FILED
NOV 26 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed November 26, 1986
vs.	)	298
RODNEY L. MOHRING,	)	6-319 85-1360
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Bremer County (23023) - Ralph F. McCartney and B. C. Sullivan, Judges.

Defendant appeals the judgment and sentence entered on a jury verdict finding him guilty of operating while intoxicated, second offense, in violation of Iowa Code section 321.281. **AFFIRMED.**

Leslie P. Turner, Nashua, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Ann DiDonato, Assistant Attorney General; and Dale E. Goeke, Bremer County Attorney; for plaintiff-appellee.

Considered by Snell, P.J., Schlegel, and Hayden, JJ.

SCHLEGEL, J.

Defendant appeals the judgment and sentence entered on a jury verdict finding him guilty of operating while intoxicated, second offense, in violation of Iowa Code section 321.281. We affirm.

On April 4, 1985, at approximately 9:30 p.m., a Plainfield police officer, Joseph Beenblossom, received a radio dispatch informing him that a silver Chevy with a loud muffler had been seen approaching the city from the east on Highway 188 and was reported to be "swerving all over the road." Beenblossom immediately proceeded to the highway where he observed a westbound vehicle entering the city. He noticed that the vehicle weaved to (but not across) the center line and back to the edge of the pavement two times within a short distance. He was unable to determine the color of the vehicle.

After Beenblossom silently followed the vehicle for a short distance, the driver of the vehicle pulled into a driveway and stopped. Beenblossom then parked his car in the driveway and approached the vehicle, which he could then see was a green and black Dodge.

When Officer Beenblossom asked the driver, defendant Rodney L. Mohring, to step out of his vehicle, he detected the odor of alcohol on Mohring's breath and he noticed that Mohring was walking unsteadily. When Beenblossom asked Mohring if he had been drinking, Mohring responded affirmatively. Beenblossom then asked Mohring to perform four field sobriety tests. After Mohring allegedly failed all the tests, Beenblossom arrested him and charged him with operating while intoxicated. Mohring refused to take a breath analyzer test and no blood test was administered.

Mohring filed a pretrial motion to suppress the evidence obtained from the investigatory stop of his vehicle, claiming that Officer Beenblossom lacked reasonable cause for believing Mohring was operating while intoxicated at the

time of the stop. After a hearing, Mohring's motion was overruled by Judge B. C. Sullivan, who stated in his ruling that Officer Beenblossom testified that he saw Mohring's vehicle weave "across the center line of the highway" (emphasis added).

When trial commenced on July 30, 1985, a bartender testified that she had served Mohring four drinks containing 80 proof whiskey on the evening of April 4, 1985, prior to his arrest. A passenger in Mohring's car on the night in question testified that Mohring did not appear intoxicated to him. Mohring failed to object when Officer Beenblossom testified that following Mohring's arrest, Mohring admitted having three beers before leaving work on the day in question.

During Mohring's cross-examination of Beenblossom regarding his knowledge of Mohring's ankle injury, the State objected to any reference to the minutes of testimony which allegedly contained conflicting evidence. The trial court sustained the objection. At the close of his evidence and again at the close of the State's evidence, Mohring moved for a judgment of acquittal. When the trial court reserved ruling on his first motion, Mohring failed to request an immediate ruling.

On August 1, 1985, the jury returned a verdict finding Mohring guilty as charged. On August 6, 1985, Judge McCartney overruled Mohring's motions for judgment of acquittal. When Mohring filed a motion for new trial on August 13, 1985, he failed to raise the ruling reservation issue. On August 22, 1985, Judge McCartney denied Mohring's motion for new trial. On August 26, 1985, Mohring was sentenced to a term of incarceration of seven days and was ordered to pay a total fine of $862.50 plus costs.

Defendant contends the trial court erred: (1) in overruling his pretrial motion to suppress evidence obtained from an allegedly unreasonable investigatory

stop of his vehicle; (2) in admitting testimony of a police officer concerning statements made by the defendant following his arrest regarding his drinking; (3) in denying defendant the use of the minutes of testimony during cross-examination of a police officer; and (4) in reserving ruling on defendant's motions for judgment of acquittal and later in overruling them. The State contends that the defendant has failed to preserve error on issues (2) and (4) above and has waived issue (3) above by failing to properly raise it for review. Our review of the constitutional issue is de novo. State v. Conger, 375 N.W.2d 278, 279 (Iowa Ct. App. 1985). Our review of the other issues raised by defendant is on error. Iowa R. App. P. 4.

Defendant argues that there was not specific and articulable cause to support a reasonable belief that criminal activity was occurring at the time of the stop. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. This amendment requires that an officer have "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). An officer must have specific and articulable cause to support a reasonable belief that criminal activity may have occurred. State v. Conger, 375 N.W.2d 278, 279 (Iowa Ct. App. 1985). The record must disclose objective facts available to the officer to justify the stop under the circumstances. State v. Losee, 353 N.W.2d 876, 878 (Iowa Ct. App. 1984). An officer is not required to observe an actual traffic violation before making a stop. See State v. Aschenbrenner, 289 N.W.2d 618, 620-21 (Iowa 1980). Observation of erratic driving within a traffic lane can justify an investigatory stop. Id. Unusual driving can be conduct which leads an officer to conclude, in light of his experience, that criminal activity may have occurred. State v. Donnell, 239 N.W.2d 474, 478 (Iowa 1976). Officer Beenblossom testified that, in his experience, a car which weaved within

a lane is often an indication that the driver is intoxicated. The record shows that the officer's attention was properly directed to the vehicle in question because of information the officer had recently received of a swerving car approaching the city. The officer had reasonable cause to approach and question the driver of the swerving car to determine if criminal activity was occurring. The resulting failure of the driver to pass a field sobriety test provided the officer with probable cause to arrest the driver.

The defendant also contends that the trial court erred in allowing testimony of the officer concerning defendant's statements regarding drinking that had occurred while defendant was at work. Defendant contends that the officer testified beyond matters set out in the minutes of testimony. Rule 5(3) of the Iowa Rules of Criminal Procedure states:

> The prosecuting attorney shall, at the time of filing such information, also file the minutes of evidence of the witnesses which shall consist of a notice in writing stating the name, place of residence and occupation of each witness upon whose expected testimony the information is based, and a full and fair statement of the witness' expected testimony.

The minutes of the testimony of Officer Beenblossom stated:

> That he resides in Plainfield, Iowa, and is by occupation Chief of Police of the Plainfield Police Department; that on the date in question at approximately 9:36 p.m. witness was on duty and did receive a call from the Bremer-Waverly Law Center of a silver Chevrolet with a loud muffler enroute to Plainfield from Horton; that said vehicle was reported to be all over the road; that as witness turned east on 188 he observed a vehicle proceeding west and observed that the vehicle swerved to the centerline and back to the edge of the payment on two occasions; that witness turned his vehicle around and observed that the vehicle had turned into the driveway of the Kevin Adams' residence; that witness stopped his vehicle and observed the Defendant driver; that Defendant exited his vehicle and witness observed an odor of an alcoholic beverage about the Defendant; that in answer to question Defendant stated that he had been drinking; that witness asked the Defendant to perform field sobriety tests which were performed poorly; that

> during the field sobriety tests, the witness stated "This is bullshit!;" that witness observed that the Defendant's eyes were watery and his balance and walk unsteady and his speech slurred; that witness placed the Defendant under arrest and advised the Defendant of his Miranda Rights and transported the Defendant to the Bremer-Waverly Law Center for further processing; that during transportation of the Defendant the Defendant became very belligerent and began using extremely abusive language; that at the Law Center witness again advised the Defendant of his Miranda Rights; that Defendant became very uncooperative and refused to sign the Miranda Rights form; that witness then explained to the Defendant the provisions of the Implied Consent Law; that Defendant refused to give a specimen; that Bremer County Deputy Sheriff again explained the provisions of the Implied Consent Law and Defendant again refused to give a specimen, whereupon Implied Consent was invoked; that witness completed processing the Defendant and will testify as to his observations during processing; that in the opinion of the witness the Defendant was under the influence of an alcoholic beverage; and witness will testify to other related matters.

The defendant claims that this information did not fully and fairly notify him that his statements concerning his drinking at work would be part of the officer's testimony. We do not agree. Minutes need not detail each circumstance of the testimony, but they must be sufficient—fully and fairly—to alert defendant generally to the source and nature of the evidence against him. State v. Ristau, 340 N.W.2d 273, 275 (Iowa 1983). The minutes refer to the statements made to the officer by the defendant that defendant had been drinking. The minutes refer to the testimony that would be offered concerning the officer's observation of the defendant at the Law Center. It was during this period that defendant made the remarks about drinking at work. We believe that defendant was generally alerted by the minutes that the testimony against him would relate to statements made about alcohol consumed prior to the arrest.

Defendant states that "the court improperly prevented cross-examination of officer Beenblossom on matters alleged to be in conflict with the minutes of testimony in the county attorney's information." There is no further discussion

of this issue other than that it was being considered with the previous issue "for the purpose of this Brief." No reference is made to the record enabling us to determine what is the basis for the argument on appeal. There is no discussion of the issue and no authority cited. This failure to individually argue the claimed error or even cite to the record to alert us to the basis for the issue must be deemed a waiver of this issue. See Iowa R. App. P. 14(a)(3).

Defendant also argues that the failure of the trial court to sustain or overrule defendant's motion for acquittal at the conclusion of the State's evidence pursuant to Iowa Rule of Criminal Procedure 18(8)(a) constitutes reversible error. We need not reach this issue since the defendant has failed to preserve this error for review. At the close of State's evidence, the defendant moved for a judgment of acquittal. Judge McCartney said he thought he had authority to reserve ruling on the motion. The defendant's attorney agreed with the judge. Defendant did not then ask for an immediate ruling, and has only raised the issue again on appeal. The party desiring a ruling has the burden of demanding it from the trial court. Blunt, Ellis & Loewi, Inc. v. Igram, 319 N.W.2d 189, 195 (Iowa 1982). Failure to request a ruling on an objection or motion constitutes waiver and will not be excused absent the trial court's refusal or failure to rule after a request has been made. Id. Defendant's assent to the judge's interpretation of the rule and defendant's failure to request a ruling constitute a waiver of this matter.

AFFIRMED.