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Summary of State v. Rincon, 122 Nev. Adv. Op. 99

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State v. Rincon, 122 Nev. Adv. Op. 99 (Dec. 7, 2006)[1]

CRIMINAL LAW – REASONABLE SUSPICION

Summary

A motorist is driving below the speed limit is, by itself, insufficient to give rise to a reasonable suspicion of driving while intoxicated warranting an investigative stop. While reasonable suspicion is not a stringent standard, it requires more than a mere observation that a motorist is driving slowly. There must be additional indicia of erratic driving or unusual behavior before a reasonable suspicion arises justifying an investigative stop. Where no reasonable suspicion exists, an inquiry stop may nonetheless be justified under the community caretaking doctrine when a police officer has an objectively reasonable belief that a slow driver is in need of emergency assistance. Because the record before was insufficient to permit review of the district court's ruling, the Court vacated the district court's order and remanded the case to the district court for further proceedings applying the clarified standards.

Disposition/Outcome

Vacated and remanded.

Factual and Procedural History

At 12:45 a.m., on July 24, 2005, Pyramid Police Officer Michael Durham observed a white pickup truck driving very slowly. The section of Pyramid Lake Highway was dark with no streetlights or other incidental lighting. Officer Durham pulled behind the truck and activated the video recorder mounted on the dash of the police vehicle. A copy of the videotape was admitted into evidence at the preliminary hearing.

At the preliminary hearing, Officer Durham testified that he followed the truck for 3 miles and determined that it was traveling 48 miles per hour in a zone where the maximum speed limit was 65 miles per hour. Officer Durham also testified that, although the driver was not weaving, he observed the truck cross the fog line of the roadway two times and the center divider line three times. On cross-examination, Officer Durham admitted that the written police report he prepared did not indicate that the driver crossed the fog line of the roadway, but instead stated that he crossed the yellow center divider line five times. When confronted with the police report, Officer Durham admitted that his testimony was inaccurate, explaining "what my report says is what happened that night." Officer Durham initiated an investigative traffic stop based on his belief that the driver was under the influence of alcohol.

When the driver rolled down the window, Officer Durham immediately smelled alcohol. He administered several field sobriety tests and, ultimately, arrested respondent Abraham Rincon for driving while under the influence of alcohol (DUI). Approximately two hours later, Rincon underwent three descending blood draws: his blood alcohol level measured .122, .109, and .102, respectively. Because Rincon had prior misdemeanor DUI convictions, he was subsequently charged with one count of felony DUI.

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After the preliminary hearing, defense counsel filed a motion to suppress the blood evidence, arguing that there was no reasonable suspicion to justify the traffic stop. The State opposed the motion. Without conducting an evidentiary hearing, the district court granted the motion, finding that upon viewing the video tape of the traffic stop, the district court concluded that probable cause did not exist to warrant the officer's stop. The State filed this timely appeal.

Discussion

A law enforcement officer has a reasonable suspicion justifying an investigative stop if there are specific, articulable facts supporting an inference of criminal activity.[2] In determining the reasonableness of a stop, the evidence is viewed under the totality of the circumstances and in the context of the law enforcement officer's training and experience.[3]

Many jurisdictions have concluded that the reasonable suspicion standard is satisfied where the motorist is driving well below the speed limit and is engaged in another unusual driving behavior indicative of intoxication, such as swerving in the travel lane,[4] driving on the shoulder of the road,[5] straddling the lane,[6] crossing the center line,[7] or weaving within or outside the travel lane.[8]

However, the State cited no legal authority in support of its argument that slow driving without any other indicia of erratic driving or unusual behavior is sufficient to justify a traffic stop. *Taylor v. State*,[9] upon which the State relied, did not conclude that the sole fact that the driver was proceeding slowly was sufficient to satisfy the reasonable suspicion standard. Additionally, other jurisdictions which have considered the issue have concluded that the mere fact that a driver is traveling at a slower than usual speed on a roadway does not by itself create a reasonable suspicion of driving under the influence of alcohol.[10] The Court agreed with this standard.

The Court held that, absent evidence of a traffic violation,[11] there must be additional indicia of erratic driving or unusual behavior before a reasonable suspicion arises that a motorist who is driving slowly is intoxicated. In analyzing whether there was reasonable suspicion to justify an investigative stop of a slow driver, a reviewing court may consider a variety of relevant circumstances, including the road and weather conditions, the time of day, the driving pattern, the behavior of the driver, and any other circumstance that appears to be indicative of criminal activity in light of the officer's training and experience.

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[2] State v. Lisenbee, 116 Nev. 1124, 1127-28, 13 P.3d 947, 950 (2000); State v. Sonnenfeld, 114 Nev. 631, 633, 958 P.2d 1215, 1216 (1998).

[3] *Sonnenfeld*, 114 Nev. at 633, 958 P.2d at 1216; State, Dep't of Motor Vehicles v. Long, 107 Nev. 77, 79, 806 P.2d 1043, 1044 (1991).

[4] Wells v. State, 772 N.E.2d 487, 490 (Ind. Ct. App. 2002).

[5] United States v. Sanchez-Pena, 336 F.3d 431, 437 (5th Cir. 2003).

[6] United States v. Botero-Ospina, 71 F.3d 783, 788 (10th Cir. 1995).

[7] United States v. Bertrand, 926 F.2d 838, 844 (9th Cir. 1991).

[8] Veal v. State, 614 S.E.2d 143, 145 (Ga. App. Ct. 2005); Esteen v. State, 503 So. 2d 356, 357-58 (Fla. Dist. Ct. App. 1987), *modified on other grounds by* Kehoe v. State, 521 So. 2d 1094 (Fla. 1988).

[9] 111 Nev. 1253, 903 P.2d 805 (1995), *overruled on other grounds by* Gama v. State, 112 Nev. 833, 920 P.2d 1010 (1996).

[10] State v. Brown, 509 N.W.2d 69, 71 (N.D. 1993); *see also* Raulerson v. State, 479 S.E.2d 386, 387 (Ga. Ct. App. 1996); Faunce v. State, 884 So. 2d 504, 506-07 (Fla. Dist. Ct. App. 2004).

[11] *See* NEV. REV. STAT. § 484.371(1) (2005); *Gama*, 112 Nev. at 836, 830 P.2d at 1012-13.

Absent reasonable suspicion, and under very limited and narrow circumstances, an inquiry stop of a slow driver may also be permissible pursuant to the community caretaking exception to the Fourth Amendment.[12] The community caretaking doctrine recognizes that police officers have a duty to aid drivers who are in distress, which is totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.[13] The community caretaking exception applies if a police officer initiates a traffic stop based on a reasonable belief that a slow driver is in need of emergency assistance.[14] An objectively reasonable belief that emergency assistance is needed may arise if a police officer observes circumstances indicative of a medical emergency or automotive malfunction.[15]

In this case, the record was insufficient to effectively review the district court's decision granting the motion to suppress. The district court did not conduct a suppression hearing and stated no findings on the record. Additionally, the district court's order granting the motion to suppress incorporates the wrong legal standard and does not include express findings of fact.

The district court's made factual inferences about Rincon's driving after viewing the videotape, but it failed to include those factual findings in its order. The Court recently advised district courts to issue express factual findings when ruling on suppression motions so that this court would not have to speculate as to what findings were made below.[16] Because the Supreme Court does not act as a finder of fact, and it was unable to determine whether the district court found the police officer's testimony was credible or was inconsistent with the videotape. Accordingly, it vacated the district court's order granting the motion to suppress and remanded this case to the district court for an evidentiary hearing.

Conclusion

That a motorist is driving slowly does not, by itself, create a reasonable suspicion justifying an investigative stop. There must be additional indicia of erratic driving or unusual behavior before a reasonable suspicion arises justifying an investigative stop. Where no reasonable suspicion exists, an inquiry stop may nonetheless be justified under the community caretaking doctrine when a police officer has an objectively reasonable belief that a slow driver is in need of emergency assistance. Because the record before was insufficient to permit review of the district court's ruling, the Court vacated the district court's order and remanded this case to the district court for further proceedings.

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[12] Cady v. Dombrowski, 413 U.S. 433, 441 (1973); *see also* State v. Rinehart, 617 N.W.2d 842, 844 (S.D. 2000); *Brown*, 509 N.W.2d at 71-72; McDonald v. State, 759 S.W.2d 784, 785 (Tex. Ct. App. 1988); State v. Garbin, 739 A.2d 1016, 1018-19 (N.J. Super. Ct. App. Div. 1999); Com. v. Waters, 456 S.E.2d 527, 529-30 (Va. Ct. App. 1995).
[13] *Cady*, 413 U.S. at 441.
[14] *See Rinehart*, 617 N.W.2d at 844.
[15] *Id.*
[16] Rosky v. State, 121 Nev. 184, 191, 111 P.3d 690, 695 (2005).