IN THE COURT OF APPEALS OF IOWA

No. 0-711 / 10-0123
Filed October 20, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JERRAD MICHAEL RUNGE,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Steven P. Van Marel, District Associate Judge.

The defendant appeals from the judgment entered on his conviction for operating while intoxicated, third offense. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Stephen Holmes, County Attorney, and Timothy J. Meals and Brendan Greiner, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ. Tabor, J., takes no part.

VOGEL, P.J.

Jerrad Runge appeals from the judgment entered on his conviction of operating while intoxicated, third offense, in violation of Iowa Code section 321J.2 (2009); and of being a habitual offender, carrying a sentencing enhancement under Iowa Code section 902.8. Runge claims the district court erred in denying his motion to suppress evidence. We affirm.

Runge asserts the stop of his vehicle was a violation of his right to be secure against unreasonable searches and seizures, under both the Iowa and United States constitutions. U.S. Const. amend IV; Iowa Const. art I, § 8. At 5:00 a.m. on the morning of August 23, 2009, Officer David Lois received a dispatch call regarding a gunshot in a mobile home park in Nevada, Iowa. His estimated travel time to the location was one minute. En route he received additional information from dispatch—that the caller reported a group of people were gathered outside a vehicle; that the caller was concerned there was an injured person inside the vehicle; and the vehicle was described as "silver colored." As Officer Lois approached, he saw a vehicle leaving the area, which he described as being "metallic silverish/bluish" in color. [1] The only other vehicle in the vicinity was headed in the opposite direction.

Runge asserts Officer Lois did not have the requisite specific and articulable suspicion that criminal activity was afoot or that an emergency existed such that would justify stopping Runge's vehicle under the guise of "community caretaking." *See State v. Crawford*, 659 N.W.2d 537, 543 (Iowa 2003)

[1] In his incident report, Officer Lois described the vehicle as "blue," but testified he used the color indicator from the vehicle's registration, rather than his own observations.

(discussing the community caretaking function exception to the warrant requirement); *State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997) (discussing the *Terry* stop exception to the warrant requirement permits an investigatory stop based upon reasonable suspicion, supported by specific and articulable facts, that a criminal act has occurred or is occurring). After detailing the testimony, the district court found,

> Based on the time of day, the lack of traffic, the particular description given by the caller of the car, the group of people around the car, that there was a gunshot and the caller was afraid somebody might be injured, that the officer did have reasonable and articulable suspicion that criminal activity was afoot and that the defendant was involved or that the person driving the car was involved in that criminal activity anyway.

On our de novo review of the evidence presented at the suppression hearing and at trial, and in light of the totality of the circumstances, we agree with the district court. *See State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004). Accordingly, we affirm pursuant to Iowa Court Rule 21.29(1)(*a*), (*b*), (*c*), (*d*), and (*e*).

AFFIRMED.