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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed March 31, 1987
vs.	)	
BRUCE ELDON SMIT,	)	7-30 86-737
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Sioux County (CR 4983) - Edwin L. Mitchell, Judge.

Defendant appeals his conviction of operating a motor vehicle while intoxicated. **AFFIRMED.**

Terry L. Huitink of Huitink Law Firm, Ireton, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Lona Hansen, Assistant Attorney General; and Mark J. Schouten, Sioux County Attorney; for plaintiff-appellee.

Considered by Oxberger, C.J., Schlegel, and Hayden, JJ.

SCHLEGEL, J.

The defendant appeals his conviction of operating a motor vehicle while intoxicated. We affirm.

The defendant was accused of operating a motor vehicle while intoxicated (OWI). Prior to trial, the defendant moved to suppress the results of his breath intoxilyzer test and any other evidence obtained as a result of an allegedly illegal investigatory stop. The trial court overruled the defendant's motion and the case proceeded to a bench trial on the minutes of testimony and the transcript of the suppression hearing. The trial court found the defendant guilty as charged and pronounced sentence.

On June 30, 1985, an Ireton police officer saw the defendant make a wide turn and then accelerate quickly in downtown Ireton. Rather than stopping the defendant at that time, the officer followed him out of town so that he could obtain more evidence. On the way, the defendant's car crossed the center line twice. The officer stopped the defendant's car outside of the Ireton city limits. The officer administered three field sobriety tests to the defendant. Because he believed the defendant's performance was unsatisfactory, the officer requested that the defendant redo the tests at the Ireton City Hall. Although the officer testified that the defendant was not under arrest at this time, he also testified that the defendant was not free to leave. The officer placed the defendant under arrest after he failed two of the four field sobriety tests at the city hall. Before leaving city hall, the officer invoked the implied consent law and asked the defendant to take a breath test. The intoxilyzer test results indicated that the defendant had a blood alcohol concentration of .194.

The defendant contends that the officer lacked reasonable cause to justify an investigatory stop of his vehicle. He maintains that the officer's testimony that he stopped the defendant for OWI indicates that the stop was merely a

pretext to gather evidence in support of a foregone conclusion. He asserts that any evidence obtained by the allegedly illegal stop should have been suppressed.

The defendant also argues that he was unlawfully arrested because the officer lacked authority to arrest him, either as a peace officer or as a private citizen. He argues that he was actually arrested at the scene of the investigatory stop after he completed the initial round of sobriety tests. Since the stop was made outside of the city limits, the defendant claims that the officer lacked the authority as a peace officer to arrest him. He then submits that the officer could not make a valid arrest as a private citizen either, since he lacked reasonable cause for an investigatory stop and held himself out as a peace officer at all times. The defendant maintains that any evidence gained as a result of this allegedly illegal arrest should have been suppressed.

The defendant finally maintains that the officer lacked authority to invoke implied consent under Iowa Code chapter 321B (1985) where he acted as a private citizen in making the arrest outside of the city limits. Iowa Code section 321B.4 requires lawful arrest by a peace officer as a prerequisite for invocation of the implied consent provisions. The defendant contends that his arrest rendered the implied consent invalid since section 321B.4 does not authorize the administration of implied consent procedures by a private citizen or to persons arrested by a private citizen.

It is now well settled that the fourth amendment requires an officer have "reasonable cause" to stop a vehicle for investigatory purposes. Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L.Ed.2d 889, 906 (1968); State v. Eis, 348 N.W.2d 224, 225-27 (Iowa 1984). Reasonable cause exists where the stopping officer had specific and articulable cause to support a reasonable belief that criminal activity may have occurred. State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982). The test is not the officer's subjective theory but whether the record

discloses objective facts were available to the officer to justify the stop under the circumstances. State v. Peck, 329 N.W.2d 680, 686 (Iowa Ct. App. 1982). To justify an investigatory stop the fourth amendment does not require an officer have the precise level of information necessary for probable cause, however, mere suspicion or curiosity will not suffice. State v. Peck, 324 N.W.2d at 683; State v. Dixon, 241 N.W.2d 21, 23 (Iowa 1976).

In the present case, there can be no doubt that the officer had reasonable cause to justify an investigatory stop. In State v. Aschenbrenner, 289 N.W.2d 618, 621 (Iowa 1980), the supreme court found that erratic driving was sufficient to justify an investigatory stop of a vehicle to determine the cause of the erratic driving. The driver in this case was observed driving in an erratic manner. The driver made a wide turn, accelerated quickly, and then crossed over the center line several times. In these circumstances, an investigatory stop was appropriate to determine the cause of the observed driving. See also Saunders v. Commissioner of Public Safety, 226 N.W.2d 19, 21 (Iowa 1975).

In order to arrest a suspect for operating a motor vehicle while intoxicated, there must be reasonable grounds to believe that the suspect was operating the vehicle while under the influence of an alcoholic beverage. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682, 685 (Iowa 1976); Saunders v. Commissioner of Public Safety, 226 N.W.2d at 22. Once the officer made the investigatory stop, he detected an odor of alcohol, observed defendant's unsteadiness, and requested that defendant perform field sobriety tests which were performed unsatisfactorily. In these circumstances, the officer had reasonable grounds to arrest the defendant for operating a motor vehicle in violation of Iowa Code section 321.281 (1985). See State v. Aschenbrenner, 289 N.W.2d at 621; Shellady v. Sellers, 208 N.W.2d 12, 14 (Iowa 1973). The trial court did

not err in refusing to suppress the evidence gained as a result of the investigatory stop.

We also cannot agree with the defendant's contention that he was unlawfully arrested because the officer lacked authority to arrest him. In Iowa, "[a]n officer who seeks to make an arrest without warrant outside his territory must be treated as a private person." State v. O'Kelly, 211 N.W.2d 589, 595 (Iowa 1973), cert. denied O'Kelly v. Iowa, 417 U.S. 936, 94 S. Ct. 2652, 41 L. Ed. 2d 240 (1974). Rather, "his action will be lawful if the circumstances are such as would authorize a private person to make the arrest." Id. A private person may arrest another for a public offense committed in his presence. Id.; see Iowa Code § 804.9 (1985). Because the officer witnessed a public offense committed in his presence, his subsequent actions were lawful. Because we find that the stopping of the defendant's automobile was not illegal, this assignment of error is without merit.

We also cannot agree with defendant's argument that where an officer acts as a private citizen in making an arrest for operation of a motor vehicle while intoxicated, that officer cannot invoke implied consent under Iowa Code chapter 321B.4. While it is true that the officer was acting as a private citizen when making the arrest outside of his territorial boundaries of his law enforcement authority, he remained a peace officer. Implied consent may be invoked outside of the territorial boundaries of the peace officer's law enforcement authority. See State v. Wagner, 359 N.W.2d 487, 489-90 (Iowa 1984). The officer in this case was acting as a state agent for purposes of administering the laws of this state. See id. The peace officer in this case was certified to invoke implied consent. We do not believe that the language of the implied consent statute suggests that a peace officer is limited to his or her territorial boundary in administering implied consent procedures. We hold, therefore, that a valid arrest by a section 321B.2 "peace officer" acting as a private citizen may serve

as an "arrest" by the peace officer under Iowa Code section 321B.4 and that peace officer is entitled to administer the implied consent procedures.

AFFIRMED.