IN THE COURT OF APPEALS OF IOWA

No. 7-140 / 06-0684
Filed May 9, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHARLES KENNETH POLING,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Richard R. Gleason (motion to suppress), and Randal J. Nigg (trial and sentencing), District Associate Judges.

Charles K. Poling appeals his conviction for operating while intoxicated, second offense, in violation of Iowa Code section 321J.2 (2005). He claims the district court erred in denying his motion to suppress. **AFFIRMED.**

Charles Hallberg of Hallberg, Jacobsen, Johnson & Viner, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Ralph Potter, County Attorney, and Michael J. Whalen, Assistant County Attorney, for appellee.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

MILLER, J.

Charles K. Poling appeals his conviction for operating while intoxicated (OWI), second offense. He claims the district court erred in denying his motion to suppress, arguing the stop of his vehicle was illegal. We affirm.

The record reveals the following facts. On January 1, 2005, at about 5:30 in the afternoon, Lieutenant Mark Dalsing of the Dubuque Police Department stopped Poling for driving the wrong way on a one-way street. Dalsing checked the status of Poling's driver's license and verified he had a valid license. After a brief conversation, Lieutenant Dalsing allowed Poling to proceed on his way. When Poling left the parking lot Dalsing observed Poling again go the wrong way on the one-way street. Accordingly, Dalsing directed his back-up officers, McTague and Ryan, to again stop Poling. Poling only drove about a half block out of the parking lot before Officers McTague and Ryan stopped him a second time. After the second stop Officer Ryan formed the opinion that Poling was under the influence of alcohol. Poling failed the field sobriety tests and was arrested for operating while intoxicated. A breath test at the police station revealed an alcohol concentration of .242.

The State charged Poling, by trial information, with OWI, second offense, in violation of Iowa Code sections 321J.2(1) and 321J.2(2) (2005). Poling filed a motion to suppress, contending the second stop of his vehicle was without reasonable suspicion, was thus illegal, and all evidence obtained as a result of the stop should therefore be suppressed. The district court held a hearing on the motion and denied the motion. The court determined that although there was

some variation in the officers' exact testimony concerning where they saw Poling and how he was stopped, "Lieutenant Dalsing testified clearly that [Poling], after receiving a warning concerning his failure to drive in the proper direction on a one-way street, repeated his conduct when he left the site of the first stop." Thus, the district court concluded the State met its burden to prove, by a preponderance of the evidence, that reasonable cause existed for the stop.

Poling was later convicted, following a non-jury trial on stipulated evidence, of OWI second offense. He was sentenced to a two-year prison term with all but fourteen days suspended, a fine and surcharge, and costs.

Poling appeals his conviction, claiming the court erred in denying his motion to suppress. He argues the stop violated his rights under both the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution.[1] More specifically, he contends that based on Officers Ryan's and McTague's inconsistent statements the record is not clear if they actually saw him commit a traffic violation and thus the court erred in concluding the officers had reasonable cause to stop him.

Because Poling's motion to suppress was based on alleged constitutional violations, our review of the district court's ruling on his motion is de novo. *State v. Carter*, 696 N.W.2d 31, 36 (Iowa 2005); *State v. McConnelee*, 690 N.W.2d 27, 30 (Iowa 2004). We independently evaluate the totality of the circumstances

[1] The language of the state and federal constitutions protecting citizens against unreasonable search and seizure is substantially identical and we have consistently interpreted the scope and purpose of article I, section 8, of the Iowa Constitution to track with federal interpretations of the Fourth Amendment. *State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998); *State v. Showalter*, 427 N.W.2d 166, 168 (Iowa 1988). Accordingly, we analyze the validity of the stop here similarly under both the federal and state constitutions.

shown by the record. *State v. Reinders*, 690 N.W.2d 78, 82 (Iowa 2004). We give deference to the district court's fact findings because of that court's ability to assess the credibility of the witnesses, but we are not bound by those findings. *State v. Crawford*, 659 N.W.2d 537, 541 (Iowa 2003).

The Fourth Amendment to the United States Constitution guarantees a person's right to be free from unreasonable search and seizure.[2] Evidence obtained in violation of this provision is inadmissible in a prosecution, no matter how relevant or probative the evidence may be. *State v. Manna*, 534 N.W.2d 642, 643-44 (Iowa 1995).

To stop an individual for investigatory purposes the Fourth Amendment requires that a police officer have reasonable cause to believe that a crime has occurred or is occurring. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968); *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002). An automobile stop is subject to these Fourth Amendment protections and will be upheld only when it is reasonable. *Whren v. United States*, 517 U.S. 806, 810, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89, 95 (1996).

> When a person challenges a stop on the basis that reasonable suspicion did not exist, the State must show by a preponderance of the evidence that the stopping officer had specific and articulable facts, which taken together with rational inferences from those facts, [reasonably warrant a belief that] criminal activity may have occurred. Mere suspicion, curiosity, or hunch of criminal activity is not enough. Whether reasonable suspicion exists for an investigatory stop must be determined in light of the totality of the circumstances confronting the officer, including all information available to the officer at the time the officer makes the decision to

[2] The rights guaranteed by the Fourth Amendment apply to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1694, 6 L. Ed. 2d 1081, 1090 (1961).

> stop the vehicle. The legality of the stop does not depend on the actual motivations of the officer involved in the stop.

State v. Tague, 676 N.W.2d 197, 204 (Iowa 2004) (internal citations omitted).

The weight of the evidence and credibility of witnesses are primarily to be determined by the fact-finder, here the trial court. *State v. Ruiz*, 496 N.W.2d 789, 792 (Iowa Ct. App. 1992); *State v. King*, 344 N.W.2d 562, 563 (Iowa Ct. App. 1983). Although our review is de novo, the district court's findings on credibility of witnesses are entitled to considerable deference by this court. *State v. Liggins*, 524 N.W.2d 181, 186 (Iowa 1994); *State v. Evans*, 495 N.W.2d 760, 762 (Iowa 1993). Here the trial court found Officer Dalsing's testimony to be more credible than Poling's regarding whether Poling went the wrong way again after the first stop. In addition, a defendant's "direct interest in the outcome of the hearing" can weigh against the credibility of the defendant's testimony. *See Missman v. Iowa Dep't of Transp.*, 653 N.W.2d 363, 367 (Iowa 2002) (citation omitted). Accordingly, we give deference to the district court's credibility determinations and find Dalsing did in fact observe Poling again go the wrong way on the one-way street after the initial stop.

Where there is at least some communication between officers, the shared or collective knowledge doctrine is applied and thus the knowledge of one police officer is presumed to be shared by all. *See State v. Satern*, 516 N.W.2d 839, 841 (Iowa 1994); *State v. Owens*, 418 N.W.2d 340, 342 (Iowa 1988); *State v. Thornton*, 300 N.W.2d 94, 97 (Iowa 1981). Under this doctrine, the facts known to Officer Dalsing were imputed to Officers Ryan and McTague. Dalsing's observation of Poling driving the wrong way on the one-way street a second time

gave him reasonable cause to stop Poling a second time, but he instead radioed this information to Ryan and McTague and asked them to perform the stop. Thus, whether Ryan and McTague themselves observed Poling committing a traffic violation is not of consequence. Because the facts known to Dalsing provided him with reasonable cause to stop Poling, Officers Ryan and McTague also had reasonable cause to lawfully stop him. *See United States v. Hensley*, 469 U.S. 221, 230-33, 105 S. Ct. 675, 681-82, 83 L. Ed. 2d 604, 613-15 (1985) (holding stop made by officer who lacked reasonable suspicion is lawful if it is made on the basis of a request by another officer, provided the information known to the other officer establishes reasonable suspicion).

Based on our de novo review, and for the reasons set forth above, we conclude Officers Ryan and McTague had reasonable cause to stop Poling based on Officer Dalsing notifying them of his observation of Poling driving the wrong way on a one-way street. The district court was correct in denying Poling's motion to suppress.

AFFIRMED.