

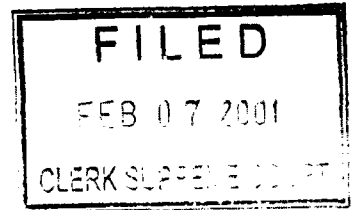
IN THE COURT OF APPEALS OF IOWA

No. 0-801 / 00-89
Filed February 7, 2001

**STATE OF IOWA,
Plaintiff-Appellee,**

vs.

**DENNIS ALLEN STEWARD,
Defendant-Appellant.**



Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard, II, District Associate Judge.

Defendant appeals from his conviction for operating while under the influence. **AFFIRMED.**

Joseph C. Johnston of Johnston, Potterfield & Nathanson, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, J. Patrick White, County Attorney, and Linda Paulson, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

VAITHESWARAN, J.

Dennis Allen Steward appeals a judgment for operating a motor vehicle while under the influence, contending the district court should have suppressed evidence obtained from a search of a commercial tractor-trailer rig he was driving as well as the fruits of the search. We affirm.

I. Background Facts and Proceedings

A state trooper assigned to a federally funded program known as the Motor Carrier Safety Assistance Program ("MSCAP") had a device in his car that allowed him to identify vehicles using radar detectors. As he was patrolling Interstate 80, the device began beeping, alerting him that a tractor-trailer rig had such a detector. The trooper stopped the vehicle, identified the driver as Steward, and retrieved the detector.

The trooper then announced he was going to inspect the vehicle as authorized by MCSAP. While examining the cab interior, the trooper noticed a pill bottle between the seats. When asked, Steward stated the bottle contained an aspirin-like substance known as Ibuprofen. Believing the substance was actually methamphetamine, the trooper called for another officer whose expertise was in drug recognition.

The second trooper determined the substance in the bottle was methamphetamine. This officer took Steward to the local police station to perform a drug evaluation. Steward agreed to a breath test, which resulted in a negative reading for the presence of alcohol. As Steward appeared impaired, the trooper then obtained his consent to withdraw a urine sample which tested positive for amphetamine and methamphetamine. During the course of this drug

evaluation, the trooper elicited an admission from Steward that he had used methamphetamine before beginning his journey that morning. Subsequent laboratory tests revealed the pill bottle did not contain any controlled substances.

The State charged Steward with operating a motor vehicle while under the influence in violation of Iowa Code section 321J.2 (1997) and possession of a controlled substance (methamphetamine) in violation of Iowa Code sections 124.401(5) and 124.206(4)(b). Steward moved to suppress the evidence found in the cab as well as the fruits of that search. The district court denied the motion, concluding the search was a constitutionally permissible administrative inspection. Immediately preceding trial, the State dismissed the possession count in light of the laboratory test results. The remaining count was tried to the bench on stipulated facts. The court found Steward guilty of operating a motor vehicle while under the influence and sentenced him to thirty days in jail and a \$500 fine. This appeal followed.

II. Suppression Ruling

Steward contends the search of the cab violated his constitutional right to be free from unreasonable searches and seizures guaranteed by the United States and Iowa Constitutions.¹ See U.S. Const. amend. IV; Iowa Const. art. I, § 8. He maintains the district court should have suppressed the pill bottle as well as evidence "flowing from items seized in that search."² We review this

¹ Steward does not challenge the initial stop of the vehicle. Therefore, we need not consider its constitutionality.

² The State maintains Steward suffered no injury as a result of the cab search because the possession charge was dismissed and the pill bottle was not admitted. However, we must resolve the legality of the cab search in order to determine whether the subsequent admissions and seizures of breath and blood samples were fruits of an illegal search.

constitutional claim de novo. See *State v. Canas*, 597 N.W.2d 488, 492 (Iowa 1999).

A search occurs when the government unreasonably intrudes upon a person's legitimate expectation of privacy. *State v. Breuer*, 577 N.W.2d 41, 45 (Iowa 1998). That expectation of privacy is diminished for owners or operators of closely regulated industries. *New York v. Burger*, 482 U.S. 691, 702, 107 S. Ct. 2636, 2643, 96 L. Ed. 2d 601, 616 (1987). The commercial trucking business is a closely regulated industry. See 49 C.F.R. § 300-399 (1999); Iowa Code § 321.449, 321.476; 761 Iowa Admin. Code r. 520.1(a); 520.1(1)(321)(a); 520.2(321); *United States v. Burch*, 153 F.3d 1140, 1142-3 (10th Cir. 1998); *United States v. Dominguez-Prieto*, 923 F.2d 464, 467 (6th Cir. 1991).

A warrantless search of a closely regulated industry will be upheld if: (1) a substantial government interest informs the regulatory scheme; (2) the warrantless inspection is necessary to further the regulatory scheme; and (3) the authorizing statute's inspection program provides a constitutionally adequate substitute for a warrant. *Burger*, 452 U.S. at 703, 101 S. Ct. at 2644, 96 L. Ed. 2d at 615. A statute requiring the owner or operator to be advised of the search and the grounds and the limits of the searching officer's discretion will comport

See *Wong Sun v. United States*, 371 U.S. 471, 484, 83 S. Ct. 407, 416, 9 L. Ed. 2d 441, 453 (1963). The State also argues Steward only challenged the cab search and, accordingly, failed to preserve error on his challenge to the statements he made at the police station and the seizure of breath and urine samples. We conclude his pleading was sufficient to preserve error on searches subsequent to the cab search. Finally, the State argues the district court's failure to specifically address the seizures at the police station precludes review. We disagree. The court's conclusion that the cab search was reasonable was sufficient to preserve error. See *State v. Chrisman*, 514 N.W.2d 57, 59 (Iowa 1994).

with this last requirement. *Id.* We conclude each of these requirements is satisfied here.

First, the federal and state governments clearly have an interest in ensuring the safety of our highways and the motoring public. See generally 49 C.F.R. § 350.103; Iowa Code ch. 321. *Dominguez-Prieto*, 923 F.2d at 468. They also have an interest in placing restrictions on the types of commodities that may be transported and the types of vehicles in which they are transported. See Iowa Code §321.449(4)(regulating vehicles used to transport hazardous materials); *Dominguez-Prieto*, 923 F.2d at 469.

Second, the warrantless inspections are necessary to further the regulatory scheme. Vehicles are mobile and, as such, may be gone by the time officers apply for and obtain a warrant. See *Chambers v. Maroney*, 399 U.S. 42, 51, 90 S. Ct. 1975, 1981, 26 L. Ed. 2d. 419, 427 (1970); *Dominguez-Prieto*, 923 F.2d at 469; *State v. Dawdy*, 533 N.W.2d 551, 556 (Iowa 1995).

Third, federal regulations, incorporated by reference in MSCAP rules require employers to inform truckers of the program, circumscribe the scope of vehicle inspections, and identify the persons authorized to conduct the inspections. See 49 C. F. R. § 390.3(e)(1)(2); Iowa Code §§ 321.478, 321.492; 761 Iowa Admin. Code r. 520.1(1)(a).

Therefore, the trooper was authorized to search the tractor-trailer rig. Steward concedes as much but appears to maintain that his surrender of the radar detector terminated the officer's authority to conduct such a search. We disagree. Although the officer immediately retrieved the radar detector, our statute still afforded him the right to "inspect the vehicle with reference to size,

weight, cargo, log book, bills of lading or other manifest of employment, tires, and safety equipment, or to inspect the registration certificate, the compensation certificate, travel order, or permit of the vehicle.” Iowa Code § 321.492. Additionally, the officer was authorized to search for controlled substances inside the truck. See 49 C.F.R. § 382.213; 761 Iowa Admin. Code r. 520.1(a). Therefore, the trooper was entitled to proceed with his inspection notwithstanding recovery of the item that precipitated the stop. See *Burch*, 153 F.3d at 1142-3.

Having concluded the search of the cab was constitutionally permissible, we further conclude the subsequent admissions elicited by the trooper and the seizure of breath and urine samples were not the fruits of an illegal search. Additionally, we note Steward consented to the breath and urine tests. See *Breuer*, 577 N.W.2d at 45.

We affirm the district court's denial of Steward's motion to suppress and affirm his judgment for operating a motor vehicle while under the influence.

AFFIRMED.