

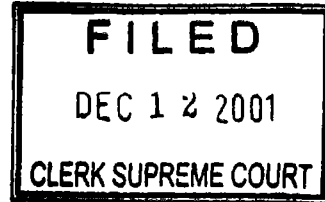
IN THE COURT OF APPEALS OF IOWA

No. 1-767 / 00-1335
Filed December 12, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL MILTON LAGER,
Defendant-Appellant.



Appeal from the Iowa District Court for Harrison County, Gordon C. Abel,
Judge.

Michael Lager appeals following his conviction for operating while
intoxicated, third offense. **AFFIRMED.**

Michael Lager, Missouri Valley, pro se.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, Judson L. Frisk, County Attorney, and Susan Larson Christensen,
Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

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HUITINK, P.J.

Michael Lager appeals from the judgment and sentence entered upon a jury verdict finding him guilty of operating while intoxicated, third offense, in violation of Iowa Code section 321J.2 (1999). Lager contends the stop of his vehicle violated his right against unreasonable search and seizure because the police officer did not have reasonable suspicion to stop his vehicle. He accordingly requests that we reverse the court's decision not to suppress evidence obtained subsequent to the stop with instructions that the charge and judgment be dismissed.

Constitutional issues are reviewed de novo in light of the totality of the circumstances. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). We find the district court properly denied Lager's motion to suppress. The police officer detained Lager only after seeing him pull over to the side of the road and, upon further inspection, finding him "passed out [in his vehicle] with his forehead on the steering wheel." See *State v. Pickett*, 573 N.W.2d 245, 247 (Iowa 1997) (fourth amendment protection attaches only once defendant has been detained by physical force or show of authority by law enforcement officer); see also *State v. Mitchell*, 498 N.W.2d 691, 694 (Iowa 1993); *State v. Kersh*, 313 N.W.2d 566, 568 (Iowa 1981) (reasonable for police officer finding person unconscious in vehicle to enter vehicle for purposes of giving aid and obtaining information regarding the cause of condition). Once the officer entered the vehicle and found Lager intoxicated, he could then legally arrest him for operating while intoxicated. See *Kersh*, 313 N.W.2d at 568. The district court decision is accordingly affirmed.

AFFIRMED.**000673**