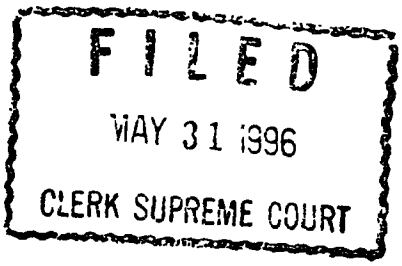
IN THE COURT OF APPEALS OF IOWA




No. 6-325 / 95-1327

**STATE OF IOWA,**
Appellee,

vs.

**ROBERT SHANNON STUMP,**
Appellant.

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Appeal from the Iowa District Court for Jefferson County, Lucy Gamon, Judge.

Robert Shannon Stump challenges his conviction, following a jury trial, of second-offense operating while intoxicated. **AFFIRMED.**

Thomas M. Walter and Robert E. Breckenridge II, of Johnson, Hester, Walter & Harrison, L.L.P., Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, John Morrissey, County Attorney, and Scott E. Schroeder, Assistant County Attorney, for appellee.

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

**PER CURIAM**

This is an appeal by a defendant challenging his conviction for operating while intoxicated (OWI), in violation of Iowa Code section 321J.2 (1993). We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

In the early morning of November 8, 1993, Robert Stump was stopped by sheriff's deputy Randy Lewis after Lewis heard Stump's vehicle squeal its tires through an intersection, and then saw the car accelerate to the point where Lewis believed Stump was exceeding the speed limit. After talking to Stump, Lewis believed he might be intoxicated. Stump failed field sobriety tests. He was then arrested. A breath test showed he had a blood alcohol limit of .155, which is over the legal limit. In a jury trial, Stump was convicted of OWI. He now appeals.

**I.** Stump claims his constitutional rights against double jeopardy were violated because he was subjected to one punishment when his driver's license was revoked by the Iowa Department of Transportation, and to a second punishment for the OWI conviction. The Iowa supreme court recently rejected a similar argument in *State v. Kocher*, 542 N.W.2d 556, 558 (Iowa 1996). The court determined the license revocation did not place a person in jeopardy, and thus, a subsequent OWI conviction did not place a person in double jeopardy. *Id.*

**II.** Stump claims deputy Lewis did not have reasonable cause to make a stop. It is well settled that the fourth amendment requires reasonable cause to stop a

vehicle for investigatory purposes. *State v. Lamp*, 322 N.W.2d 48, 51 (Iowa 1982) (citing *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889, 906 (1968)).

Deputy Lewis testified he believed Stump was exceeding the posted speed limit of twenty-five miles per hour by at least ten miles per hour. Based on his belief Stump was exceeding the speed limit, Lewis had reasonable cause to stop the vehicle.

**III.** Stump also claims the district court abused its discretion by refusing to grant a mistrial due to prosecutorial misconduct. In opening arguments, the prosecutor mentioned a preliminary breath test. Defense counsel objected and sought a mistrial. The court denied the mistrial, but admonished the jury to disregard the reference to the preliminary breath test.

The results of a preliminary breath test are inadmissible. *State v. Zell*, 491 N.W.2d 196, 197 (Iowa App. 1992). Here, as in *Zell*, the results of the preliminary breath test were not revealed, only that the defendant had been given such a test. In *Zell*, under these circumstances we determined it was sufficient to admonish the jury, and a mistrial was not necessary. *Id.* at 198. Based on this previous holding, we find no abuse of discretion in the present case.

We affirm the district court on all issues raised in this appeal. Costs of this appeal are assessed to defendant.

**AFFIRMED.**