

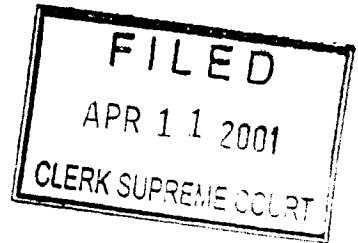
IN THE COURT OF APPEALS OF IOWA

No. 1-087 / 00-0380
Filed April 11, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHAUN JOSEPH RYDL,
Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, James D. Birkenholz,
District Associate Judge.

Defendant appeals following his conviction for operating while under the influence of alcohol, second offense. He contends the court erred in failing to suppress the results of a breath test taken following an allegedly unconstitutional stop of his automobile. **AFFIRMED.**

Joseph G. Bertogli, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Denise A. Timmins, Assistant Attorney General, John P. Sarcone, County Attorney, and Christina Gonzalez, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

000439

MILLER, J.

Shaun Joseph Rydl appeals his conviction for operating while intoxicated, second offense, following a trial on the minutes of evidence. He contends the trial court erred in failing to suppress the results of a breath test taken following an allegedly unconstitutional stop of his automobile, asserting no probable cause existed for the stop. We affirm.

I. BACKGROUND FACTS

An automobile accident on I-35/80 in the southbound lanes north of University Avenue in Clive, Iowa blocked interstate traffic southbound and vehicles were rerouted around the accident by using the University Avenue exit ramp. Officer Tarry Pote, with the Urbandale Police Department, arrived at the scene shortly after the accident following a request for assistance from the Clive Police Department. While assisting with the situation, Officer Pote heard a radio transmission stating there was a possible intoxicated driver in a red Ford Tempo approaching the accident scene. This information had been received through an anonymous tip.

When Officer Pote finished assisting with the accident scene, approximately ten to fifteen minutes later, he returned to his vehicle and proceeded to wait in line with the rest of the traffic to exit off University Avenue. While waiting in this traffic he observed a maroon Ford Tempo passing traffic on the right shoulder of the exit ramp. Pote cut across traffic and stopped the vehicle. He made contact with the driver and requested a license and registration. Pote smelled an odor of alcohol coming from the car so he returned to his vehicle and contacted his dispatch. Dispatch sent a state trooper as

backup. The trooper took over the investigation after Officer Pote informed him of his observations, as Officer Pote was about to go off duty.

The state trooper administered a breath test on Rydl which showed a blood alcohol content of .149. The State charged Rydl with operating a motor vehicle while under the influence of alcohol, second offense, in violation of Iowa Code section 321J.2 (1999). Rydl filed a motion to suppress, requesting the results of the breath test be excluded from evidence. A hearing was held on the motion and the district court denied Rydl's request. At the suppression hearing Rydl testified he had gotten off work about one-half hour before he was stopped and had not been drinking while at work.

Rydl waived his right to jury trial and agreed to a trial on the minutes of evidence. He was found guilty by the court after trial on the minutes and was sentenced to two years in prison with all but seven days suspended. He was ordered to pay a fine, which was converted to community service, and was ordered to perform community service and pay costs.

Rydl appeals his conviction contending the court erred in denying his motion to suppress. Specifically, he argues Officer Pote lacked probable cause to stop his vehicle.

II. STANDARDS OF REVIEW

Rydl challenges the district court's denial of his motion to suppress based on his constitutional right under the Fourth Amendment to be free from unreasonable search and seizure. We review an alleged constitutional violation de novo in light of the totality of the circumstances. *State v. Canas*, 597 N.W.2d 488, 492 (Iowa 1999); *State v. Cadotte*, 542 N.W.2d 834, 836 (Iowa 1996). "We

are bound by findings of fact which underlie the district court's ruling if they are supported by substantial evidence." *Canas*, 597 N.W.2d at 492. In reviewing the trial court's ruling, we consider both the evidence presented at the suppression hearing and that introduced at trial. *Id.* The adverse ruling on Rydl's motion to suppress preserved error for our review. *State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998).

III. MERITS

Rydl's claim is direct and focused. He claims that no probable cause existed for the stop of his motor vehicle. However, when a peace officer observes a traffic offense, however minor, the officer has probable cause to stop the motorist. *State v. Aderholdt*, 545 N.W.2d 559, 563 (Iowa 1996); *State v. Mitchell*, 498 N.W.2d 691, 693 (Iowa 1993). During the suppression hearing Officer Pote testified that he saw a red Ford Tempo passing all the rest of the traffic on the right shoulder of the exit ramp even though all of the vehicles had been directed to use a single lane on the roadway. He also testified there were no other vehicles using the shoulder of the road on the exit ramp, and that in his opinion Rydl's action posed a safety hazard. In his testimony at the suppression hearing Rydl conceded that, "I may have been partly on the shoulder" However, Rydl asserted there were some other vehicles taking the same path he took, he was merely following them, and that traffic "doubles up" on the exit ramp.

The district court found that Officer Pote had observed Rydl operating his vehicle on the shoulder of the exit ramp where the exit was only one lane in width, passing vehicles which had formed a single lane to exit the interstate, and

no other vehicles were traveling on the shoulder of the exit lane. It noted that although Rydl testified he was on his way directly home from work and had been at work all day with no alcohol consumption while at work, Rydl's intoxilyzer test results were a .149. It concluded the facts clearly established Rydl had operated his vehicle in an unsafe manner.

Iowa Code section 321.302 states, in relevant part, that, "No person shall drive off the pavement or upon the shoulder of the roadway in overtaking or passing on the right." Iowa Code §321.302 (1999). The district court implicitly found Officer Pote's testimony concerning disputed facts to be more credible than Rydl's. Although we review Rydl's allegation of a constitutional violation de novo, we give weight to the district court's fact findings because of its opportunity to assess the credibility of witnesses. *State v. Countryman*, 572 N.W.2d 553, 557 (Iowa 1997). Furthermore, Rydl testified at the suppression hearing that he was driving "in the right lane" and admitted he may have been partly on the shoulder.

It was undisputed that Rydl was driving on the right of other vehicles, both Officer Pote and Rydl having so testified. Therefore, the trial court's finding that Rydl was driving on the shoulder was clearly a finding that he was driving on the right shoulder.

Based on our de novo review of the totality of the circumstances, we find substantial evidence supports the findings of the district court that Officer Pote observed Rydl driving upon the shoulder in passing on the right at the time he was stopped by Officer Pote. This constituted a violation of Iowa Code section 321.302. Regardless of how minor Rydl's violation of the law may have been, it

provided Pote with probable cause to stop Rydl's vehicle. *Aderholdt*, 545 N.W.2d at 563; *Mitchell*, 498 N.W.2d at 693.

Substantial evidence supports the district court's findings of fact, including the credibility determinations that are inherent in its findings and ruling on the motion to suppress. Rydl's claim that there was no probable cause for the stop of his motor vehicle is without merit.

AFFIRMED.