IN THE COURT OF APPEALS OF IOWA

No. 0-404 / 09-1698
Filed July 14, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER TAD BRUINEKOOL,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Odell McGhee, Judge.

Christopher Bruinekool appeals the denial of his motion to suppress. **AFFIRMED.**

Robert G. Rehkemper of Gourley, Rehkemper & Lindholm, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, John P. Sarcone, County Attorney, and David Porter, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J., takes no part.

POTTERFIELD, J.

A de novo review of the record reveals the following. At about 2:36 p.m. on July 24, 2009, police dispatch received a telephone call from Kaleigh Adams in which she stated an intoxicated male was leaving Camp Sunnyside and getting into a vehicle. The dispatcher radioed deputy sheriff for Polk County, Chong Wong, with the report. Wong entered the parking lot at Camp Sunnyside and pulled in behind a black 2000 Mazda truck in a parking stall with its engine running. The deputy activated his overhead lights. Wong approached the driver's door, and observed Christopher Bruinekool behind the wheel. Wong noticed the smell of alcohol and Bruinekool's bloodshot eyes. He asked Bruinekool to turn off the vehicle and step out. Bruinekool failed field sobriety tests. Bruinekool was placed under arrest at about 3:00 p.m. (the incident report indicates the time of arrest as 15:00), and at 3:55 Bruinekool was asked to submit to a breath specimen for chemical testing, which he refused.

The State charged Bruinekool with operating while intoxicated, first offense. Bruinekool filed a motion to suppress, in which he challenged whether he was "operating" the vehicle,[1] and alleged the stop of his vehicle was without reasonable and articulable suspicion. Following a hearing, the district court denied Bruinekool's motion. Bruinekool then stipulated to a trial on the minutes of testimony and was found guilty as charged.

Bruinekool now appeals, contending a violation of his constitutional right against unreasonable seizure. He argues the report of an "intoxicated male

[1] Bruinekool denied the engine of his truck was running.

leaving Camp Sunnyside and getting into a vehicle" is insufficient to establish reasonable suspicion for the officer's seizure of his vehicle.

We review claimed violations of constitutional rights de novo in light of the totality of the circumstances. *State v. Walshire*, 634 N.W.2d 625, 626 (Iowa 2001).

The Fourth Amendment of the United States Constitution requires that an investigatory stop be supported by reasonable suspicion that criminal activity may be afoot. *Id.*

> 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, to reasonably believe criminal activity may have occurred.

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

> 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 stop the vehicle.

Id.

The State concedes, and we agree, that Wong's actions resulted in a seizure of Bruinekool for Fourth Amendment purposes. *Cf. State v. Wilkes*, 756 N.W.2d 838, 844 (Iowa 2008) (finding headlights on patrol car, without activation of emergency lights, insufficiently coercive to constitute a seizure of a parked vehicle).

We agree with the district court that the deputy had reasonable suspicion for an investigatory stop. *See Walshire*, 634 N.W.2d at 627 (finding an anonymous tip provided reasonable suspicion to conduct an investigatory stop);

State v. Christoffersen, 756 N.W.2d 230, 232 (Iowa Ct. App. 2008) (same). A call came from a named person who reported an intoxicated man was leaving the camp and getting into a vehicle. The report was relayed to Deputy Wong, who testified that dispatch provided him with a description of the vehicle. However, he did not include the description in his report, and did not testify to the description. When Wong arrived at the camp's parking lot, he pulled in behind a black 2000 Mazda truck. *See Christoffersen*, 756 N.W.2d at 232 (finding reasonable suspicion for stop where anonymous call from a citizen informant reported a possible drunk driver and officer confirmed the accuracy as to vehicle description and location). Bruinekool now complains that the absence from the record on the motion to suppress of the vehicle's description defeats the State's case on reasonable suspicion and distinguishes his case from *Walshire* and *Christoffersen*. We disagree. Although the deputy's testimony was not a model of clarity or persuasion, we are convinced that the actions of the deputy in proceeding directly to the 2000 black Mazda truck establishes the description provided by dispatch and speaks to the accuracy of the description provided by the citizen informant and relayed to Wong by the dispatcher.

Our supreme court has recognized that a drunk driver creates a great danger and a sense of urgency. *Walshire*, 634 N.W.2d at 629 ("Indeed, a drunk driver is not at all unlike a 'bomb,' and a mobile one at that." (Citation omitted)). The citizen's tip here was based on contemporaneous observation and was sufficiently specific to constitute reasonable suspicion. The deputy was not required to allow the alleged drunk driver to leave the parking lot only to put the public at risk. *Christoffersen*, 756 N.W.2d at 232. It would have been a

dereliction of duty for the officer to allow an alleged intoxicated driver to simply enter the public roadway without confirming or dispelling the suspicion of criminal activity. *State v. Kreps*, 650 N.W.2d 636, 642-43 (Iowa 2002) (discussing that where reasonable suspicion exists, citizens would be critical had the officer chose not to take any action). "The principal function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot." *Id.* at 642. We conclude the deputy had reasonable suspicion for the investigatory stop based upon the information given.

We affirm the denial of the motion to suppress.

AFFIRMED.