IN THE COURT OF APPEALS OF IOWA

No. 1-393 / 91-211

FILED
NOV 26 1991
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

THEADOR A. SORENSEN,

Appellant.

877

Appeal from the Iowa District Court for Howard County, James C. Bauch, Judge.

Defendant appeals following his conviction of OWI, first offense. **AFFIRMED.**

Roger L. Sutton of Sutton Law Office, Charles City, for appellant.

Bonnie J. Campbell, Attorney General, John W. Baty, Assistant Attorney General, and Joseph M. Haskovec, County Attorney, for appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

On November 3, 1989, at approximately 10:50 p.m. Deputy Minor observed a blue van "pulling doughnuts" in the parking lot of a closed auto salvage business located approximately five miles outside of Cresco, Iowa. Several times the officer observed the vehicle leave the business premises through the ditch, drive onto the shoulder of the highway, and then return to the business premises through the ditch. Deputy Minor made these observations from approximately one-quarter mile away. The owner of the business had previously complained to the sheriff's department about individuals being in the parking lot after closing.

Approximately forty minutes later the van left the business premises. Deputy Minor followed the vehicle for approximately five miles. While following, the deputy did not observe any improper driving. Deputy Minor then stopped the vehicle to determine who the driver was and why the driver was "pulling doughnuts" and driving the vehicle through the ditch.

Sorensen was operating the van when the deputy stopped the vehicle. Sorensen claimed he was "testing" new tires he had purchased from the auto salvage business. Apparently the owner of the business was in the vehicle when Sorensen was "testing" the tires; however, the deputy was unaware of the owner's presence.

When Deputy Minor asked for Sorensen's driver's license, he detected the odor of alcohol on Sorensen's breath. The deputy also observed Sorensen's balance was unsteady. Sorensen failed the field sobriety tests conducted by the deputy.

At approximately 11:50 p.m., Deputy Minor arrested Sorensen for OWI and transported him to the county law enforcement center where Sorensen consented to take a breath test at 12:16 a.m. The result of the breath test revealed a blood alcohol level of .144.

Sorensen sought to suppress all evidence acquired by the State alleging the stop was illegal. The district court denied Sorensen's motion and found him guilty of operating while intoxicated, first offense. Sorensen appeals, contending the district court erred in refusing to suppress evidence obtained as a result of an allegedly unreasonable stop of his motor vehicle.

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 899, 906 (1968). When a stop is challenged on the basis that reasonable cause did not exist, the State must show the stopping officer had "specific and articulable cause to support a reasonable belief that criminal activity may have occurred." State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982) (quoting 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; the officer may not rely on reasons that he or she could have had but did not actually have. Aschenbrenner, 289 N.W.2d at 619.

Reasonable cause exists when an officer observes unusual conduct leading the officer to conclude criminal activity may be afoot. Lamp, 322 N.W.2d at 51. The record reveals such conduct existed in the present case. The facts show defendant was driving erratically both on and off the business premises. This is indicative of the offenses of operating a motor vehicle while under the influence of alcohol or a drug (OWI) in violation of Iowa Code section 321.281 and reckless driving in violation of Iowa Code section 321.277. The driving occurred late at night in the parking lot of a business whose owner had previously complained to the sheriff's department about unauthorized persons on the premises after hours. This is indicative of criminal mischief and/or trespass as defined in Iowa Code chapter 716 and possibly theft as set out in Iowa Code section 714.1. We determine these circumstances gave the deputy reasonable cause to stop defendant's vehicle. That the deputy did not immediately approach the vehicle after observing it "pulling doughnuts" and driving through the ditch is of no consequence. Effective law enforcement might dictate observing the activity for a period of time to gain a better understanding of what was occurring.

The trial court did not err in denying defendant's motion to suppress evidence. Accordingly, the decision of the trial court is affirmed.

AFFIRMED.