

IN THE IOWA MAGISTRATE COURT FOR CLINTON COUNTY

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05 MAR 22 AM 8:59

CLERK OF DISTRICT COURT
CLINTON COUNTY IOWA

STATE OF IOWA,
Plaintiff,

Case No. OWCR-49118
TICKET #WG-892678

LINDA SUE MINNSEN,
Defendants,

The Motion of the County Attorney is hereby granted and the above action is dismissed without prejudice.

- () Costs are assessed to Defendant and are due in 60 days payable in the Clerk's Office, Room 107, Clinton County, Courthouse.
- (X) No costs shall be assessed.

3/22/05
Date

Carol M. Pige
Judge of the 7th Judicial District of the State of Iowa

bjm

THE UNDERSIGNED CERTIFIES THAT THE FOLLOWING INSTRUMENT WAS SERVED UPON THE FOLLOWING BY:

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ON THE 22 DAY OF Mar, 2005
AND

*CA
Peterson
file
DCT
file*

IN THE IOWA DISTRICT COURT IN AND FOR CLINTON COUNTY
ASSOCIATE DIVISION

STATE OF IOWA,)
Plaintiff,)
vs.) CRIMINAL NO. OWCR-49118
)
LINDA SUE MINNSEN) ORDER
Defendant.)

This case is scheduled for contested hearing on Defendant's Motion to Suppress Evidence on September 7, 2004. Present are Linda Minssen, defendant; Scott C. Peterson, attorney for defendant; and Robin Strausser, Assistant County Attorney.

The Court receives sworn testimony from Clinton Police Officer William Sattler and defendant Linda Sue Minssen. The Court receives into evidence Defendant's Exhibits A, B and C.

The issue before the Court is probable cause for the stop of the vehicle operated by Linda Sue Minssen on June 11, 2004. She had just left the Rastrelli's Restaurant in Clinton. As she drove away, she passed the front of the restaurant and sounded the horn to acknowledge a good-bye to her friends who were just exiting the restaurant. The officer's attention was drawn to the vehicle driven by Linda Sue Minssen by the sounding of the horn. Officer Sattler first described the incident as someone "laying on the horn". Upon cross-examination by defense counsel, he was asked whether the time frame for the sounding of the horn was one or two seconds, and Officer Sattler affirmed this time frame.

Iowa Code Section 321.432 requires that no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall, when reasonably necessary to insure safe operation, give audible warning with

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CLINTON COUNTY, IOWA
JUDICIAL DISTRICT COURT

the horn but shall not otherwise use such horn when upon a highway. The purpose of the horn is to draw attention in order to insure safe operation of the motor vehicle. If danger presents itself, the blast of the horn alerts others to a potentially unsafe situation.

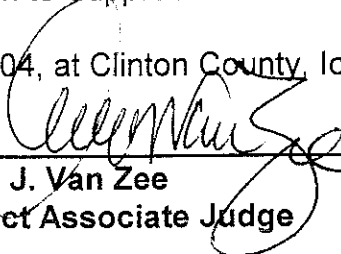
Horns are also used improperly to get someone's attention. Horns are used improperly to signal a hello or good-bye. Horns are used improperly in celebrations such as a wedding procession or after a sports victory. The question is whether the improper use of the horn by Linda Sue Minssen to signal good-bye to her friends in front of Rastrelli's Restaurant rises to the level of probable cause for a stop of her motor vehicle. The officer acknowledged the length of the sounding of the horn as one or two seconds upon cross-examination. It is the conclusion of the Court that this does not rise to the level of probable cause for the stop of a motor vehicle. In the case at hand, the facts are not sufficient to warrant a finding that probable cause existed to believe that a traffic law was being violated or that criminal activity was afoot.

There is a lesson to be learned from this incident. Sounding a horn may indeed be a way to get someone's attention, but you may also get more attention than you expected.

ORDER

IT IS ORDERED that defendant's Motion to Suppress Evidence be granted.

Dated this 9 day of September, 2004, at Clinton County, Iowa.



Arlen J. Van Zee
District Associate Judge

THE UNDERSIGNED CERTIFIES THAT THE FOLLOWING INSTRUMENT WAS SERVED UPON THE FOLLOWING BY:
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ON THE 9 DAY OF Sept, 2004. *KH*

CA Peterson

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IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellant, vs. Linda Sue Minssen, Defendant-Appellee.	<p>04 OCT 29 AM 9:07</p> <p>MAIRILYN K. HUFF CLERK DISTRICT COURT CLINTON COUNTY, IOWA</p> <p>No. 04-1615 Clinton County No. OWCR 049118</p> <p>RESISTANCE TO APPLICATION FOR DISCRETIONARY REVIEW</p>
------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Defendant, Linda S. Minssen, by and through her attorney, Scott C. Peterson, respectfully resists the State's Application for Discretionary Review and, in support of this resistance, states that:

1. The Honorable Arlen J. Van Zee did not err in holding that the officer did not have reasonable suspicion or probable cause to stop Ms. Minssen's car.
2. The State's recitation of the facts in its Application is erroneous and misleading. The officer first testified that Ms. Minssen sounded her horn over a distance equating to a city block, but when asked on cross-examination to be more specific and quantify the sounding of her horn in terms of time, the officer testified that she honked her horn between one and two seconds. Ms. Minssen also testified that she honked her horn between one and two seconds, corroborating the officer's testimony in terms of time. The court correctly found the officer's prior testimony about Ms. Minssen sounding her horn over a distance equating to a city block not to be credible.
3. Without any evidence to support his observation that the vehicle driven by Ms. Minssen was speeding, the court found the officer's testimony in this regard not to be credible, as well. The officer clearly testified that he decided to turn around and stop Ms. Minssen because she sounded her horn in front of a restaurant. The officer did not say anything to Ms. Minssen about speeding at the time he stopped her, nor did he make any reference about speeding in any of his reports following Ms. Minssen's arrest. Further, Ms. Minssen denied speeding at any point between the time she got in the vehicle and the time she was stopped.
4. The State is urging the Court to follow Minnesota's lead and points to *Daly v.*

Commission of Public Safety, 405 N.W.2d 489 (Minn. App. 1987). However, the facts in that case and a subsequent case are significantly different from those in the case at hand.

- A. In *Daly*, the Court found the officer had a specific and articulable basis for stopping the driver's car, not merely for sounding the horn but for doing so late at night (1:10 a.m.), for five to six seconds and for a distance of 200 to 300 feet, and for no apparent reason. *Daly* at 490-1.
 - B. In an unpublished opinion ten years later, *State v. Peterson*, 1997 Minn. App. LEXIS 1333, the same court relied in part on the *Daly* decision and found the following facts supported the stop in that case: the driver sounded the horn approximately eight times; no other vehicles or pedestrians were in the area; the officer could not determine any reason for the horn being sounded; the officer became concerned that the driver was trying to flag him down; the vehicle had dealer plates; and the officer thought that someone may have taken the vehicle for a joy ride. The Court found that the erratic honking horn and dealer plates sufficed for "particularized and objective" facts to justify a limited investigatory stop. *Peterson* at 4.
 - C. In the case at hand, the officer observed the vehicle pass in front of a restaurant in daylight just after the dinner hour (approximately 8:30 p.m.); the driver sounded the horn between one and two seconds; the officer observed the driver and the passenger waving specifically at certain patrons leaving the restaurant; and the vehicle was being operated legally and appropriately in all other respects. The officer then turned around with the intent to stop the vehicle solely for the sounding of the horn.
5. During the hearing below, the officer further opined that the sounding of a horn, however short and for any reason than emergencies, is in and of itself a criminal act except in emergency circumstances, an opinion that is contrary to common driving practices that pervade our society and is a questionable exercise of discretion and common sense that we reasonably expect of officers of the law.

WHEREFORE, Defendant Linda S. Minssen respectfully requests that the Court deny the State's Application for Discretionary Review in its entirety.

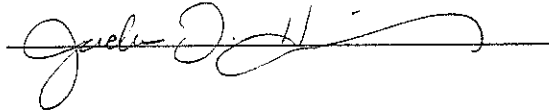


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ATTORNEY FOR DEFENDANT

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all of the parties, or upon pro se parties, to the above-entitled cause on the 28 day of OCTOBER, 200A, by:

U.S. Mail Fax Hand Delivered
 Overnight Courier Other _____



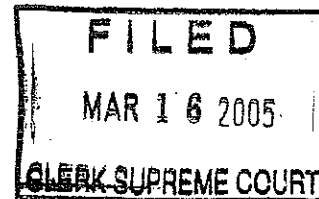
cc: Clinton County Clerk of Court
Robin Strausser, Assistant County Attorney
Mary Tabor, Assistant Attorney General

IN THE SUPREME COURT OF IOWA

No. 04-1615

Clinton County No. OWCR049118

ORDER



STATE OF IOWA,
Plaintiff-Appellant,

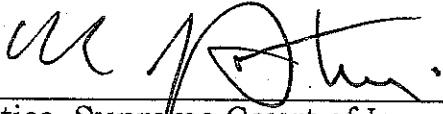
vs.

LINDA SUE MINSEN,
Defendant-Appellee.

This matter comes before the court upon the State's application for discretionary review of the district court's order granting the defendant's motion to suppress. The defendant filed a resistance to the application.

Upon consideration by this court, the State's application is denied.

Dated this 16th day of March, 2005.


Justice, Supreme Court of Iowa

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MARILENE K. HUFF
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