FILED
JAN 23 1995
CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

No. 4-535 / 94-0329

**STATE OF IOWA,**

Plaintiff-Appellee,

**vs.**

**TONY M. CARR,**

Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Walter V. Rothschild, District Associate Judge.

Carr challenges his conviction for operating a motor vehicle while intoxicated, second offense. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Thomas G. Fisher and Ann E. Brenden, Assistant Attorneys General, Thomas J. Ferguson, County Attorney, and Anthony Janney, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Habhab and Huitink, JJ.

**HABHAB, J.**

Tony M. Carr was convicted, after a bench trial, of operating while intoxicated, second offense, in violation of Iowa Code section 321J.2 (1993). Carr now challenges his conviction claiming the trial court erred in denying his motion to suppress the evidence of his intoxication as it was obtained through an illegal stop.

Two police officers stopped Carr after hearing him squeal his vehicle's tires. The officers administered an intoxilyzer test indicating a breath alcohol concentration of .175. Carr was then arrested for second-offense operating while intoxicated.

Carr filed a motion to suppress the evidence of his intoxication. He contended the officers lacked reasonable cause to conduct an investigatory stop. He claimed there was not evidence a crime had occurred. Carr argues he did not violate the one potentially applicable ordinance making it unlawful to disturb the peace by unnecessarily squealing a vehicle's tires. He claimed that, given the amount of sand at the intersection, the squealing was not unnecessary. Carr also contended that, because it occurred in a business district, there was not a disturbance of the peace. The court denied the motion to suppress.

Having waived his right to a jury trial, the matter proceeded to a trial before the court. The court found Carr guilty as charged and sentenced him to serve 180 days in jail with all but seven days suspended. Carr appeals.

Carr appeals on the ground that his constitutional right against unreasonable search and seizure was violated as a result of an improper investigatory stop. Since a constitutional challenge is at issue, review is de novo under the totality of the circumstances. State v. Aschenbrenner, 289 N.W.2d 618 (Iowa 1980).

Unreasonable searches and seizures are protected against in the fourth amendment of the United States Constitution. Evidence obtained in violation of this amendment is inadmissible in a criminal prosecution. State v. Schrier, 283 N.W.2d 338, 342 (Iowa 1979).

Our supreme court has recently examined the criteria for a police officer to stop a vehicle for investigative purposes.

> When a peace officer observes a traffic offense, however minor, the officer has probable cause to stop the driver of the vehicle. Pennsylvania v. Mimms, 434 U.S. 106, 111, 98 S. Ct. 330, 333, 54 L. Ed. 2d 331, 337 (1977); United States v. Cummins, 920 F.2d 498, 500 (8th Cir. 1990), cert. denied, ___ U.S. ___, 112 S. Ct. 428, 116 L. Ed. 2d 448 (1991). A peace officer may also stop and briefly detain a person for investigative purposes if the officer has reasonable cause to believe a crime may have occurred or criminal activity is afoot. Terry v. Ohio, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884-85, 20 L. Ed. 2d 889, 911 (1968); State v. Rosenstiel, 473 N.W.2d 59, 61 (Iowa 1991).

State v. Mitchell, 498 N.W.2d 691, 693 (Iowa 1993).

Police officers have probable cause to stop a car if there is a minor traffic violation. Id. at 693. The traffic violation in this case was the city noise

ordinance.[1] The police officers witnessed Carr squealing his tires at an intersection. Upon witnessing Carr's squealing tires, reasonable cause existed to stop the vehicle.

Carr argues sand on the road caused his tires to squeal, and as a result the officers did not have reasonable cause to stop the vehicle. We find otherwise.

> [R]easonable cause may exist to investigate conduct which is subject to a legitimate explanation and turns out to be wholly lawful. Reid v. Georgia, 448 U.S. 438, 441, 100 S. Ct. 2752, 2754, 65 L. Ed. 2d 890 (1980). The principle function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot. 3 W. LaFave, Search and Seizure, § 9.3(b) at 432 (1987).

State v. Richardson, 501 N.W.2d 495, 497 (Iowa 1993). Even if the sand caused Carr's tires to squeal, the officers still had reasonable cause to stop Carr's vehicle and investigate.

We find the police officers had reasonable cause to stop Carr's vehicle. We affirm his conviction.

**AFFIRMED.**

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1. The ordinance states:

> It shall be unlawful for any person to disturb the peace by any loud and unnecessary noise by blowing horns, ringing bells, whistles, sirens, radios or any type of speaking device or noise makers, and by the unnecessary squealing of tires on motor vehicles.