

IN THE COURT OF APPEALS OF IOWA

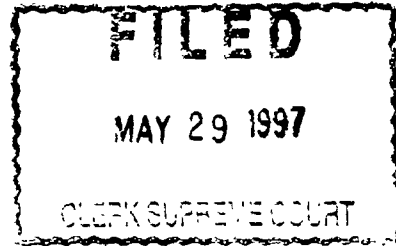
No. 7-168 / 96-1166

000439

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSEPH JOHN SCALISE,
Defendant-Appellant.



Appeal from the Iowa District Court for Cerro Gordo County, Carlynn D.
Grupp, District Associate Judge.

The defendant appeals his convictions and sentences for operating a motor vehicle while intoxicated and possession of a controlled substance (marijuana).

AFFIRMED.

Randall E. Nielsen of Pappajohn, Shriver, Eide & Nicholas, P.C., Mason City,
for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant County
Attorney, and Paul L. Martin, County Attorney, for appellee.

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

PER CURIAM.

This is an appeal by a defendant challenging his convictions for operating a motor vehicle while intoxicated (OWI), in violation of Iowa Code section 321J.2, and possession of a controlled substance (marijuana), in violation of sections 124.401(3) and 124.204(4)(m). We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

In the early morning hours of August 29, 1995, officer Alan Haubrich of the Mason City Police Department observed a vehicle parked off the edge of an alley. The car was parked on some bushes. Officer Haubrich drove by and observed a person sitting behind the wheel. The officer parked behind the vehicle and shone his light on the car. The occupant was then slumped over. Officer Haubrich walked up to the car and opened the door to see if the person needed assistance. He noticed a strong smell of alcohol. The driver, Joseph Scalise, was subsequently arrested for OWI. When Scalise was taken to the police station, a small plastic bag of marijuana was found on his person.

Scalise was charged with OWI and possession of a controlled substance (marijuana). He filed a motion to suppress the evidence in the case, claiming the officer did not have reasonable cause to investigate his vehicle. The district court denied the motion to suppress. Scalise was convicted of the crimes charged. He now appeals.

Scalise contends the district court erred in denying his motion to suppress. He claims the police officer did not have reasonable cause to open the door of his vehicle without consent. Scalise believes that if the officer was concerned about his welfare, he could have just looked in the window or tapped on the window without opening the vehicle door. Scalise also claims the officer could not have reasonably believed an emergency existed.

Police officers' duties extend beyond crime detection and investigation and include a community caretaking function, which involves protecting the public and rescuing those in distress. *State v. Mitchell*, 498 N.W.2d 691, 694 (Iowa 1993). A warrantless search under the emergency-aid exception is valid where a reasonable person under the circumstances would have thought an emergency existed. *State v. Carlson*, 548 N.W.2d 138, 141 (Iowa 1996). To establish reasonableness, the police have the burden of showing specific and articulable facts that indicate their actions were proper. *Id.* at 142. In addition, the scope of the entry and search must be limited to the justification thereof, and the officer may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance. *Id.*

We find a reasonable person under the circumstances here would have thought an emergency existed. Officer Haubrich observed Scalise's vehicle, in the early morning hours, parked just off the edge of an alley in a backyard and on top of some bushes. When he parked behind Scalise's vehicle, Scalise was slumped down in the

seat. Scalise was not roused when the officer shone his light on the car. We find the officer was justified in walking up to Scalise's vehicle and opening the door to determine whether he was all right. Once the officer opened the car door and smelled a strong odor of an alcoholic beverage, the officer's subsequent investigation was proper under the Fourth Amendment.

We determine Scalise's motion to suppress was properly denied. We affirm defendant's convictions. Costs of this appeal are assessed to Scalise.

AFFIRMED.