

IN THE COURT OF APPEALS OF IOWA

No. 1999-499 (9-756) / 99-363
Filed February 9, 2000

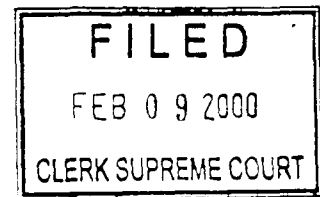
STATE OF IOWA,

Appellant,

vs.

TRACY LYNN ALGER,

Appellee.



Appeal from the Iowa District Court for Buena Vista County, Joseph J. Straub, Judge.

The State of Iowa appeals from a district court decision to sustain Tracy Alger's motion to suppress an implied consent form and blood test taken pursuant to Iowa Code section 321J.6 (1997). **AFFIRMED.**

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, and Philip E. Havens, County Attorney, for appellant.

Donald J. Hemphill of Hemphill Law Office, Spencer, for appellee.

Considered by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

VAITHESWARAN, J.

The State of Iowa seeks discretionary review of a district court ruling suppressing a blood sample and implied consent form. We affirm.

I. Background Facts and Proceedings

On August 1, 1998, Tracy Alger was driving down a county road in northwest Iowa with his friend Mark Griffith. At an intersection, another car struck Alger's car on the passenger side, killing Griffith. Alger's car rolled into a cornfield.

Deputy Sheriff Joel Sivinski arrived at the scene. He noticed several full cans of beer and one unopened wine cooler scattered in the cornfield. He also noticed a small cooler inside the car. A witness at the scene told Sivinski that Alger entered the intersection without ever slowing down or stopping.

Sivinski spoke briefly to Alger before he was taken to a county hospital in Storm Lake. After the ambulance left the scene, Sivinski contacted the Storm Lake Police Department and asked an officer to obtain an implied consent form and a blood specimen from Alger and the driver of the other vehicle. When Sivinski arrived at the hospital, Officer Kenny McClure told Sivinski he had obtained blood samples from both individuals, after reading them the implied consent advisory and obtaining their consent. The test results later revealed Alger had a blood alcohol concentration of .111. Sivinski spoke to Alger at the hospital for approximately thirty-five minutes. During this conversation, Alger admitted he was driving at the time of the accident and admitted he drank three or four cans of beer while golfing earlier that afternoon, as well as a substantial amount of beer the night before.

The State charged Alger with vehicular homicide, in violation of Iowa Code sections ~~707.6A~~(a) and (b) (1997). Alger moved to suppress the blood test results and evidence of implied consent. The district court granted the motion and the State sought discretionary review.

II. Scope of Review

The State contends constitutional rights are implicated and, therefore, our review is de novo. Alger counters that the State does not raise a constitutional challenge but only a challenge to the district court's "interpretation and application of" Iowa Code § 321J.6(1)(b). Therefore, he contends the applicable standard of review is for correction of errors of law. We agree with Alger and accordingly review the district court's ruling for legal error. See *State v. Palmer*, 554 N.W.2d 859, 864 (Iowa 1996); *State v. Owens*, 418 N.W.2d 340, 342 (Iowa 1988).

III. Reasonable Grounds

A. Applicable Standard

Iowa Code section 321J.6 authorizes an officer to request a blood test if the officer has reasonable grounds to believe the person was operating a motor vehicle while intoxicated. "Reasonable grounds" means "the facts and circumstances known to the officer at the time action was required would have warranted a prudent person's belief that an offense had been committed." *Owens*, 418 N.W.2d at 342.

As a preliminary matter, the State contends the district court erroneously applied the more stringent probable cause standard rather than the reasonable grounds standard set forth in Iowa Code section 321J.6. We disagree. The court stated the question to be decided was "[d]id Deputy Sivinski have reasonable grounds to believe that the defendant was operating a motor vehicle while under

the influence of alcohol or while having alcohol concentration of .10 or more?" The court concluded "Deputy Sivinski did not make sufficient observations at the scene to acquire knowledge of reasonable grounds to believe that the defendant was operating while intoxicated." These statements establish the court applied the correct standard.

B. Officer Sivinski's Knowledge

The State contends Officer Sivinski was aware of facts and circumstances that afforded him reasonable grounds to believe Alger was driving while intoxicated. Specifically, the State points to the following evidence: (1) Alger ran a stop sign; (2) Alger was speeding; (3) Alger gave no indication he saw the other vehicle; (4) Sivinski saw alcohol at the scene and a fellow officer told Sivinski one can of beer appeared to have been consumed before the crash; (5) Sivinski noted Alger was not alert and disoriented.

None of these facts, either independently or together, would have warranted a prudent person to believe an offense was committed. The only facts which do establish this nexus were properly rejected by the district court as supporting a reasonable grounds determination and the State does not challenge those portions of the ruling. For example, the State does not challenge the district court's determination that Sivinski's conversation with Alger after the blood sample was taken cannot support the reasonable grounds determination. The State also does not take issue with the court's determination that certain of Sivinski's pretrial testimony was not credible. Specifically, Sivinski testified Alger admitted at the accident scene he had been drinking alcohol. The court pointed out, however, that Sivinski did not mention this admission in his four page, single spaced report. The

State finally does not challenge the court's finding that Sivinski did not have an understanding he needed reasonable grounds to invoke implied consent and, consequently, did not administer any tests which might have revealed alcohol impairment.

It is undisputed Alger's speech was not slurred and his eyes were not bloodshot at the time of the accident and no witnesses at the scene suggested Alger was alcohol impaired. Accordingly, we conclude Sivinski did not have reasonable grounds to believe Alger was operating a motor vehicle while intoxicated. To conclude otherwise would subvert one of the three purposes behind Iowa Code section 321J.6: "to prevent citizens from indiscriminate testing or harassment." *State v. Satern*, 516 N.W.2d 839, 841 (Iowa 1994).

C. Officers' Shared Knowledge

The State contends, even if the information within Sivinski's knowledge is not sufficient to support a finding of "reasonable grounds," Officer McClure possessed additional information that established reasonable grounds for removal of the blood sample. It is established that "[w]hen police officers are acting in concert, the knowledge of one is presumed shared by all." *Owens*, 418 N.W.2d at 342.

Officer McClure was on duty at the Storm Lake Police Department when a radio dispatch arrived from Deputy Sivinski requesting that an officer go the hospital to obtain blood specimens from the drivers of two cars involved in an accident. McClure was not at the accident scene and testified he knew nothing about the accident. However, he responded to Sivinski's dispatch and proceeded to the hospital. As Alger was being wheeled into the emergency room, McClure detected "an odor of an intoxicating beverage coming from his person." Later, as McClure

approached Alger, he noticed Alger's "eyes were bloodshot and an odor of intoxicating beverage coming from his person." McClure read Alger the implied consent advisory, ensured Alger understood it, then requested a blood specimen. Alger consented and signed the form.

The district court concluded McClure's additional insights into Alger's appearance could not rehabilitate the reasonable grounds determination made by Sivinski. The court stated:

Officer McClure testified that he invoked implied consent at the request of Deputy Sheriff Sivinski; that he did not make any determination that the basis for a blood test existed and that any observations he made did not affect the blood test. He also testified that the decision to request the blood samples was made before he (McClure) even got to the hospital. ... It is obvious that Officer McClure testified that the observations he made of the defendant did not affect the decision whether or not to obtain the blood sample. In fact, he did not make that determination. Those observations were made **after** Deputy Sivinski had ordered the blood test. Therefore, they could not have been a part of the factual basis for invoking implied consent. (emphasis in original).

We agree with and adopt the court's reasoning. It is true the pertinent time frame for determining reasonable grounds is "at the time action was required." *Saturn*, 516 N.W.2d at 841. However, the requesting officer must have reasonable grounds to believe a person was intoxicated while driving. Accepting McClure's testimony that Alger smelled of alcohol and had blood shot eyes, McClure nevertheless had no reason to believe Alger was driving drunk and, as we have previously noted, neither did Sivinski. Therefore, their combined observations cannot establish reasonable grounds to support the taking of blood.

We acknowledge this is a very close case. However, under the applicable standard of review, we cannot conclude the district court erred in sustaining Alger's

motion to suppress the blood sample and implied consent form. Accordingly we affirm.

AFFIRMED.