IN THE COURT OF APPEALS OF IOWA

000355

No. 7-417 / 96-1524

FILED
AUG 22 1997
CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

RANDY DWAYNE BROWN,
Appellant.

Appeal from the Iowa District Court for Des Moines County, Gary J. Snyder, District Associate Judge.

Defendant appeals the judgment and sentence entered upon his convictions of driving while barred and operating a motor vehicle while intoxicated in violation of *Iowa Code* sections 321J.2(1)(a), 321J.2(2)(b) and 321.560 (1995). **AFFIRMED.**

Alan N. Waples of Wittkamp & Waples, Burlington, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Patrick C. Johnson, County Attorney, and Jennifer Verhein and Michael Clark, Assistant County Attorneys, for appellee.

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

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VOGEL, J.

Randy Dwayne Brown appeals the judgment and sentence entered upon his convictions of driving while barred and operating a motor vehicle while intoxicated in violation of Iowa Code sections 321J.2(1)(a), 321J.2(2)(b) and 321.560 (1995).

Brown argues the court erred in denying his motion to suppress. Finding the circumstances surrounding the stop gave rise to reasonable suspicion that criminal activity was afoot, we affirm.

Scope of review. We review whether an officer's suspicion to stop a vehicle is reasonable "in light of the totality of the attendant facts and circumstances." *State v. Anderson*, 479 N.W.2d 330, 332 (Iowa App. 1991).

On August 12, 1995, at approximately 4:38 a.m., Burlington police officer John Stirn observed a car at the entrance to a driveway. He saw one of the two individuals standing in the driveway holding what appeared to be a "shiny" or "metallic-color[ed]" beer can in his hand, and observed one of the individuals passing the can to Brown inside the car on the driver's side. As Stirn backed up and began to pull behind the car, Brown started to drive away. This further alerted Stirn to the possibility that criminal activity might be afoot. *See State v. Richardson*, 501 N.W.2d 495, 497 (Iowa 1993) (concluding that the "furtive action" of defendant trying to pull away as the police approached was significant in concluding there was a reasonable suspicion to stop the defendant's car). Stirn had thus formed a reasonable and articulable suspicion to approach Brown's vehicle for an investigatory check. *See*

State v. Haviland, 532 N.W.2d 767, 768 (Iowa 1995); *State v. Rosentiel*, 473 N.W.2d 59, 62 (Iowa 1991) (holding that the police may stop and briefly detain an individual for investigative purposes if the officer has reasonable cause to believe a crime may have occurred). Stirn then discovered several empty beer cans in the back seat of Brown's car, and Brown admitted to having consumed about six beers while driving around in the country with a suspended license.

In reviewing the totality of the circumstances, we determine Stirn's stop of Brown's car was valid, and thus, all evidence flowing therefrom is admissible. We accordingly conclude the district court correctly denied Brown's motion to suppress the evidence; we affirm.

AFFIRMED.