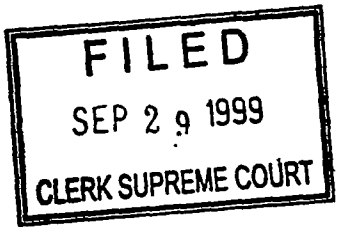
IN THE COURT OF APPEALS OF IOWA

No. 1999-251 (9-481) / 98-1258
Filed September 29, 1999



STATE OF IOWA,
Plaintiff-Appellee,

vs.

MALIPHONE SOURIVONG,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis, District Associate Judge.

Maliphone Sourivong appeals his conviction and sentence for operating while intoxicated (OWI) second offense. **AFFIRMED.**

Dennis A. Bjorklund, Coralville, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, and Kathryn E. Moreland, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Vogel and Zimmer, JJ.

STREIT, P.J.

On a cold January morning Maliphone Sourivong demanded he be arrested for some criminal offense. The officers granted his plea by arresting him for operating a motor vehicle while intoxicated. Officers had probable cause to arrest Sourivong based on his confession, and his confession corroborated with independent evidence provided a sufficient evidentiary basis for his conviction. The conviction is affirmed.

I. Background Facts & Proceedings.

On January 18, 1998, two officers were called to Maliphone Sourivong's residence to investigate a domestic argument. The officers arrived at 6:38 a.m. and found an intoxicated Sourivong. He was unsteady on his feet, had an odor of alcohol about him, his speech was slurred, and his eyes were watery and red. The officers attempted to calm him down, but he demanded to be arrested. The officers told him they had no cause to arrest him unless he had driven home drunk. Sourivong told the officers he drove home drunk. The officers conducted field sobriety tests on Sourivong which he failed. They also felt Sourivong's vehicle, and the engine was still warm. The officers were unable to find any alcohol containers in the residence or in or near the vehicle. Sourivong had a .205 intoxilyzer test result. After being charged with operating while intoxicated second offense, Sourivong filed a motion to suppress asserting the officers lacked probable cause to arrest him. The motion was heard simultaneous to the bench trial. The court denied the motion, found Sourivong guilty, and sentenced him.

II. Sourivong's Arrest Was Supported by Probable Cause.

Sourivong first argues the trial court erred in denying his motion to suppress because the officers had no evidence, as mandated by Iowa Code section 321J.2(1) (1997), that he had immediate control over a motor vehicle or the present or potential capability to direct the movements of a vehicle.

A. Standard of Review.

When a defendant is alleging error involving a constitutional right, such as here, we make an independent evaluation of the totality of the relevant circumstances to determine if such an error was made. *Rinehart v. State*, 234 N.W.2d 649, 658 (Iowa 1975); *State v. Jeffries*, 417 N.W.2d 237, 239 (Iowa App. 1987). As such, review of Sourivong's claim is de novo. *State v. Aschenbrenner*, 289 N.W.2d 618, 619 (Iowa 1980).

B. Merits.

Probable cause to arrest is dependent upon the circumstances surrounding each case. *State v. Bumpus*, 459 N.W.2d 619, 624 (Iowa 1990). "The facts must give rise to something more than a mere suspicion, but they need not be so strong as to convince officers involved in the arrest of a suspect's guilt." *Id.* Probable cause to arrest exists when "the totality of the circumstances as viewed by a reasonable and prudent person would lead that person to believe that a crime has been or is being committed and that the arrestee committed or is committing it." *Id.* A defendant's admissions or confessions alone rise above mere suspicion, and are sufficient to

establish probable cause. *See State v. Harris*, 436 N.W.2d 364, 370 (Iowa 1989); *Commonwealth v. Cox*, 686 A.2d 1279, 1287 (Pa. 1996) ("An admission by a defendant that he committed an offense establishes probable cause to arrest regardless of what a defendant previously said of did not say to the police."); *State v. Bedford*, 529 N.E.2d 913, 921 (Ohio 1988) ("The police had more than mere suspicion, . . . in fact, they had been told by [defendant] that he had killed two people."). Given Sourivong's statements, his performance on the field sobriety tests, and the investigation conducted at the scene, a reasonably prudent person would believe Sourivong committed the offense of operating a motor vehicle while intoxicated. The trial court properly denied the motion to suppress.

III. Sourivong's Conviction Is Supported by Sufficient Evidence.

Sourivong next argues the court lacked sufficient evidence with which to find him guilty beyond a reasonable doubt of the crime charged.

A. Standard of Review.

We review claims of insufficient evidence for errors at law. Iowa R. App. P. 4. A verdict of guilty is binding on appeal unless there is no substantial evidence in the record to support it, or it is clearly against the weight of the evidence. *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981). Substantial evidence means evidence that could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.* In determining the sufficiency of evidence, we view the record in a light

most favorable to the State. *State v. Robinson,* 288 N.W.2d 337, 340 (Iowa 1980). All evidence is considered, not simply the evidence supporting the verdict. *Id.*

B. Merits.

"The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the defendant committed the offense." Iowa R. Crim. P. 20(4). The corroborating "evidence need not per se, and independent of [the] confession, be sufficient to prove commission of the crime charged beyond a reasonable doubt." *State v. Dunn*, 199 N.W.2d 104, 108-09 (Iowa 1972). "Corroboration need not be strong nor need it go to the whole of the case so long as it confirms some material fact connecting the defendant with the crime." *State v. White*, 319 N.W.2d 213, 214 (Iowa 1982); *see State v. Osborne*, 516 S.E.2d 201, 205 (S.C. 1999) (ruling a warm engine hood and car keys in the defendant's pocket sufficient corroborating evidence); *Folk v. State,* 797 S.W.2d 141, 144 (Tex. App. 1990) (ruling evidence that the vehicle driven by defendant was registered to a person with whom defendant lived sufficient corroborating evidence).

Sourivong's confession was corroborated by ample evidence. Officers corroborated the intoxication element of section 321J.2(1), by performing field sobriety tests, through their first-hand observations of Sourivong's person, and the intoxilyzer result. This independent evidence coupled with Sourivong's confession could convince a rational trier of fact that he was intoxicated beyond a reasonable doubt. Officers corroborated the immediate control element of section 321J.2(1), by

establishing the vehicle he claimed to have driven belonged to his wife, the vehicle was parked at his residence, he was the last one to drive the vehicle, and the hood of the car was still warm on a cold January night. Sourivong's confession bolstered by the independent evidence could convince a rational trier of fact that he had immediate control over a motor vehicle beyond a reasonable doubt.

The trial court did not err in denying Sourivong's motion to dismiss, and there was sufficient evidence to convict him of operating a motor vehicle while intoxicated second offense. The conviction is affirmed.

AFFIRMED.