IN THE COURT OF APPEALS OF IOWA

No. 2-764 / 11-0824
Filed October 3, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TODD RONALD QUIGLEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Joseph Moothart, District Associate Judge, (motion to suppress), and George Stigler, Judge (trial).

Defendant appeals his conviction for operating while intoxicated. **AFFIRMED.**

Judith O'Donohoe of Elwood, O'Donohoe, Braun & White, L.L.P., Charles City, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Jeremy L. Westendorf, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., Potterfield, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

HUITINK, S.J.

I. Background Facts & Proceedings.

On April 18, 2010, at about 3:00 a.m., Lieutenant Kelli Head of the Cedar Falls Police Department was assisting another officer at the intersection of Third Street and Washington Street in downtown Cedar Falls. The officers heard a loud clunking sound from a vehicle coming towards them down Third Street. The officers turned to look at the vehicle, then saw the lights of the vehicle turned on. Lieutenant Head ran across the intersection to intercept the vehicle, waving her flashlight and yelling. The vehicle did not stop, but turned right on Washington Street.

Lieutenant Head got into her police car to pursue the other vehicle. The vehicle stopped in front of the police station on Second Street. The driver of the vehicle was Todd Quigley. Lieutenant Head noticed Quigley had an odor of alcoholic beverages, and his eyes were red, bloodshot, and watery. Quigley failed field sobriety tests, and he was arrested. Quigley's blood alcohol level was .177, well above the legal limit. He was charged with operating while intoxicated in violation of Iowa Code section 321J.2 (2009), a serious misdemeanor.

Quigley filed a motion to suppress, claiming the stop of his vehicle violated the Fourth Amendment of the United States Constitution.[1] At the hearing on the motion, Lieutenant Head testified and the State presented a recording of the incident from Lieutenant Head's dashboard camera. Quigley testified he did not

[1] Quigley also raised a claim under Article I, section 8 of the Iowa Constitution, but made no claim the Iowa Constitutional provision should be interpreted differently than the federal Constitution, and therefore we do not separately address this issue under the Iowa Constitution. *See State v. Dewitt*, 811 N.W.2d 460, 467 (Iowa 2012).

believe it was unsafe to drive with the flat tire because he was going very slowly. He stated he was headed towards a gas station to pump up the tire. He recognized he turned his headlights on after he turned onto Third Street.

The court denied the motion to suppress. The court found the officer had reasonable cause to suspect Quigley was operating with an unsafe tire, in violation of section 321.381. The court also found the officer had reasonable cause to believe Quigley violated section 321.384(1) by initially driving without headlights. The court concluded the officer had specific and articulable cause to stop defendant's vehicle.

The case proceeded to trial before the court on the minutes of evidence. The court found Quigley guilty of operating while intoxicated. He was sentenced to serve 365 days in jail, with all but ten days suspended. Quigley now appeals his conviction.

II. Standard of Review.

A challenge to a ruling on a motion to suppress based on the Fourth Amendment is reviewed de novo. *State v. Pals*, 805 N.W.2d 767, 771 (Iowa 2011). We engage in an "independent evaluation of the totality of the circumstances as shown by the entire record." *Id.* (citation omitted). While we give deference to the factual findings of the district court, especially regarding the credibility of witnesses, we are not bound by those findings. *Id.*

III. Merits.

The Fourth Amendment prohibits unreasonable searches and seizures by the federal government. *State v. Louwrens*, 792 N.W.2d 649, 651 (Iowa 2010). This prohibition is applicable to the states through the Fourteenth Amendment.

Id. When officers temporarily stop or detain a person this is considered a "seizure" for Fourth Amendment purposes, and the government's action must be reasonable under the circumstances. *Dewitt*, 811 N.W.2d at 468.

"As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Pals*, 805 N.W.2d at 773 (quoting *Whren v. United States*, 517 U.S. 806, 810 (1996)). We apply an objective standard to determine "whether the facts known to the officer at the time of the stop would lead a reasonable person to believe the stop was appropriate." *State v. Reisetter*, 747 N.W.2d 792, 794 (Iowa Ct. App. 2008). The State has the burden to prove, by a preponderance of the evidence, that the officer had probable cause to stop the vehicle. *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004).

A. Section 321.384(1) provides, "[e]very motor vehicle upon a highway within the state, at any time from sunset to sunrise . . . shall display lighted headlamps . . . ." Officers have probable cause to stop a vehicle driving on a public highway at night without lights. *State v. Farrell*, 242 N.W.2d 327, 329 (Iowa 1976). The terms "street" and "highway" are used in chapter 321 interchangeably. *See* Iowa Code § 321.1(78); *Christenson v. Iowa Dist. Ct.*, 557 N.W.2d 259, 262 (Iowa 1996).

On appeal, Quigley claims the videotape shows Lieutenant Head was not looking at his vehicle until after his lights were turned on. He asserts if she did not observe him driving with his headlights off, then a violation of section 321.384(1) cannot be used as a justification for the stop. He also raises an

assertion that her testimony at the suppression hearing was based on viewing the videotape and not on her memory of the incident.

We have carefully examined the videotape multiple times. The videotape clearly shows Lieutenant Head had turned toward the vehicle and had already started on her way to intercept it before the lights came on. Specifically, at 7:35 on the tape Quigley comes around the corner without his lights on. At 7:40 the other officer notes there is a car with a flat tire. Lieutenant Head starts on her way towards the intersection at that time. The lights of the vehicle do not come on until 7:43, while she is walking toward the vehicle.

In her police report, which is dated April 19, 2010, the day after the incident, Lieutenant Head notes, "[t]he vehicle didn't have any lights on and was making a clanking sound." At the suppression hearing, she testified, "[a]ctually, the clunking is what I heard first and then did see the vehicle on the street, with no headlights." She also testified the vehicle did not have lights on when she first observed it and it turned its lights on. There was no evidence presented as to whether she observed the videotape before testifying at the suppression hearing. Quigley's claims in this regard are pure supposition.

On our de novo review, we conclude the officer had probable cause to stop Quigley's vehicle due to a violation of section 321.384(1), based on an observation he was driving on a public street at night without his headlights on. *See State v. Hoskins*, 711 N.W.2d 720, 726 (Iowa 2006) (noting, "it is well-settled law that a traffic violation, no matter how minor, gives a police officer probable cause to stop the motorist").

B. Quigley also claims the fact he was driving on a flat tire did not provide probable cause for the officer to stop his vehicle. We have already found the stop did not violate the Fourth Amendment because Quigley had violated section 321.384(1) by driving at night without his headlights on, and therefore, we do not need to address the question of whether the stop was also valid because Quigley was driving with a flat tire.[2]

We conclude the district court properly denied Quigley's motion to suppress. We affirm his conviction for operating while intoxicated.

AFFIRMED.

[2] The district court found the stop was also valid due to the flat tire based on section 321.381, which provides, "It is a simple misdemeanor . . . for any person to drive or move . . . on any highway any vehicle . . . which is equipped with one or more unsafe tires . . . ." Lieutenant Head stated she stopped the vehicle because of safety concerns, testifying, "I didn't want the subject to lose control on the roadway, strike a pedestrian, strike another vehicle, the tire to completely come off and go flying at another vehicle."