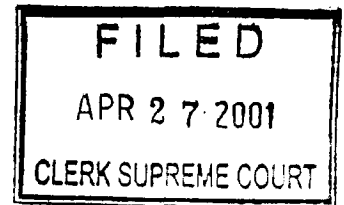


**IN THE COURT OF APPEALS OF IOWA**

No. 1-172 / 00-0734  
Filed April 27, 2001



**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JAMES ALAN GINTHER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Thomas A. Renda,  
District Associate Judge.

James Ginther appeals from his conviction for operating while intoxicated.

**AFFIRMED.**

Joel W. Bittner and Blaine B. Hudnall, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Christina Gonzalez, Assistant  
County Attorney, for appellee.

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

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**HUITINK, J.**

***I. Background Facts and Proceedings.***

On September 11, 1999, James Ginther was stopped by Officer Michael Martin while driving an all-terrain vehicle ("ATV") on city streets. Martin testified that he stopped the ATV because it did not have registration displayed and was occupied by two passengers. After stopping the vehicle, Martin, noticing that Ginther smelled strongly of alcohol, asked Ginther to perform field sobriety tests and to take a preliminary breath test.

Following these tests, Officer Woller arrived on the scene. He transported Ginther to the police department, where Ginther signed an implied consent and submitted to an intoxilyzer test, indicating a breath alcohol concentration of .110.

Ginther was charged with operating while intoxicated ("OWI") under Iowa Code section 321J.3 (1999). He filed a motion to suppress evidence obtained as a result of this allegedly illegal stop, which was denied by the district court. Ginther was subsequently found guilty.

On appeal, Ginther contends the district court erred in denying his motion to suppress and in allowing the results of the intoxilyzer test to be admitted at trial. He also challenges the Iowa Department of Transportation's authority to suspend his driver's license as a result of this incident.

***II. Standard of Review.***

When constitutional rights, such as search and seizure rights, are at issue, our review is de novo. *State v. Bumpus*, 459 N.W.2d 619, 622 (Iowa 1990). Nevertheless, the court's findings on credibility of the witnesses are entitled to

considerable deference. *State v. Liggins*, 524 N.W.2d 181, 186 (Iowa 1994). Evidentiary matters are generally within the trial court's discretion. *State v. Hubka*, 480 N.W.2d 867, 868 (Iowa 1992). Reversal is warranted only when there is a showing that the trial court abused its discretion. *Id.*

### ***III. Legality of the Stop.***

It is well settled that a traffic violation, however minor, gives an officer probable cause to stop a motorist. *State v. Aderholdt*, 545 N.W.2d 559, 563 (Iowa 1996); *State v. Mitchell*, 498 N.W.2d 691, 693 (Iowa 1993). To justify such a stop, an officer need only have reasonable, not probable, cause to believe the traffic violation has occurred. *Aderholdt*, 545 N.W.2d at 563. When a stop is challenged on the basis reasonable cause did not exist, the State must show that the stopping officer had specific and articulable cause to support a reasonable belief that criminal activity may have occurred. *State v. Godfrey*, 491 N.W.2d 173, 174 (Iowa Ct. App. 1992). Reasonable cause exists when an officer observes unusual conduct leading the officer to conclude that criminal activity may be afoot. *Id.*

We find Officer Miller offered specific and articulable facts to support his belief that Ginther's operation of the ATV was in violation of the law. Not only were there two persons on the ATV, in violation of Iowa Code section 321G.13(12) ("A person shall not operate an all-terrain vehicle while carrying a passenger."), the vehicle was without proper registration, as required under 321G.3 ("A person shall not operate . . . an all-terrain vehicle . . . on public land . . . unless the all-terrain vehicle . . . is numbered in accordance with this chapter

... and unless the identifying number set forth in the registration is displayed on ... the rear fender of the all-terrain vehicle.”). See *Delaware v. Prouse*, 440 U.S. 648, 661, 99 S. Ct. 1391, 1400, 59 L. Ed. 2d 660, 672 (1979) (lawful stop requires only an articulable and reasonable suspicion that the vehicle being stopped is unregistered or that the vehicle or the occupant is otherwise committing a legal violation).

#### ***IV. Iowa Code section 321J.6(2).***

Ginther also argues that the court erred in allowing the results of the intoxilyzer test into evidence based on the officer’s failure to comply with Iowa Code section 321J.6(2). This section requires the officer to offer the test “within two hours after the preliminary screening test is administered or refused or the arrest is made, whichever occurs first.” Ginther contends that he had taken the preliminary breath test prior to midnight, but that the intoxilyzer test was not administered until 1:59 a.m., just over two hours after the preliminary testing.

Ginther bases his conclusion as to the time of the intoxilyzer test on a supplemental report of Officer Woller, which indicated that he arrived at the police station with Ginther at 1:28 a.m. This same report, however, also indicates that he obtained Ginther’s implied consent at 12:55 and administered the intoxilyzer test at 12:59. Further, Officer Woller testified that the time of arrival recorded on the report was an error and that it should be have read 12:28 a.m. The district court found Woller’s testimony credible; we defer to its assessment of witness credibility. See *Neimann v. Butterfield*, 551 N.W.2d 652, 654-55 (Iowa Ct. App. 1996) (The trial court has a superior vantage point to

make credibility determinations due to its ability to consider firsthand the demeanor and appearance of the parties.). We accordingly find Ginther's argument to be without merit.

***V. Authority of Iowa Department of Transportation.***

Ginther also challenges the Iowa Department of Transportation's authority to suspend his driver's license to operate a motor vehicle based on an OWI charge or conviction arising from the operating of an ATV, which does not require a driver's license to operate. This issue is not properly raised in this appeal because it is not germane to Ginther's OWI conviction, which is the matter on appeal before us. See *Wiebenga v. Iowa Dep't of Transp.*, 530 N.W.2d 732, 734 (Iowa 1995); *Carroll v. Iowa Dep't of Public Safety*, 231 N.W.2d 19, 21 (Iowa 1975) (criminal prosecution for driving while under the influence of intoxicants and the civil, administrative proceeding for license revocation are separate and distinct proceedings). See also *Podraza v. City of Carter Lake*, 524 N.W.2d 198, 203 (Iowa 1994) (Our function is to review trial court's consideration of arguments raised before it.). We accordingly decline to address it.

***VI. Summary.***

We have carefully considered all issues raised on appeal and find they have no merit or are effectively resolved by the foregoing. The judgment of the district court is affirmed in its entirety.

**AFFIRMED.**