

IN THE COURT OF APPEALS OF IOWA

No. 4-548 / 94-545

FILED

JAN 23 1995

CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

BRIAN JAMES ASWEGAN,

Appellant.

Appeal from the Iowa District Court for Black Hawk
County, James D. Coil, Judge.

Brian Aswegan appeals the judgment and sentence entered
upon his conviction of operating while intoxicated in
violation of Iowa Code section 321J.2 (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S.
Lipman, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Bridget A.
Chambers, Assistant Attorney General, Thomas J. Ferguson,
County Attorney, and Anthony Janney, Kasey Wadding, and
Peter B. Newell, Assistant County Attorneys, for appellee.

Considered by Donielson, C.J., and Habhab and Cady, JJ.

09/01/92

DONIELSON, C.J.

The defendant was convicted of operating while intoxicated. He contends the arresting officer lacked a sufficiently reasonable suspicion to stop his vehicle. We have reviewed the parties' arguments, the record and the applicable law and find the trial court properly denied the defendant's motion to suppress. We affirm the defendant's conviction.

Our review is de novo as the defendant alleges a violation of his constitutional rights. State v. Malloy, 453 N.W.2d 243, 244 (Iowa App. 1990). The fourth amendment requires reasonable cause to stop a vehicle for investigatory purposes. Id. If a defendant challenges a stop as unreasonable, the State must show the officer had specific and articulable cause to support a reasonable belief criminal activity may have occurred. Id.

The evidence from the suppression hearing reveals the defendant was driving west on University Avenue in Waterloo, Iowa, at approximately 2 a.m. on August 4, 1992. Officer Cook was also traveling west on University behind the defendant. University is a three-lane road and the defendant was in the right lane.

Officer Cook was within a block of the defendant when she observed him signal to enter the center lane and he did so. The defendant's turn signal remained on for three to four blocks before the defendant returned to the right-hand

lane. The officer stopped the defendant's vehicle to issue him a citation for improper signaling.

Section 321.314 provides in relevant part--

No person shall turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety and then only after . . . giving an appropriate signal in the manner hereinafter provided in the event any other vehicle may be affected by such movement.

Iowa Code §321.314 (1993).

The defendant argues this case is indistinguishable from State v. Malloy, 453 N.W.2d 243 (Iowa App. 1990). In Malloy we held section 321.314 does not require a driver to use a turn signal in all instances. Instead, a driver is required to use a turn signal only in the event another vehicle may be affected. Id. at 245. In Malloy the officers could not rely on the driver's failure to use a turn signal as a basis for stopping his vehicle because they were far enough behind him his turn did not affect their vehicle. Id.

This case is distinguishable from Malloy. The defendant's turn signal remained on for three to four blocks after he entered the center lane, and it remained on when he returned to the right lane. This conduct constitutes a failure to use an appropriate signal when turning as required by section 321.314. This improper use of the defendant's turn signal gave rise to reasonable cause for Officer Cook to stop the defendant's vehicle, and the trial court properly denied the motion to suppress.

AFFIRMED.