IN THE COURT OF APPEALS OF IOWA

No. 3-509 / 12-1326
Filed July 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

HAROLD EDWIN MOFFIT,
Defendant-Appellant.

Appeal from the Iowa District Court for Warren County, Joe E. Smith, Judge.

A defendant appeals his conviction and sentence for operating a motor vehicle while intoxicated, second offense. **AFFIRMED.**

Jeremy M. Evans of Sporer & Flanagan, P.L.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney General, John Criswell, County Attorney, and Bobbier Cranston and Daniel Schwalm, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VAITHESWARAN, J.

Harold Moffit appeals his judgment and sentence for operating a motor vehicle while intoxicated, second offense. He contends the district court should have suppressed evidence obtained following the stop of his vehicle.

I. Background Facts and Proceedings

A Department of Natural Resources employee observed a motorcycle parked inside a shelter house at Lake Ahquabi State Park. The employee approached the motorcycle driver and told him the shelter "was not an appropriate parking area" and he needed to move his motorcycle into the parking lot. In response, the driver "revved" his engine, pointed his motorcycle toward the entrance, and spun his tires, hitting the shelter and damaging the building. He then drove the motorcycle out of the park. The DNR employee contacted a park ranger about the incident; the ranger relayed the report to a dispatcher.

An Indianola police officer on routine patrol heard the dispatcher's broadcast about a man who had "caused damage to property" at Lake Ahquabi. The man was described as "wearing a black t-shirt with cut off sleeves" and as riding "a brown Harley Davidson." The broadcast stated the man "left the scene when the DNR officers had tried to tell him to stay" and was believed to be traveling northbound on Highway 65/69.

"Maybe a minute" after receiving the dispatch, the officer observed a motorcycle "matching that description traveling northbound on Highway 65/69." He stopped the motorcycle and identified the driver as Harold Moffit. While he was speaking to Moffit, he "detected the odor of alcoholic beverage coming from his breath." Moffit admitted to consuming alcohol and submitted to field sobriety

tests and a preliminary breath test. Moffit was arrested for operating a motor vehicle while intoxicated and was taken to jail, where he was administered a DataMaster test that revealed breath alcohol content of well over two times the legal limit.

The State charged Moffit with operating while intoxicated, second offense, in violation of Iowa Code section 321J.2 (2011). Moffit moved to suppress his DataMaster test result on the ground that the officer lacked reasonable suspicion to stop his vehicle. Following a hearing, the district court denied the motion.

Moffit waived his right to a jury trial and the district court found him guilty as charged. This appeal followed.

II. *Analysis*.

The Fourth Amendment to the United States Constitution protects citizens against unreasonable searches and seizures. U.S. Const. amend IV. Generally, to be reasonable, a search or seizure must be conducted pursuant to a warrant issued by a judge or magistrate. *State v*. *Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997).

"A traffic stop is unquestionably a seizure under the Fourth Amendment." *State v*. *Tyler*, 830 N.W.2d 288, 292 (Iowa 2013).[1] A warrantless traffic stop may be deemed reasonable if it is based on a reasonable suspicion that a criminal act has occurred or is occurring. *Id*. (citing *Terry v*. *Ohio*, 392 U.S. 1, 21-22 (1968)).

[1] Neither Moffit's motion to suppress nor his brief in support of the motion cited the comparable state provision, Article I, section 8 of the Iowa Constitution. Accordingly, we will not address that provision.

Moffit contends "[t]he initial seizure . . . was made with no reasonable suspicion to believe that [he] was actively committing a crime or had been prior to the seizure." On our de novo review, we disagree.

A DNR employee observed Moffit's actions and reported them to a dispatcher in order to enlist police assistance. The police officer heard the dispatcher's broadcast of recent criminal activity and did not stop the motorcycle until he had essentially matched the description provided by the dispatcher, a description on which he was entitled to rely. *See State v*. *Satern*, 516 N.W.2d 839, 841 (Iowa 1994) (imputing knowledge of one peace officer to another peace officer); *State v*. *Owens*, 418 N.W.2d 340, 342 (Iowa 1988) (finding that when peace officers "are acting in concert, the knowledge of one is presumed shared by all"); *see also* Iowa Code §§ 801.4(11)(g) (stating "peace officer" includes DNR officers as authorized by section 456A.13); 456A.13 ("The full-time officers and supervisory personnel [of the DNR] have the same powers that are conferred by law on peace officers in the enforcement of all laws of the state of Iowa and the apprehension of violators."); *State v*. *Moore*, 609 N.W.2d 502, 503 (Iowa 2000) (finding DNR park ranger acted within her authority in stopping defendant for speeding at the park and radioing to state patrol upon her observation that defendant smelled of alcohol).[2]

Because the stop was based on a reasonable suspicion of recent criminal activity, it did not violate the Fourth Amendment to the United States Constitution.

[2] The Iowa Supreme Court recently articulated standards for analyzing anonymous tips under the Fourth Amendment. *State v. Kooima*, ___ N.W.2d ___, ___ 2013 WL 3230574 (Iowa 2013). This case does not involve an anonymous tip.

Accordingly, we affirm the district court's denial of Moffit's motion to suppress and his judgment and sentence for operating while intoxicated, second offense.

AFFIRMED.