

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

STATE V. HOLMES

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STATE OF NEBRASKA, APPELLANT,
v.
LEVEGEANO E. HOLMES, APPELLEE.

Filed February 19, 2008. No. A-07-849.

MOORE, Judge.

INTRODUCTION

The State of Nebraska, pursuant to Neb. Rev. Stat. § 29-824 (Cum. Supp. 2006), seeks review of the order of the district court for Hall County, granting the motion of Levegeano E. Holmes to suppress evidence as a result of a traffic stop of Holmes. Because I find that a reasonable suspicion existed that Holmes was violating the motor vehicle registration statutes, the stop was constitutionally permissible. The decision of the district court granting Holmes' motion to suppress is reversed, and the cause is remanded for further proceedings.

BACKGROUND

On May 23, 2007, Holmes was charged by information with one count of possession of a controlled substance with intent to distribute and one count of no drug tax stamp. Holmes filed a motion to suppress evidence, and a hearing on the motion was held on July 11, 2007.

At the hearing on the motion to suppress, the State offered the testimony of Investigator Jason Probasco of the Nebraska State Patrol. Probasco testified that on February 22, 2007, he was patrolling Interstate 80 in Hall County, at which time he observed a Chevy Suburban with no front license plate and some type of paper in the license plate holder on the rear of the vehicle. Probasco pulled alongside the vehicle, approximately within a car length, and he could only see black handwritten numbers on the paper in the license plate holder which read "0311." He could not read the balance of the paper, although he did see some red lettering. Probasco then initiated a stop of the vehicle. Probasco indicated that Nebraska law requires vehicles to have license plates in both the front and back of the vehicle, and because this vehicle did not have any license plates, he considered that to be a traffic violation. Probasco agreed that the vehicle was not

violating any other traffic laws and that he stopped the vehicle to check its compliance with the registration requirements.

Probasco testified that he routinely stops vehicles with in-transit tags in order to make sure the paperwork is current, the vehicle is not stolen, and the in-transit tags have not been altered. Probasco testified that in-transit tags are normally printed, but the numbers such as an expiration date or purchase date are typically handwritten, depending on the state, and the in-transit tags are typically on the inside of a vehicle. Probasco was familiar with many states' license and in-transit tags, having seen "thousands" over the course of his law enforcement career. Probasco keeps information regarding other states' license plate requirements in his patrol vehicle. Probasco had never seen this type of in-transit tag before.

After the stop of Holmes' vehicle and as Probasco was approaching the vehicle, he could read the words "Texas Buyer Unlicensed Vehicle" above the handwritten black numbers. Probasco confirmed that the "3" on the paper signified the month and the "11" signified the day of expiration of the in-transit tag. Probasco thought the in-transit tag looked legitimate; however, he needed to verify that by running the vehicle identification number to make sure it matched up. Upon running the number through the State Patrol dispatch, Probasco confirmed that the vehicle was purchased in Texas by the company that was shown on the rental agreement.

In an order entered on July 27, 2007, the district court sustained Holmes' motion to suppress. Relying upon the case of *State v. Childs*, 242 Neb. 426, 495 N.W.2d 475 (1993), wherein the Nebraska Supreme Court held that reasonable suspicion for a constitutional investigatory stop cannot be based solely on a police officer's desire to verify compliance with motor vehicle registration laws, the district court concluded that "without more than the trooper's claim that he was unable to read the tags and was conducting a routine stop to check the validity of the in-transit stickers, the totality of the circumstances in this case does not approach reasonable suspicion."

The State timely appeals, pursuant to § 29-824, from the granting of the motion to suppress.

ASSIGNMENT OF ERROR

The State asserts, combined and restated, that the district court erred in finding there was no reasonable suspicion to stop Holmes' vehicle and in suppressing the evidence acquired as a result of the stop.

STANDARD OF REVIEW

When reviewing a district court's determinations of reasonable suspicion to conduct an investigatory stop and probable cause to perform a warrantless search, ultimate determinations of reasonable suspicion and probable cause are reviewed de novo. But findings of historical fact to support that determination are reviewed for clear error, giving due weight to the inferences drawn from those facts by the trial court. *State v. Voichahoske*, 271 Neb. 64, 709 N.W.2d 659 (2006).

ANALYSIS

The State argues that Probasco had a reasonable suspicion that Holmes may have been avoiding the motor vehicle registration statutes when Probasco observed the in-transit type paper which did not conform to the requirements for proper display of in-transit stickers and was unlike any in-transit decal he had ever seen before. The State points to Neb. Rev. Stat. § 60-376 (Cum. Supp. 2006), which sets forth the requirements of proper display of in-transit stickers, including that a sticker be displayed on the front and rear windows or the rear side windows of the vehicle, with the words “In Transit” plainly printed in black numbers. The State argues that since the decal displayed on Holmes’ vehicle did not meet these requirements, there was at least a reasonable suspicion that the driver was violating the motor vehicle registration statutes, and that this traffic violation created probable cause to stop the driver.

Police can constitutionally stop and briefly detain a person for investigative purposes if the police have a reasonable suspicion, supported by articulable facts, that criminal activity exists, even if probable cause is lacking under the Fourth Amendment. *State v. Soukharith*, 253 Neb. 310, 570 N.W.2d 344 (1997). Reasonable suspicion entails some minimal level of objective justification for detention, something more than an inchoate and unparticularized suspicion or “hunch,” but less than the level of suspicion required for probable cause. *Id.*; *State v. Kling*, 8 Neb. App. 631, 399 N.W.2d 240 (1999).

In *State v. Childs*, *supra*, the officer stopped the vehicle solely to see if the vehicle was within the in-transit period after observing in-transit tags in the windows. The court, finding that the defendant was entitled to the presumption of innocence, found that the officer lacked a reasonable and articulable suspicion or basis to stop the vehicle. The court held that reasonable suspicion cannot be based solely on a police officer’s desire to verify compliance with the motor vehicle registration statutes. In *State v. Bowers*, 250 Neb. 151, 548 N.W.2d 725 (1996), the Supreme Court found that when an officer observes a vehicle without license plates or in-transit tags, a particularized and objective basis exists to justify a reasonable, articulable suspicion that the driver may be criminally avoiding the motor vehicle registration statutes, thereby supporting a brief investigatory stop. See, also, *State v. Anderson*, 258 Neb. 627, 605 N.W.2d 124 (2000), *disapproved on other grounds*, *State v. McCulloch*, 274 Neb. 636, 742 N.W.2d 727 (2007) (officer’s observation of vehicle having only one Ohio license plate, rather than two, provided probable cause for stop of vehicle). It is well established that a traffic violation, no matter how minor, creates probable cause to stop the driver of a vehicle. *State v. Bartholomew*, 258 Neb. 174, 602 N.W.2d 510 (1999).

In *State v. Kling*, *supra*, the vehicle in question had handwritten in-transit tags in the front and rear windows. This court held that because the handwritten in-transit tags did not comply with Neb. Rev. Stat. § 60-320(3)(d) (Reissue 1998) requiring dealer in-transit tags, the vehicle was being operated without a valid outward manifestation of compliance with the registration statutes. We affirmed the denial of the motorist’s motion to suppress, finding reasonable suspicion existed that the motorist was violating the motor vehicle registration statutes and that the officer was justified in stopping the motorist in order to demand documentation showing the certificate of title.

In the present case, Probasco testified that he routinely stops vehicles with in-transit tags to verify compliance with registration laws. If this were the sole basis for the stop of Holmes' vehicle, we would agree with the district court that under *State v. Childs, supra*, the stop was constitutionally impermissible. However, Probasco did not testify that he stopped Holmes' vehicle only as a matter of routine. Rather, Probasco testified that the vehicle did not have license plates in either the front or back of the car but had a handwritten paper in the rear license plate holder, which type of in-transit tag he had never seen before. These facts provided an articulable basis, beyond any routine on the part of Probasco, to stop Holmes' vehicle. According to *State v. Anderson, supra*, and *State v. Kling, supra*, Probasco had a reasonable suspicion that the motorist was violating the motor vehicle registration statutes, thus justifying the stop of the vehicle operated by Holmes.

CONCLUSION

The district court erred in sustaining Holmes' motion to dismiss. The order of the district court is reversed, and the cause is remanded for further proceedings.

REVERSED AND REMANDED FOR
FURTHER PROCEEDINGS.