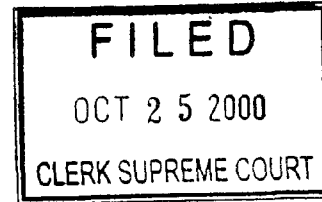


IN THE COURT OF APPEALS OF IOWA

No. 0-656 / 00-0311
Filed October 25, 2000



STATE OF IOWA,
Plaintiff-Appellee,

vs.

BURNIE MILFRED TWEEDT, III,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, David L. Christensen, Judge (suppression hearing), and James D. Birkenholz, District Associate Judge (trial and sentencing).

Defendant appeals from the judgment and sentence entered upon the district court ruling finding him guilty of second-offense operating while intoxicated in violation of Iowa Code section 321J.2 (1999). **AFFIRMED.**

James A. Sinclair of Sinclair & Associates, P.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, John P. Sarcone, County Attorney, and Christina Gonzalez, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Defendant appeals from the judgment and sentence entered upon the district court ruling finding him guilty of second-offense operating while intoxicated in violation of Iowa Code section 321J.2 (1999). He contends the search of his vehicle violated his constitutional rights to be free from unlawful search and seizure. We affirm.

Background Facts and Proceedings. In the early morning hours of April 5, 1999, West Des Moines police officers were called to the scene of an accident in the 4700 block of Pleasant Street in West Des Moines. Officer Kooiker, the first to arrive at the scene, observed a vehicle in the eastbound lane facing westbound, with no one around it. The vehicle had a flat tire and about \$1500 damage to its front quarter panel. The officer was not sure there had been an injury, but found nothing in or around the vehicle to indicate injuries resulted from the accident.

A resident of a nearby apartment, Craig Long, heard the accident and called police. He told the dispatcher someone may have been injured. From his window, Long observed the driver of the vehicle get out of it and head in a northwesterly direction on foot. Long relayed this information to Officer Kooiker when he arrived at the scene.

Other officers arrived at the scene to assist in the accident investigation. Officer Gass observed damage to the front end of the car. The vehicle was not running, not drivable, and was blocking traffic. It had a dealer paper registration plate with a number on it. Officer Gass relayed the information from the dealer

plate to dispatch so they could attempt to contact the owner of the vehicle. When dispatch could not ascertain the owner of the vehicle, the officer opened the unlocked vehicle to look inside for information about the owner. He located a receipt for vehicle repairs in the glove box, in the name of Bernie Tweedt. Officer Gass gave the information to Officer Kooiker, so he could contact Tweedt about the vehicle.

Officer Kooiker went to Tweedt's nearby apartment complex to find him. When he arrived, Tweedt claimed to be on the phone with Mark's Towing. The officer later determined, however, Mark's Towing had never been called. Tweedt told officers he had been at a bar with "Jeff," whose last name he did not know, prior to the accident. According to Tweedt, "Jeff" was driving the car when the accident occurred. Following the accident, "Jeff" left. When the officers tried to verify Tweedt's story, however, the bartender told the officers Tweedt left the bar alone. Similarly, Craig Long told Officer Kooiker one person, matching Tweedt's description, left the vehicle after the accident.

Officer Gass observed a strong odor of an alcoholic beverage emanating from Tweedt and requested he submit to field sobriety tests. After failing the tests, the officer arrested Tweedt for OWI.

The Polk County Attorney charged Tweedt by trial information with operating while intoxicated (OWI) second offense, in violation of Iowa Code section 321J.2. Tweedt moved to suppress the results of the search of his vehicle claiming the officer who conducted the search did not have reasonable grounds to search his car. The district court denied Tweedt's motion. Tweedt

waived his right to jury trial and stipulated to a trial on the minutes. The court found Tweedt guilty of OWI second offense and ordered he be incarcerated for two years, all but seven days suspended, placed him on probation for two years, fined him \$1500, ordered him to pay fees and required him to participate in the OWI second offense program. Tweedt appeals.

Vehicle Search. We review Tweedt's constitutional challenge de novo. *State v. Godbersen*, 493 N.W.2d 852, 854 (Iowa 1992). We make an independent evaluation of the totality of the circumstances as shown by the entire record. *State v. Astello*, 602 N.W.2d 190, 195 (Iowa App. 1999).

The Fourth Amendment of the United States Constitution protects against unreasonable searches and seizures. *State v. Huisman*, 544 N.W.2d 433, 436 (Iowa 1996). Searches and seizures conducted by governmental officials without prior court approval are per se unreasonable unless they fall within one of the few exceptions to the Fourth Amendment's warrant requirement. *State v. Jackson*, 542 N.W.2d 842, 845 (Iowa 1996). When a defendant contests a warrantless search and seizure, the State has the burden to show by a preponderance of the evidence that officers acted reasonably under one of the recognized exceptions to the warrant requirement. *State v. Predka*, 555 N.W.2d 202, 206 (Iowa 1996).

Tweedt argues the State failed to establish the emergency-aid and inevitable discovery exceptions to the search warrant requirement. The State contends the search of the vehicle to discover the owner's identity can be upheld as (1) a caretaking function of the police, (2) inevitable discovery, and/or

(3) Tweedt abandoning the vehicle and having no reasonable expectation of privacy in it. We agree with the State, and find Tweedt had no expectation of privacy in the vehicle once he abandoned it. See *State v. O'Malley*, 593 N.W.2d 517, 519 (Iowa 1999) (the district court can be affirmed for any reason appearing in the record). Even if Tweedt did have an expectation of privacy in the vehicle, we conclude the inevitable discovery doctrine applies to uphold the search.

The "capacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." *Minnesota v. Carter*, 525 U.S. 83, 88, 119 S. Ct. 469, 473, 142 L. Ed. 2d 373, 379 (1998) (quoting *Rakas v. Illinois*, 439 U.S. 128, 143, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978)). Voluntary abandonment of property in the constitutional sense occurs when an individual no longer has a reasonable expectation of privacy with regard to that property. *State v. Bumpus*, 459 N.W.2d 619, 625 (Iowa 1990). Once voluntary abandonment occurs, the individual cannot claim the protection of the Fourth Amendment. *Id.* In order to determine whether a person has voluntarily abandoned property, thereby giving up any reasonable expectation of privacy with regard to that property, intent may be inferred from words, acts, and other objective facts. *Id.*

A witness observed Tweedt walk away from his disabled vehicle in the middle of the street. The vehicle had a dealer paper registration plate, but no license plate to assist officers in determining the vehicle's owner. Tweedt left the car unlocked, and it is questionable whether the hazard lights were on. Tweedt

made no arrangements to have the vehicle towed. Given these facts, we find Tweedt abandoned his vehicle, and therefore gave up any expectation of privacy he had in the vehicle. "Since he no longer wanted to be associated with the property, he could have no reasonable expectation of privacy in it." *Bumpus*, 459 N.W.2d at 625. Tweedt cannot claim the protection of Fourth Amendment. Therefore, the officers' actions were reasonable and lawful.

Even if Tweedt did have an expectation of privacy in the abandoned vehicle, the inevitable discovery doctrine applies to validate the search. After the defendant has shown unlawful conduct on the part of police, the State has the burden to show by a preponderance of the evidence that: (1) the police did not act in bad faith for the purpose of hastening discovery of the evidence in question, and (2) the evidence in question would have been discovered by lawful means. *State v. Williams*, 285 N.W.2d 248, 260 (Iowa 1979). Bad faith means something more than just acting lawfully. *Id.* at 259. In order to satisfy its burden, the State must show the evidence would have been discovered, not merely discovery might have occurred. *Id.* at 260. A determination discovery would have come about must rest upon the record. *Id.* Assuming unlawful conduct by the officers, we conclude the State has met its burden in this case.

First, the officers did not act in bad faith to hasten the discovery of Tweedt's identity. Officers attempted to locate the owner of the vehicle by searching in the vicinity of the accident and by relaying the information from the paper dealer registration plate to dispatch so they could attempt to contact the owner of the vehicle. Only after these attempts at finding the owner of the

vehicle failed did the officer look in the glove compartment. The officers sought out the vehicle's owner because it was blocking traffic and needed to be moved.

Second, the evidence would have been discovered by lawful means in a timely manner. One well-recognized exception to the warrant clause is a vehicle inventory search. *Huisman*, 544 N.W.2d at 436. Inventory searches are justified for three "safe keeping" purposes: (1) to protect the owner's property while the vehicle is in police custody; (2) to protect the police officer who performs the inventory search against claims or disputes over the property; and (3) to protect the police officer from potential danger. *State v. Jackson*, 542 N.W.2d 842, 845 (Iowa 1996). The legality of an inventory search depends on two overlapping inquiries: the validity of the impoundment and the scope of the inventory. *Huisman*, 544 N.W.2d at 436. If either is unreasonable, the search violates the Fourth Amendment and evidence discovered in the search must be suppressed. *Id.*

Officers testified the vehicle was not drivable and was blocking the entire westbound lane of traffic. If a vehicle blocks the roadway and creates a hazard, written West Des Moines police policy dictates the vehicle be impounded. Upon impounding a vehicle, West Des Moines police conduct an inventory search at the scene before having the vehicle towed. In accordance with written police policy, the inventory search includes a search of the glove compartment, where officers located the receipt containing Tweedt's name. According to the officers, it takes approximately fifteen minutes for a tow truck to arrive at the scene of an accident. The record demonstrates the officers would have impounded the

vehicle after a short period of time, pursuant to police policy, due to the hazard it posed. The officers would have discovered the receipt containing Tweedt's name upon conducting an inventory search shortly thereafter, pursuant to police policy. The State has met its burden of proving the evidence would have been discovered by lawful means.

AFFIRMED.