IN THE COURT OF APPEALS OF IOWA

No. 6-871 / 06-0012
Filed November 30, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NICHOLAS ALAN WAGNER,
Defendant-Appellant.

Appeal from the Iowa District Court for Mitchell County, Bryan H. McKinley, Judge.

Nicholas Alan Wagner appeals his conviction and sentence following a conviction of operating while intoxicated. **AFFIRMED.**

Judith O' Donohoe of Elwood, O'Donohoe, Stochl, Braun & Churbuck, Charles City, for appellant.

Thomas J. Miller, Attorney General, Kristin Guddall, Assistant Attorney General, Mark L. Walk, County Attorney, and Aaron Murphy, Assistant County Attorney, for appellee.

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

MAHAN, P.J.

Nicholas Alan Wagner appeals his conviction and sentence following a conviction of operating while intoxicated (OWI). He argues the district court erred when it denied his motion to suppress evidence. We affirm.

I. Background Facts and Proceedings

Osage Police Officer Lucas Irvin, assisted by Mitchell County Reserve Deputy Larry Mork, stopped Wagner sometime around 2 a.m. on June 11, 2005. Previously that night an individual in Mitchell reported that a white, four-door vehicle collided with a mailbox. At the time of the stop, Wagner was driving a white Plymouth Neon.[1] The officers also believed Wagner's vehicle did not have a license plate light. Once the car was stopped, Wagner exited the vehicle and met Irvin between his vehicle and the officer's car. Irvin spoke with Wagner briefly, but detected the smell of alcohol. Irvin then walked around the car to investigate. Meanwhile, Mork engaged Wagner in conversation. After investigating the vehicle, the officers determined both that it was not involved in the mailbox vandalism and the license plate light was simply dirty. However, Irvin requested Wagner's license, insurance, and registration. Wagner produced the documents. Irvin then told Wagner, "Why don't you come back to my car for a second, we'll do some chatting?" Wagner complied and went to the squad car.

While in the squad car, Irvin noticed Wagner had bloodshot, watery eyes. He asked Wagner if he had been drinking. Wagner replied that he had, but that he had stopped drinking at 9:30 p.m. Irvin requested to check Wagner's eyes,

[1] Wagner's car was the second to be stopped to investigate the criminal mischief complaint.

and observed nystagmus. The two stepped out of the vehicle where there was more light, and Irvin completed the nystagmus test. Wagner failed the test. Wagner also failed the walk and turn test and the one-leg stand test.[2] Irvin administered a preliminary breath test, which indicated Wagner's blood alcohol content was .11. Irvin arrested Wagner and took him to the county jail. At the jail, the Datamaster indicated Wagner's BAC was .178.

The State charged Wagner with first-offense OWI on July 18, 2005. Wagner filed a motion to suppress his statements and the results of the field sobriety and Datamaster tests. He argued the evidence was seized in violation of the Fourth Amendment of the United States Constitution, article I, section 8 of the Iowa Constitution, and Iowa Code sections 321J.5 and 321J.6 (2005). The district court denied the motion. Following a stipulated bench trial on the minutes of testimony, the district court found Wagner guilty of OWI. It sentenced him to two days in jail and imposed a $500 fine. Wagner appeals.

II. Standard of Review

Because Wagner argues the evidence violates the Fourth Amendment, we review de novo. *State v. Freeman*, 705 N.W.2d 293, 297 (Iowa 2005). We will give deference to the district court's determinations of credibility, but are not bound by those determinations. *Id.* Further, because the protections offered under the Fourth Amendment of the United States Constitution and under article I, section 8 of the Iowa Constitution are substantially the same, our discussion of Wagner's claimed seizure violation applies equally under both constitutional provisions. *State v. McCoy*, 692 N.W.2d 6, 15 (Iowa 2005).

[2] Wagner reported to Irvin that he had a bad knee prior to completing the tests.

III. Merits

Wagner concedes officers had reasonable suspicion for the initial stop of his vehicle. However, he argues that once officers determined the vehicle was not involved in the mailbox vandalism and did not have a broken license plate light, they lacked probable cause to conduct an OWI investigation.[3] The State argues Wagner voluntarily entered the squad car and, alternatively, officers had reasonable suspicion to continue to detain him after they cleared him of the wrongdoing that prompted the initial stop.

When a lawful stop is made, an officer's investigation must be "reasonably related in scope to the circumstances which justified the interference in the first place." *State v. Aderholdt*, 545 N.W.2d 559, 563-64 (Iowa 1996) (quoting *United States v. Cummins*, 920 F.2d 498, 502 (8th Cir. 1990)). A reasonable investigation for a traffic stop includes "asking for the driver's license and registration, requesting that the driver sit in the patrol car, and asking the driver about his destination and purpose." *Id.* (quoting *United States v. Bloomfield*, 40 F.3d 910, 915 (8th Cir. 1994)). When the detainee's responses or actions raise further suspicion unrelated to the initial reasons for the stop, the officer's investigation may be broadened to satisfy those suspicions. *Id.*; *State v. Bergmann*, 633 N.W.2d 328, 337-38 (Iowa 2001).

In this case, officers initially stopped Wagner to determine whether his vehicle was involved in mailbox vandalism and whether his license plate light was out. In the course of that initial investigation, Irvin noticed the smell of alcohol emanating from Wagner. He asked Wagner to sit in his squad car.

[3] The State argues, and we agree, the reasonable suspicion analysis is appropriate.

According to *Aderholdt*, that request is permissible during a resonable investigation of an initial traffic stop. *Aderholdt*, 545 N.W.2d at 563. Once Wagner was in the squad car, Irvin noticed Wagner had bloodshot, watery eyes. Additionally, Wagner told Irvin he had been drinking earlier that evening. The smell of alcohol, Wagner's bloodshot, watery eyes, and his admission that he had been drinking gave Irvin reasonable suspicion of intoxication. *State v. Marks*, 644 N.W.2d 35, 38 (Iowa Ct. App. 2002). "When an officer has reasonable cause to believe a driver is operating while intoxicated, a suspect may be briefly detained and asked to perform field sobriety tests and comply with other investigatory requests without violating the suspect's Fourth Amendment rights." *Id.* Further, since Irvin had reasonable suspicion to administer the PBT test, he did not violate Iowa Code sections 321J.5 or 321J.6. *See* Iowa Code §§ 321J.5-.6. Thus, the district court ruling denying Wagner's motion to suppress his statements and the results of his sobriety tests is affirmed.

AFFIRMED.