IN THE COURT OF APPEALS OF IOWA

No. 9-439 / 08-1441
Filed August 6, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARTY LEE DECKER,
Defendant-Appellant.

Appeal from the Iowa District Court for Union County, Monty W. Franklin, District Associate Judge.

A defendant appeals following his conviction of operating while intoxicated, second offense. **AFFIRMED.**

Gordon Darling of Darling & Darling, Winterset, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Timothy R. Kenyon, County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel, J. and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VOGEL, J.

Marty Decker appeals from his conviction for operating while intoxicated, second offense, in violation of Iowa Code sections 321J.2, 321J.2(2), and 321.12(4) (2007). He claims the district court erred in denying his motion to suppress. Upon our de novo review, we affirm. *See State v. Kinkead*, 570 N.W.2d 97, 99 (Iowa 1997) (stating our review is de novo).

On November 17, 2007, Union County Deputy Sheriff, Brian Bolton, observed a driver of a vehicle, not wearing a shoulder harness/seatbelt, sitting at a stop sign. After turning his vehicle around, Deputy Bolten followed the vehicle as it pulled away from the stop sign. Deputy Bolten then activated his emergency lights and stopped the vehicle. The driver, Decker, acknowledged he was not wearing his seatbelt. After observing signs of intoxication, Deputy Bolten arrested Decker for operating while intoxicated.

Decker asserted in his motion to suppress and at the suppression hearing that the stop was in contravention of his right to be free from unreasonable searches and seizures, both under the Fourth Amendment of the United States Constitution and article one, section eight of the Iowa Constitution.[1] Specifically he claims that since the deputy observed him unbelted*, while sitting stationary*, the deputy did not have reasonable suspicion to, moments later, stop his vehicle. Iowa Code section 321.445(2) provides in part that a driver and front seat occupant must be properly belted "any time the vehicle is in forward motion."

[1] The State asserts and we agree Decker did not preserve error on any Iowa constitutional ground.

Because Decker's vehicle was not moving when the deputy observed him being unbelted, Decker claims the stop was unreasonable.[2]

The district court found:

> The Defendant was the only person sitting in a running vehicle on a public street at a stop sign and clearly had driven this vehicle up to the stop sign. The Defendant also put his vehicle in forward motion immediately after the Deputy's car had turned onto the road where the Defendant's vehicle was sitting at the stop sign.

Because the deputy had observed Decker at the stop sign without wearing his seat beat, it was reasonable for the deputy to stop and investigate whether Decker, *while moving forward*, continued to be unbelted or whether he had secured his seat belt in conformance with the statute. *See State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002) ("To justify an investigatory stop, the officer must be able to point to 'specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant that intrusion.'"); *State v. Reisetter*, 747 N.W.2d 792, 795 (Iowa Ct. App. 2008) ("The principal function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot.").

We agree with the fact findings, reasoning and conclusions of the district court and therefore affirm pursuant to Iowa Court Rule 21.29(1)(*d*) and (*e*).

AFFIRMED.

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[2] Decker also asserts, "Presumably, Iowa law does not require the driver of a motor vehicle who is lawfully 'backing up' upon a street or highway to wear a safety belt or safety harness." We need not address this contention as it is factually inapplicable to the case at hand.