

IN THE SUPREME COURT OF IOWA
Supreme Court No. 16-2177

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEFFREY JOHN MYERS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR FLOYD COUNTY
THE HONORABLE PETER B. NEWELL, JUDGE

APPELLEE'S BRIEF

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FINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW.....	5
ROUTING STATEMENT	6
STATEMENT OF THE CASE	6
ARGUMENT	10
I. The State Presented Sufficient Evidence to Establish Myers Was Guilty of Operating While Under the Influence.	10
II. The District Court Did Not Err in Denying Myers’s Motion to Suppress.	15
CONCLUSION	19
REQUEST FOR NONORAL SUBMISSION	20
CERTIFICATE OF COMPLIANCE	21

TABLE OF AUTHORITIES

Federal Cases

<i>United States v. Willis</i> , 431 F.3d 709 (9th Cir. 2005).....	19
<i>Whren v. United States</i> , 517 U.S. 806, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996)	17

State Cases

<i>Loder v. Iowa Dep't of Transp., Motor Vehicle Div.</i> , 622 N.W.2d 513 (Iowa Ct. App. 2000)	12
<i>State v. Abbas</i> , 561 N.W.2d 72 (Iowa 1997)	10
<i>State v. Aderholdt</i> , 545 N.W.2d 559 (Iowa 1996)	17
<i>State v. Breuer</i> , 577 N.W.2d 41 (Iowa 1998).....	15
<i>State v. Childs</i> , 898 N.W.2d 177 (Iowa 2017).....	12
<i>State v. Cline</i> , 617 N.W.2d 277 (Iowa 2000).....	17
<i>State v. Crone</i> , 545 N.W.2d 267 (Iowa 1996).....	10
<i>State v. Frake</i> , 450 N.W.2d 817 (Iowa 1990).....	18
<i>State v. Harrison</i> , 846 N.W.2d 362 (Iowa 2014)	17
<i>State v. Hilleshiem</i> , 291 N.W.2d 314 (Iowa 1980)	16
<i>State v. Howard</i> , 509 N.W.2d 764 (Iowa 1993)	15, 16
<i>State v. Jackson</i> , 542 N.W.2d 842 (Iowa 1996).....	16
<i>State v. Jump</i> , 269 N.W.2d 417 (Iowa 1978)	15
<i>State v. Liggins</i> , 524 N.W.2d 181 (Iowa 1994).....	14
<i>State v. McPhillips</i> , 580 N.W.2d 748 (Iowa 1998)	10
<i>State v. Mitchell</i> , 498 N.W.2d 691 (Iowa 1993)	17
<i>State v. Predka</i> , 555 N.W.2d 202 (Iowa 1996)	17

<i>State v. Robinson</i> , 288 N.W.2d 337 (Iowa 1980)	10
<i>State v. Turner</i> , 630 N.W.2d 601 (Iowa 2001)	15
<i>State v. Tyler</i> , 830 N.W.2d 288 (Iowa 2013).....	16
<i>State v. Weaver</i> , 608 N.W.2d 797 (Iowa 2000)	10, 19

State Statutes

Iowa Const. Art. I, § 8	16
Iowa Code § 321J.2 (2015).....	11
Iowa Code §§ 321J.2(1) (a) and (b).....	11
Iowa Code § 321J.2(1)(b)	11
Iowa Code § 321J.2(1) (c)	11, 12
Iowa Code § 321J.2(12).....	12

State Rule

Iowa R. App. P. 6.904(3)(p)	14
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Other Authorities

Administrative Rule 661-157(7).....	12
Administrative Rule 661.557(7).....	13

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The State Presented Sufficient Evidence to Establish Myers Was Guilty of Operating While Under the Influence.

Authorities

Loder v. Iowa Dep't of Transp., Motor Vehicle Div.,
622 N.W.2d 513 (Iowa Ct. App. 2000)
State v. Abbas, 561 N.W.2d 72 (Iowa 1997)
State v. Childs, 898 N.W.2d 177 (Iowa 2017)
State v. Crone, 545 N.W.2d 267 (Iowa 1996)
State v. Liggins, 524 N.W.2d 181 (Iowa 1994)
State v. McPhillips, 580 N.W.2d 748 (Iowa 1998)
State v. Robinson, 288 N.W.2d 337 (Iowa 1980)
State v. Weaver, 608 N.W.2d 797 (Iowa 2000)
Iowa Code § 321J.2 (2015)
Iowa Code § 321J.2(1) (a) and (b)
Iowa Code § 321J.2(1)(b)
Iowa Code § 321J.2(1) (c)
Iowa Code § 321J.2(12)
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II. The District Court Did Not Err in Denying Myers's Motion to Suppress.

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State v. Frake, 450 N.W.2d 817 (Iowa 1990)
State v. Harrison, 846 N.W.2d 362 (Iowa 2014)
State v. Hilleshiem, 291 N.W.2d 314 (Iowa 1980)
State v. Howard, 509 N.W.2d 764 (Iowa 1993)
State v. Jackson, 542 N.W.2d 842 (Iowa 1996)

State v. Jump, 269 N.W.2d 417 (Iowa 1978)
State v. Mitchell, 498 N.W.2d 691 (Iowa 1993)
State v. Predka, 555 N.W.2d 202 (Iowa 1996)
State v. Turner, 630 N.W.2d 601 (Iowa 2001)
State v. Tyler, 830 N.W.2d 288 (Iowa 2013)
State v. Weaver, 608 N.W.2d 797 (Iowa 2000)
Article I, § 8 of the Iowa Constitution

ROUTING STATEMENT

This case can be decided based on existing legal principles.
Transfer to the Court of Appeals would be appropriate. Iowa R. App.
P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

The defendant, Jeffrey Myers, appeals the judgment and sentence imposed upon his conviction, following a bench trial, of first offense operating while under the influence in violation of Iowa Code section 321J.2 (2015). He argues that there was insufficient evidence that he was under influence of a controlled substance because confirmatory tests were not in evidence. Further, Myers contends there was no probable cause for his stop on the basis of a traffic violation because his taillights were illuminated; therefore, the district court erred in denying his motion to suppress evidence.

Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

In the early morning hours of March 12, 2016, Charles City Police Officer Cory Van Horn noticed that the taillights of a car driving by him were not illuminated. Motion Tr. p. 5, lines 1-9, p. 6, line 1-p. 7, line 21, Minutes of Testimony; Confidential App. 4. He followed the car for approximately two blocks and stopped it. Motion Tr. p. 6, line 24-p. 7, line 5, Minutes of Testimony; Confidential App. 4. Officer Van Horn approached the driver of the car, Myers, and told him the reason for the stop was that his taillights were not on. Motion Tr. p. 11, lines 7-10, Minutes of Testimony; Confidential App. 4.

Officer Van Horn noticed Myers make a movement that looked to him as though Myers was pulling a switch in the car. Motion Tr. p. 11, lines 10-24, Minutes of Testimony; Confidential App. 4. Further, Officer Van Horn observed that Myers's voice was shaky, he was sweating profusely, his eyes were watery and blood shot, his pupils dilated only a little bit when the flashlight was near his eyes, and that

the rear of his tongue was brownish green. Minutes of Testimony; Confidential App. 4-5.

Officer Van Horn requested Myers perform some field sobriety tests. Minute of Testimony; Confidential App. 4-5. Myers showed two clues on the horizontal gaze nystagmus test, four clues on the walk and turn test, two clues on the one-leg stand test. Minutes of Testimony; Confidential App. 4-5.

Based upon his observations and testing, Officer Van Horn arrested Myers for operating under the influence. Additionally, Officer Van Horn cited Myers for failing to have proof of insurance and registration; he did not cite Myers for driving without his taillights illuminated. Minutes of Testimony; Confidential App. 6.

Myers consented to a urine test. However, he was not able to urinate for approximately one and one-half hours despite being provided multiple glasses of water. Minutes of Testimony; Confidential App. 6. As Officer Van Horn continued to observe Myers he noticed that he was growing increasingly sluggish. His eyes were droopy, he had a cotton mouth, and he was sensitive to lights. Minutes of Testimony; Confidential App. 5-6. Testing of Myers's urine showed it contained detectable levels of marijuana and

amphetamines. Minutes of Testimony (Secured Attachment); Confidential App. 8.

On March 30, 2016, the State filed a trial information charging Myers with operating while intoxicated in violation of Iowa Code section 321.J.2(a) and (b). Trial Information; App. 4. Myers filed a motion to suppress evidence arguing that Officer Van Horn was not justified in stopping him for a taillight violation because his taillights were illuminated. Motion to Suppress; App. 8. *See* Iowa Code § 321.387 (Rear Lamps). Following a hearing, the district court found that Officer Van Horn had probable cause to stop Myers for a violation of traffic laws. Ruling on Motion to Suppress; App. 14-15.

Myers waived his right to a jury and, following a trial to the bench on the minutes of testimony, the district court found him guilty of operating while intoxicated. Order; App. 21-22.

Additional facts will be set forth below as relevant to the State's argument.

ARGUMENT

I. The State Presented Sufficient Evidence to Establish Myers Was Guilty of Operating While Under the Influence.

Preservation of Error

“[W]hen a criminal case is tried to the court, a defendant may challenge the sufficiency of the evidence on appeal irrespective of whether a motion for judgment of acquittal was previously made.” *State v. Abbas*, 561 N.W.2d 72, 74 (Iowa 1997).

Standard of Review

“[R]eview [of] a trial court's findings in a jury-waived case” is the same as review of a “jury verdict: If the verdict is supported by substantial evidence,” the appellate court “will affirm.” *State v. Weaver*, 608 N.W.2d 797, 803 (Iowa 2000). Substantial evidence is evidence that could convince a trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996). In determining whether there is sufficient evidence, the court considers all the evidence. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). However, the court views the evidence in a light most favorable to the State and makes all reasonable inferences that may be drawn from the evidence. *State v. McPhillips*, 580 N.W.2d 748, 752 (Iowa 1998).

Merits

Iowa Code section 321J.2 provides, in pertinent part:

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in any of the following conditions:
 - a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.
 - b. While having an alcohol concentration of .08 or more.
 - c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

The State charged Myers with operating while intoxicated pursuant to sections 321J.2(1) (a) and (b).¹ Trial Information; App. 4.

The district court found him guilty pursuant to Iowa Code section 321J.2 without specifying a subsection. Myers now complains that there was insufficient evidence from which the district court could find him guilty of operating while intoxicated pursuant to section 321J.2(1)(c). He maintains that the lack of a confirmatory test of the Division of Iowa Criminal Investigation (DCI) Criminalistics Laboratory's initial screening test precludes a conclusion that there

¹ Despite the designation of Iowa Code § 321J.2(1)(b), the language used in the trial information mirrors Iowa Code § 321J.2(1) (c). Trial Information; App. 4.

were actually any controlled substances in his urine; therefore, the State failed to present sufficient evidence to prove him guilty of operating under the influence pursuant to section 321J.2(1)(c).

Section 321J.2(1)(c) “is aimed at keeping drivers who are impaired because of the use of illegal drugs off the highways.”

Loder v. Iowa Dep't of Transp., Motor Vehicle Div., 622 N.W.2d 513, 516 (Iowa Ct. App. 2000). The Supreme Court has said, and recently reaffirmed, that “any amount” means any amount greater than zero.” *State v. Comried*, 693 N.W.2d 773, 778 (Iowa 2005); *State v. Childs*, 898 N.W.2d 177, 178–79 (Iowa 2017).

Section 321J.2(12) provides that “The department of public safety shall adopt nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's *initial laboratory* screening test for controlled substances.” (Emphasis added.) Accordingly, Iowa Administrative Rule 661-157(7) provides that:

Initial test requirements based upon standards adopted by the federal Substance Abuse and Health Services Administration in “Mandatory Guidelines for Federal Workplace Drug Testing Programs,” 73 FR 71858, and displayed in the following table are hereby adopted as standards for determining detectable levels of controlled substances in

the division of criminal investigation criminalistics laboratory initial screening for controlled substances detected by the presence of the following: marijuana metabolites, cocaine metabolites, opiate metabolites, acetylmorphine, phencyclidine, and amphetamines.

(Emphasis added.) The table displayed in section 661-557(7) provides that the presence of a minimum level of 50 ng/ml marijuana metabolites and a level of 500 ng/ml amphetamines in a person's urine will result in a finding that a controlled substance is present at a detectable level.

The DCI Criminalistics Laboratory report attached to the minutes of testimony shows that Meyers had levels of 62 ng/ml marijuana metabolites and (589 ng/ml) amphetamine in his urine, well over the threshold of a detectable level. Minutes of Testimony (Secured Attachment); Confidential App. 8. Therefore, Meyers had detectable levels of two controlled substances in his system when he was operating a motor vehicle. Nothing in the Code requires confirmational testing. To the extent administrative rule 661.557(7) relies upon the federal rules, it is only for the purpose of "initial tests" to determine detectable levels of controlled substances. The evidence

was sufficient to prove Myers had two controlled substances in his system when he provided his urine sample.

Even if Myers's contention that the evidence merely shows that controlled substances were *possibly present* in Myers's urine, the district court was still able to use the DCI Criminalistics Laboratory Report as circumstantial evidence that Myers was operating his vehicle with an amount of controlled substance in his system. *State v. Liggins*, 524 N.W.2d 181, 186 (Iowa 1994) ("Circumstantial evidence is not inferior evidence; both direct and circumstantial evidence are equally probative."); Iowa R. App. P. 6.904(3)(p). When Officer Van Horn stopped Myers he observed that Myers's voice was shaky, he was sweating profusely, his eyes were watery and blood shot, his pupils dilated only a little bit when the flashlight was near his eyes, and that the rear of his tongue was brownish green. Minutes of Testimony; Confidential App. 4-7. Further, Myers did not perform well in the field sobriety tests given at the site of the stop and, at the police station he was sluggish, sensitive to light, and required numerous bottles of water to urinate. Minutes of Testimony; Confidential App. 4-7. The circumstantial evidence of the DCI Criminalistics Laboratory's Report showing the presence of detectable

levels of two controlled substances, combined with Officer Van Horn's observations, constituted sufficient proof that Meyers was guilty of operating while under the influence beyond a reasonable doubt.

II. The District Court Did Not Err in Denying Myers's Motion to Suppress.

Preservation of Error

Myers filed a motion to suppress urging the stop of his car violated his fourth amendment rights. Motion to Suppress; App. 8. The district court ruled on this issue. Ruling on Motion to Suppress; App. 14-15. The State agrees that Myers has preserved error. *State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998) (adverse ruling on motion to suppress preserves error for appellate review).

Standard of Review

"[W]hen a constitutional issue is presented, the evidence relevant to the issue is reviewed de novo." *State v. Jump*, 269 N.W.2d 417, 423 (Iowa 1978). Under de novo review the court "make[s] an independent evaluation of the totality of the circumstances as shown by the entire record." *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001) (quoting *State v. Howard*, 509 N.W.2d 764, 767 (Iowa 1993)). The court "give[s] deference to the district court's fact findings due to its opportunity to assess the credibility of

witnesses, but [is] not bound by those findings.” *Id.* The court considers both the evidence at suppression hearing and the evidence introduced at trial. *State v. Jackson*, 542 N.W.2d 842, 844 (Iowa 1996).

Merits

Myers contends the district court erred in denying his motion to suppress. He maintains the video of the stop shows that his taillights were illuminated; therefore, Officer Van Horn lacked reasonable suspicion or probable cause to stop him and the stop violated his rights under the United States and Iowa Constitutions.

“Both the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution prohibit unreasonable searches and seizures by the government.” *State v. Tyler*, 830 N.W.2d 288, 291 (Iowa 2013). “The essential purpose of the fourth amendment search and seizure proscriptions is to impose a standard of reasonableness upon the exercise of discretion by government officials, including law enforcement officials, in order to safeguard the privacy and security of individuals against arbitrary invasions.” *State v. Hilleshiem*, 291 N.W.2d 314, 316 (Iowa 1980).

Where a warrantless stop is challenged, “the State has the burden to show that officers acted reasonably under one of the recognized exceptions to the warrant requirement[.]” *State v. Predka*, 555 N.W.2d 202, 206 (Iowa 1996). The State must prove the exception applies by a preponderance of the evidence. *State v. Cline*, 617 N.W.2d 277, 282 (Iowa 2000). One exception to the warrant requirement is probable cause to believe a traffic violation is occurring. *See Whren v. United States*, 517 U.S. 806, 810, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996) (“[T]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.”); *State v. Aderholdt*, 545 N.W.2d 559, 563 (Iowa 1996).

“When a peace officer observes a traffic offense, however minor, the officer has probable cause to stop the driver of the vehicle.” *State v. Mitchell*, 498 N.W.2d 691, 693 (Iowa 1993). “A traffic violation therefore also establishes reasonable suspicion.” *State v. Harrison*, 846 N.W.2d 362, 365 (Iowa 2014).

As Officer Van Horn acknowledged, it is not entirely clear from the video whether or not Myers’s taillights were illuminated when he was stopped. However, Officer Van Horn explained that the

“brightness of [his] headlights kind of drowns out the --- the rest of the video.” Motion Tr. p. 10, lines 8-12. Indeed, Myers’s license plate cannot be discerned due to the brightness of his headlights. Motion Tr. p. 10, lines 13-18. In short, the video does not accurately show the conditions as Officer Van Horn witnessed them.

However, Officer Van Horn testified that he saw no taillights illuminated on Myers’s car. Motion Tr. p. 8, lines 16-18, p. 10, lines 4-7. Further, Officer Van Horn testified that he witnessed Myers make a move as though he was turning a switch soon after he was told his taillights were not lit. In fact, a brightening of the car’s taillights can be observed on the video. State’s Exhibit MTS 1, Ruling on Motion to Suppress; App. 14-15.

The Supreme Court has explained that in “determining the credibility of the testimony of witnesses, the trial court may consider [. . .] the witness’s interest in the trial.” *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). Therefore, Meyers’s testimony that his taillights were illuminated must be considered in view of his interest in avoiding a criminal conviction.

Further, the Supreme Court has found that “[d]eterminations of credibility are in most instances left for the trier of fact, who is in a

better position to evaluate it.” *State v. Weaver*, 608 N.W.2d 797, 804 (Iowa 2000). The district court did not err in finding that Officer Van Horn’s testimony, in combination with the video, established probable cause for stopping Myers. Finally, the fact that Officer Van Horn did not ultimately issue a citation for failure to have taillights illuminated is not consequential. *See United States v. Willis*, 431 F.3d 709, 716-717 (9th Cir. 2005) (reasonable for officers to view any traffic violations as inconsequential in light of defendant’s arrest on other charges).

The district court correctly denied Myers’s motion to suppress evidence.

CONCLUSION

For all the reasons set forth above, the State respectfully requests this Court affirm Myers’s conviction of operating while intoxicated, first offense.

REQUEST FOR NONORAL SUBMISSION

The State believes that this case can be resolved by reference to the briefs without further elaboration at oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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Dated: October 13, 2017



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