IN THE COURT OF APPEALS OF IOWA

No. 0-657 / 00-320
Filed November 8, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RODNEY DALE BENTLEY,
Defendant-Appellant.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Pottawattamie County, Kathleen A. Kilnoski, District Associate Judge.

Defendant appeals from the judgment and sentence entered upon his plea to operating while intoxicated. **AFFIRMED.**

William Bracker of Bracker Law Office, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Cristen C. Odell, Assistant Attorney General, Richard Crowl, County Attorney, and Jon Jacobmeier, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Huitink and Hecht, JJ.

HUITINK, J.

The defendant-appellant, Rodney Bentley, appeals from the judgment and sentence entered upon his plea agreement to operating while intoxicated in violation of Iowa Code section 321J.2 (1999). He claims the district court erred in finding (1) that the police officer had probable cause to stop his automobile and (2) that the circumstances justified his arrest. We affirm.

Background facts. A police officer patrolling in Carson, Iowa, observed Bentley driving on a city street toward Highway 92. The officer testified he saw dust kick up and believed Bentley's wheel had dropped off the pavement onto the gravel shoulder. The officer followed Bentley after his turn onto Highway 92 and observed Bentley weaving within his lane. The officer activated his emergency lights, and Bentley eventually stopped. When the officer approached the driver's side window, he smelled alcohol. Bentley also had watery eyes. When asked, Bentley admitted he had a few beers. The officer administered two field sobriety tests, which Bentley failed. Bentley refused to try the one-leg stand, saying his balance wasn't too good. The officer then requested a preliminary breath test. Bentley complied, but did not blow enough air through for a proper sample. The PBT registered 0.08. The officer arrested Bentley for operating while intoxicated and transported him to the Carter Lake Police Station. After consulting with his attorney, Bentley signed the implied consent form and gave a breath sample, which registered 0.109. The officer also learned Bentley did not have a valid driver's license because he was still under suspension or revocation for a prior OWI conviction.

District court proceedings. The State charged Bentley with operating while intoxicated in violation of Iowa Code section 321J.2 (1999) and driving while license suspended under sections 321J.12 and 321A.17. He filed an unsuccessful motion to suppress evidence, claiming the police officer lacked probable cause to stop his car and to arrest him because his preliminary breath test was under 0.10. In the suppression hearing, Bentley introduced testimony from two witnesses who were in the parking lot of the restaurant when Bentley drove away. Neither witness recalled seeing the police car following Bentley's car, but neither watched continuously. One witness testified the restaurant is at the crest of a hill and the officer would have had to be within a half block north of the restaurant to be able to see Bentley's car south of the restaurant at the intersection with Highway 92.

Pursuant to a plea agreement, Bentley stipulated to the minutes of testimony, and the State dismissed the driving while suspended charge. The court found him guilty of operating while intoxicated, sentenced him to thirty days in jail, with all but two days suspended, and placed him on probation for six months.

Claims on appeal. On appeal, Bentley claims the district court erred in finding the police officer had probable cause to stop his automobile and that the circumstances warranted his arrest. He argues the officer could not have seen him driving near the restaurant because the police car would have been on the other side of a hill from where his car was and no witnesses saw the police car following him. He also argues merely weaving within one's lane does not provide

probable cause for a stop. Bentley also claims the circumstances did not justify his arrest.

Challenging a trial court's ruling on a motion to suppress implicates the Fourth and Fourteenth Amendments of the United States Constitution. We review constitutional issues de novo. *State v. Scott*, 518 N.W.2d 347, 349 (Iowa 1994).

Reasonable cause for the stop. Bentley first claims the officer did not have reasonable cause to stop his car. The Fourth Amendment requires reasonable cause to stop a vehicle for investigatory purposes. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968); *State v. Cooley*, 229 N.W.2d 755, 759 (Iowa 1975). When a stop is challenged claiming reasonable cause did not exist, the State must show that the officer had "specific and articulable cause to support a reasonable belief that criminal activity may have occurred." *State v. Aschenbrenner*, 289 N.W.2d 618, 619 (Iowa 1980). The officer is bound by the true reason or reasons for making the stop. *Id.* Bentley claims the officer could not have seen him driving from the restaurant toward Highway 92 because the officer would have been on the other side of the crest of a hill. The testimony concerning the topography around the location of the restaurant is not sufficient to support Bentley's claim. Bentley also argues there is evidence the road in town has an uneven edge and there are places where mud, sand, and gravel are on the road surface. He asserts any dust the officer saw kicked up could have come from those places without his going off the side of the road. Information sufficient to establish reasonable cause to stop

is not defeated by an after-the-fact showing that the information was false. *State v. Ewoldt*, 448 N.W.2d 676, 678 (Iowa App. 1989). "A reasonable suspicion may be based on articulable facts even if such facts are ultimately shown to be inaccurate or false." *Id.* (quoting *Kelly v. State*, 721 S.W.2d 586, 587 (Tex. Ct. App.1986)). Even if the officer mistakenly believed the dust he saw was caused by Bentley's car driving onto the shoulder of the road, that belief taken together with Bentley's weaving in his lane on Highway 92 provides reasonable cause for the officer to stop him. *See State v. Otto*, 566 N.W.2d 509, 510 (Iowa 1997). The court correctly refused to suppress the evidence obtained after the officer stopped Bentley's car.

Probable cause for the arrest. A warrantless arrest must be supported by probable cause. *United States v. Watson*, 423 U.S. 411, 423-24, 96 S. Ct. 820, 828, 46 L. Ed. 2d 598, 609 (1976). Probable cause exists when the facts and circumstances within the arresting officer's knowledge would warrant a person of reasonable caution to believe that an offense is being committed. *Draper v. United States*, 358 U.S. 307, 313, 79 S. Ct. 329, 333, 3 L. Ed. 2d 327, 332 (1959); *State v. Harris*, 490 N.W.2d 561, 563 (Iowa 1992). Bentley claims the officer lacked sufficient probable cause to arrest him because his eyes were not bloodshot, the officer did not testify in detail how Bentley failed the two field sobriety tests, and the PBT was less than the legal limit. To sustain a finding of probable cause, the facts must rise above mere suspicion but need not be strong enough to sustain a guilty conviction. *State v. Gregory*, 327 N.W.2d 218, 220 (Iowa 1982). All of the evidence available to the arresting officer may be

considered, regardless of whether or not each component would support a finding of probable cause by itself. *State v. Bumpus*, 459 N.W.2d 619, 623 (Iowa 1990), *cert. denied*, 498 U.S. 1001, 111 S. Ct. 563, 112 L. Ed. 2d 570 (1990).

Bentley's argument concerning the 0.08 result on the PBT is without merit. *See State v. Owens*, 418 N.W.2d 340, 342-43 (Iowa 1988) (finding that a preliminary breath test of 0.08 did not automatically eliminate grounds for believing driver was operating while intoxicated, and thus police officer was entitled to request blood test of driver); *see also* Iowa Code section 321J.2 (person operating motor vehicle while under the influence of alcohol *or* while having an alcohol concentration of 0.10 or more) (emphasis added).

After stopping Bentley's car, the officer smelled alcohol, saw his watery eyes, administered two field sobriety tests, which Bentley failed, and had Bentley's admission he had drunk a few beers. There was sufficient probable cause to arrest Bentley and to invoke implied consent procedure after his arrest. *See* Iowa Code § 321J.6(1)(a). The court did not err in refusing to suppress evidence obtained after Bentley's arrest.

Having determined both the initial stop and subsequent arrest were valid, we conclude the district court properly overruled Bentley's motion to suppress. We therefore affirm the court's judgment of conviction.

AFFIRMED.