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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed March 31, 1987

409

STATE OF IOWA,

Plaintiff-Appellee,

vs.

ALLEN K. THORNE,

Defendant-Appellant.

6-437
86-173

Appeal from the Iowa District Court for Muscatine County (Crim. No. 58322) - James A. Weaver, District Associate Judge.

The defendant appeals from his conviction of operating a motor vehicle while intoxicated, second offense, challenging the trial court's denial of his motion to suppress evidence gained as a result of an allegedly illegal investigatory stop. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for the defendant-appellant.

Thomas J. Miller, Attorney General; Richard J. Bennett, Asistant Attorney General; and Bruce Ingham, Assistant Muscatine County Attorney, for the plaintiff-appellee.

Considered by Oxberger, C.J., Snell and Hayden, JJ.

OXBERGER, C.J.

The sole question presented in this appeal is whether the police officer who stopped the defendant's car prior to his arrest for operating a motor vehicle while intoxicated had reasonable cause for stopping the automobile. The defendant filed a motion to suppress all of the evidence obtained after the stop, asserting that it was an unlawful seizure. The trial court overruled the motion, and the defendant was convicted in a bench trial. He argues that the court erred in overruling the motion. We affirm.

The principles governing our resolution of the defendant's contention are well established. Because he alleges a violation of constitutional safeguards, we make an independent evaluation of the totality of the circumstances. State v. Losee, 353 N.W.2d 876, 878 (Iowa Ct. App. 1984). Accordingly, our review is de novo. State v. Hillesheim, 291 N.W.2d 314, 316 (Iowa 1980).

In order to comport with constitutional strictures, an officer must have reasonable cause to stop a vehicle. State v. Aschenbrenner, 289 N.W.2d 618, 619 (Iowa 1980). To establish reasonable cause, the State bears the burden of demonstrating that the stop was premised upon specific and articulable facts supporting the officer's belief that criminal activity was afoot. State v. Peck, 329 N.W.2d 680, 686 (Iowa Ct. App. 1982). The officer is bound by the true reason for making the stop, and may not rely upon reasons which he could, but did not actually, have. Aschenbrenner, 289 N.W.2d at 619.

The record in the present case discloses that on January 24, 1985, the Muscatine Police Department received a call concerning the defendant and his brother's alleged disturbance of the peace; the caller advised the police that the two had been drinking. Two officers, Sergeant Hammer and Officer Carmen, arrived at the scene and found the defendant and his brother in their vehicle. According to Officer Carmen's testimony, the defendant's brother was driving

and the defendant was either passed out or asleep in the passenger's seat. The officers warned the defendant's brother not to drive because he appeared intoxicated, and then left the scene.

About an hour later, Officer Carmen received a dispatch concerning a call from an anonymous informant who told the police that the driver of a certain vehicle was in possession of a gun. Carmen determined that the vehicle in question was that owned by the defendant and his brother. Carmen located the vehicle, observed that the defendant was driving, and ordered him to stop. Carmen did not recover a gun, but arrested the defendant for operating a motor vehicle while intoxicated.

The trial court found that Carmen stopped the car for two independent reasons: (1) to investigate the tip; and (2) to investigate whether the defendant was driving while intoxicated. The court concluded that the latter purpose was premised upon reasonable and articulable facts and therefore posed no violation of the defendant's constitutional rights. We agree.

The defendant argues that Carmen's only reason for stopping the vehicle was to investigate the tip regarding the gun. After reviewing the record, however, we are persuaded to concur with the trial court's finding that Carmen stopped the vehicle to investigate both the tip and whether the defendant was intoxicated. In reaching this conclusion we note that although portions of Carmen's testimony are somewhat unclear, he consistently maintained that the tip was only "part of the reason" for his decision to stop the car.

Furthermore, we agree with the trial court's conclusion that Carmen was apprised of specific, articulable facts justifying his belief that the defendant was intoxicated. As noted above, approximately one hour before stopping the vehicle, Carmen had received a call that two men who had been drinking were disturbing the peace. Upon arriving at the scene of the alleged disturbance.

Carmen and another officer found the defendant and his brother in their vehicle. The officers noticed that the defendant's brother appeared intoxicated and warned him not to drive; the defendant was either asleep or passed out in the passenger's seat. We think that the existence of these facts provided a reasonable cause for Carmen's decision to stop the vehicle in order to investigate whether the defendant was intoxicated. We conclude that the trial court correctly overruled the motion to suppress, and affirm.

AFFIRMED.