the same direction as he was but in a different lane. This vehicle appeared to be traveling slower than Deputy Wingert and he estimates that the vehicle was traveling approximately ten miles an hour below the posted speed limit. Deputy Wingert observed that this vehicle did not catch up with his vehicle even as he continued to slow down to a very slow rate of speed (estimated as 10 to 12 miles per hour). It appeared to Deputy Wingert that the driver of the vehicle he was observing was intentionally avoiding catching up with the Deputy or passing him. In the roadway where all of these events took place, the Deputy testified that he was not aware of any minimum rate of speed required or posted.

Deputy Wingert continued to drive the community of Hinton and as he approached the area of the football field for Hinton High School on the southern part of Hinton, the vehicle he was observing eventually passed him. Up to that point, Deputy Wingert had not observed any violations of the law or rules of the road.

After the Defendant's vehicle passed Deputy Wingert, the Deputy observed the rear car license plate. The rear plate was framed by a dealership frame

(JENSENDEALERSHIPS.COM on the top of the frame and JENSEN on the bottom). This dealership frame clearly permitted the Deputy to read the plate, the State, the County, and the month or renewal sticker (red in color and June noted as the renewal month). A very tiny portion of the frame encroached the lettering of the word "Plymouth" on the bottom of the plate and the Word "Iowa" on the top of the plate. The frame did encroach a small portion of the numbers and letters which appear on the bottom of the red month sticker. The extent of these encroachments is shown quite clearly on exhibits 101 and 102 admitted at the hearing on the Motion to Suppress. The frame in no way covered up any portion of the plate.

At this point, Deputy Wingert initiated a traffic stop and pulled the Defendant over. The Defendant was driving a Ford Focus and was alone in the vehicle. The articulated reasoning for the traffic stop as stated by Deputy Wingert included: 1) the slow driving by the Defendant, 2) the Defendant's refusal or reluctance to pass the Deputy, 3) the hour of the day, and 4) the license plate frame covered a portion of the license plate.

Deputy Wingert was able to get the Defendant to pull over after activating his lights, then audibly asking him to pull over, then using his sirens. The Defendant did not elude Deputy Wingert. Deputy Wingert observed the odor of fresh or green marijuana emanating from the Defendant's car when the Defendant rolled his window down at the approach of Deputy Wingert. Deputy Wingert described the Defendant as slow and lethargic in his actions and thus appeared to be impaired. The Defendant was cooperative with Deputy Wingert. Deputy Wingert confronted the Defendant about the smell of marijuana and the Defendant admitted that he had marijuana on his person and

marijuana was later found inside the vehicle as well following an inventory search. After this confrontation, Deputy Wingert made contact with his dispatcher and was informed that the Defendant had a barred driver's license. Deputy Wingert transported the Defendant to the Plymouth County jail and Deputy Matt Struve conducted the vehicle inventory search before the car was towed.

LEGAL ANALYSIS

The Fourth Amendment of the United States Constitution requires reasonable cause to stop a person for investigation. **State v. Heminover, 619 N.W. 2d 353, 357-58 (Iowa 2000)** and **State v. Heuser, 661 N.W. 2d 157, 161 (Iowa 2003)**. The main reason law enforcement may stop a person "is to resolve the ambiguity as to whether criminal activity is afoot." **State v. Richardson, 501 N.W. 2d 495, 497 (Iowa 1993)**. Reasonable cause may exist even when there is no probable cause to arrest. **Terry v. Ohio, 392 U.S. 1, 20, 88 S.Ct. 1868, 1884, 20 L.Ed.2d 889, 911 (1968)**. Once a defendant challenges the legality of an officer's stop, the State has the burden to show the officer had "specific and articulable cause to reasonably believe criminal activity [was] afoot". **Heminover at 358** and **Heuser at 161**. A general, non-particular suspicion is not sufficient to justify a stop. **State v. Wiese, 525 N.W.2d 412 (1994)**.

When a peace officer observes a traffic offense, however minor, the officer has probable cause to stop the driver of the vehicle. **State v. Harrison, 846 N.W.2d 362, 365 (2014) citing State v. Mitchell, 498 N.W.2d 691, 693 (Iowa 1993)**. A traffic violation establishes reasonable suspicion. **Harrison at 365**. The motivation of the officer stopping the vehicle is not controlling in determining whether reasonable suspicion existed. The officer is therefore not bound by his real reasonable for the stop.

State v. Kreps, 650 N.W.2d 636, 641 (Iowa 2002). Clearly none of the driving activity or behavior of the Defendant until he passed Deputy Wingert violated any rules of the road or laws such that Deputy Wingert had either probable cause or reasonable suspicion. Accordingly the Court must look to what Deputy Wingert observed with regard to the Defendant's license plate, the frame surrounding that plate, and the applicability of case **State v. Harrison** cited above.

The **Harrison** court interpreted **Iowa Code Section 321.37(3)** under the facts of that case and concluded that the facts of that case did not merit suppression of evidence. **Iowa Code Section 321.37(3)** makes it unlawful "for the owner of a vehicle to place any frame around or over the registration plate which does not permit full view of all numerals and letters printed on the registration plate." The **Harrison** court concluded that the precise question before it was "if covering up the county name on a license plate violates **Iowa Code Section 321.37(3)**. Here, none of the plate was "covered up" and was otherwise legible as indicated on the photo exhibits noted above. In this respect the instant case is different than **Harrison** and thus **Harrison** is distinguishable from the facts here. In light of these facts, Deputy Wingert did not have probable cause or reasonable suspicion to stop the Defendant's vehicle and consequently, all evidence obtained as a result of the stop was obtained in violation of the Defendant's Constitutional rights and should be suppressed.

RULING

Accordingly, based upon the foregoing, the Defendant's Motion to Suppress is granted. All evidence obtained as a result of Deputy Wingert's traffic stop of the Defendant noted herein is suppressed. So ordered. Clerk to notify.