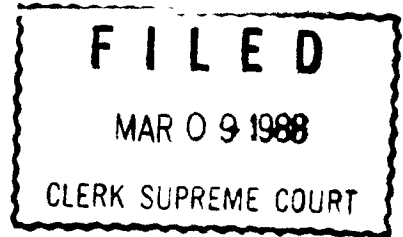


IN THE COURT OF APPEALS OF IOWA



JOHN ROBERT WOODRUFF,

)

Petitioner-Appellee,

)

vs.

)

Filed March 9, 1988

IOWA DEPARTMENT OF TRANSPORTATION,)
MOTOR VEHICLE DIVISION,

8-59
87-1331

Respondent-Appellant.

)

Appeal from the Iowa District Court for Webster County (No. 53743-7-87)

- Ronald H. Schechtman, Judge.

Iowa Department of Transportation appeals the trial court's order reversing a hearing officer's decision in a license revocation proceeding. **REVERSED.**

Thomas J. Miller, Attorney General, and Mark Hunacek, Assistant Attorney General, for the respondent-appellant.

Dan T. McGrevey, of McGrevey & Sherman, Fort Dodge, for the petitioner-appellee.

Considered by Donielson, P.J., and Sackett, and Habhab, JJ.

SACKETT, J.

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The issue is whether the trial court was correct in overturning an agency decision revoking John Robert Woodruff's driver's license because he had operated a motor vehicle with an alcohol concentration of over .10. We determine the trial court erred in reversing the agency decision. We reverse the trial court and affirm the agency's action.

Woodruff was confronted by a police officer in the Happy Chef Restaurant in Fort Dodge. The officer had received a report an intoxicated man left the Kwik Shop in Fort Dodge and drove off in a motor car meeting the description of a vehicle parked in front of the Happy Chef. The vehicle was a green Mercury with a white vinyl top, not in good shape, and with a dent in the side. The police officer had a fairly good description of Woodruff from the man in the Kwik Shop. There were about four people in the restaurant. Woodruff fairly matched the description given by the man at the Kwik Shop. Woodruff and his companion were intoxicated. A waitress at the Happy Chef indicated they had been there a short time. Woodruff was arrested for public intoxication. He was taken to the Kwik Shop where he was identified as the driver of the car. He was arrested for driving under the influence. He was removed to the law enforcement center where he was given a breath test that showed his blood alcohol to be over .10. The Iowa Department of Transportation sought to revoke his license under Iowa Code section 321J.12, which provides in relevant part:

Upon certification, subject to penalty for perjury, by the peace officer that there exists reasonable grounds to believe that the person had been operating a motor vehicle in violation of section 321J.2, that there existed one or more of the necessary conditions for chemical testing described in section 321J.6, subsection 1, and that the person submitted to chemical testing and the test results indicated an alcohol concentration as defined in section 321J.1 of .10 or more, the department shall revoke the person's motor vehicle license or nonresident operating privilege. . . .

After taking evidence the hearing officer sustained the revocation. The ruling was reviewed by a reviewing officer who affirmed the decision of the hearing officer. Woodruff filed a petition for judicial review of the agency action. The matter came on before the trial court. The trial court reversed the revocation. The DOT appeals the trial court's reversal.

The trial court's ruling is not entirely clear and the parties have some disagreement as to the basis on which the trial court reversed the agency. We determine the trial court found insufficient evidence to support a finding the officer had reasonable cause to arrest Woodruff for operating a motor vehicle under the influence. The trial court determined when the officer walked into the restaurant, confronted Woodruff and his companion, and asked Woodruff a question, a stop occurred. The trial court held the administrative officer should not have considered evidence beyond that point in determining whether the officer had reasonable cause to arrest Woodruff for driving under the influence. The trial court then determined the officer could not have a specific and articulable cause to support a reasonable belief Woodruff had been operating a motor vehicle while intoxicated because "a constitutionally regulated stop" occurred before the officer obtained a very good description of Woodruff.

The hearing officer determined:

Police Officer Maguire's receiving information that a person who left the Kwik Shop in Fort Dodge, Iowa, was believed to be intoxicated, his receiving a description of the motor vehicle that the person was driving, Officer Maguire's being advised that there was a motor vehicle matching the description of the vehicle that had left the Kwik Shop at the Happy Chef Restaurant in Fort Dodge, Iowa, Officer Maguire's observing the Plaintiff at the Happy Chef Restaurant in Fort Dodge, Iowa, and observing that the Plaintiff had a strong odor of an alcoholic beverage on his breath, that his eyes were bloodshot and that he was combative, Paul Lundberg, an employee of the Kwik Shop, giving Officer Maguire a description of the person who was driving the motor vehicle, and Paul Lundberg's telling Officer Maguire that the Plaintiff had a strong odor of an alcoholic beverage, that he was unsteady, and that he acted intox-

icated constitute reasonable grounds for Officer Maguire to believe the Plaintiff was operating a motor vehicle while under the influence of an alcoholic beverage. The arresting officer had reasonable grounds to believe the Plaintiff was operating a motor vehicle while under the influence of an alcoholic beverage.

We find ample support in the record to support the findings. We agree with the Iowa Department of Transportation's argument the hearing officer was not limited to just the evidence that proceeded the officer's confrontation with Woodruff for several reasons. First, evidence of what happened after the officer's confrontation was admitted at the administrative hearing without objection or challenge to its admissibility. Woodruff was represented by counsel at the administrative proceeding. The evidence therefore was in the record and before the administrative agency. The trial court erred in raising on its own motion an evidentiary objection when error was not preserved. See Chauffeurs, Local Union No. 238 v. Civil Rights Comm'n, 394 N.W.2d 375, 382 (Iowa 1986); Kohorst v. Iowa State Commerce Comm'n, 348 N.W.2d 619, 621-22 (Iowa 1984).

Second, the exclusionary rule formulated under the fourth and fourteenth amendments is inapplicable in a license revocation proceeding. Westendorf v. Iowa Dep't of Transp., 400 N.W.2d 553, 557 (Iowa 1987).

Third, there was no stop or seizure. The officer merely asked Woodruff several questions, which Woodruff did not answer. A seizure occurs only when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. Terry v. Ohio, 392 U.S. 1, 19 n.16, 885 S.Ct. 1868, 1879 n.16, 20 L.Ed.2d 889, 905 n.16 (1968). See State v. Stevens, 394 N.W.2d 388, 390 (Iowa 1986); State v. Johnson, 395 N.W.2d 661, 664 (Iowa App. 1986). Not all personal intercourse between policemen and citizens involves seizure of persons that implicate the fourth amendment. Johnson, 395 N.W.2d at 664.

We find the officer's action in briefly asking Woodruff if he had been at the Kwik Shop and whether he had been driving (Woodruff answered "It is none of your business.") was not a seizure. See id. at 665.

We reverse the district court. We affirm the hearing officer's revocation of Woodruff's license.

Costs are taxed to Woodruff.

REVERSED.