

IN THE COURT OF APPEALS OF IOWA

No. 1-206 / 10-1044
Filed April 27, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CALEB DANIEL STOCKTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, James Birkenholz,
District Associate Judge.

Defendant appeals the district court's denial of his motion to suppress
evidence. **AFFIRMED.**

Randall L. Jackson of the Law Offices of Randall L. Jackson, Des Moines,
for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, John Sarcone, County Attorney, and David Porter and Anastasia Hurn,
Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., Potterfield, J., and Miller, S.J.* Tabor, J.,
takes no part.

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

SACKETT, C.J.

Defendant, Caleb Daniel Stockton, appeals the denial of his motion to suppress and subsequent conviction of operating a motor vehicle while intoxicated (OWI) in violation of Iowa Code section 321J.2 (2009). Stockton asserts the initial stop made by the officers was unlawful and therefore all subsequent evidence obtained should be suppressed. Alternatively, Stockton asserts if this court finds the initial stop was lawful, then the subsequent action of the officers handcuffing him elevated his seizure into an arrest and the officers executed that arrest without probable cause. Thus, all subsequent evidence should have been suppressed. Finally, Stockton argues implied consent was improperly invoked in this case because the officer had not placed him lawfully under arrest and the preliminary breath test was conducted after the unlawful arrest which made it no longer qualify as a preliminary breath test. We affirm.

I. BACKGROUND AND PROCEEDINGS.

In the early morning hours of January 17, 2010, Officer Cody Grimes was traveling westbound on Martin Luther King Jr. Parkway (MLK) approaching the intersection with Southwest Fifth Street. Officer Grimes observed he had a green light and then watched as a white 2007 Mercedes, traveling southbound on Southwest Fifth Street made a right turn onto MLK without stopping at the red light. Officer Grimes testified he was half way through the intersection in the left lane when the white Mercedes made the turn swinging wide into the left lane before steering back into the right lane of MLK.

Officer Grimes activated his emergency lights to stop the car; however, the car continued on MLK for seven blocks without stopping. Officer Grimes paced the car at a speed between fifty-five and sixty miles per hour, well above the thirty-five mile per hour speed limit on that road. The vehicle eventually turned onto right onto Southwest Twelfth Street and came to a stop just south of the intersection of Southwest Twelfth Street and Cherry Street.

Officer Grimes approached the car and indentified the driver as Caleb Stockton. Officer Grimes observed Stockton had bloodshot watery eyes, slurred speech and a strong odor of alcohol on his breath. Stockton admitted to Officer Grimes he had been drinking, but he was unable to provide the amount of alcohol consumed or when his last drink occurred. Officer Grimes called for backup from the traffic unit in order to conduct OWI testing.

Officer Ihde arrived on scene and also noticed Stockton had bloodshot watery eyes, slurred speech and smelled strongly of alcohol. Stockton informed the officer he had been drinking at two different bars that night and estimated he consumed five beers. Stockton admitted to Officer Ihde he was drunk and should not have been driving.

Stockton submitted to two field sobriety tests and failed both. Officer Ihde then began to explain the one-leg stand test to Stockton. During the explanation, Stockton removed his hat and placed it in his back pants pocket. After Officer Ihde finished the explanation, Stockton refused to submit to the test. Officer Ihde then placed Stockton in handcuffs because Officer Ihde's law enforcement training taught him that when a suspect removes his hat, it is an indicator the

suspect will either resist or run away. Officer Ihde explained to Stockton why he was being placed in handcuffs and informed him that he was not under arrest on two occasions. Stockton was then put in the back of Officer Ihde's patrol car.

While he was in the patrol car, Stockton consented to a preliminary breath test, which indicated Stockton had an alcohol concentration above the legal limit. Officer Ihde then informed Stockton he was under arrest for operating a motor vehicle while intoxicated and for failure to obey a traffic control device.

Officer Ihde transported Stockton to the police station. At the police station, Stockton was read the implied consent advisory and he agreed to provide a breath sample for chemical testing. The test indicated Stockton's blood alcohol concentration was .162.

On February 10, 2010, a trial information charging Stockton with OWI was filed. Stockton filed a motion to suppress on April 6, 2010. It came on for a hearing on April 27, 2010. After hearing the evidence and arguments of the parties, the court denied the motion. Stockton stipulated to a trial on the minutes of testimony and he was found guilty of OWI on May 20, 2010.¹

Stockton was sentenced on the OWI charge to be incarcerated for one year, with all but three days suspended. He was given credit for one day served and placed on probation for one year. He was fined \$1250 and ordered to complete both the substance abuse evaluation and the OWI First Offense Program. Stockton filed a notice of appeal on June 17, 2010.

¹ He was also found guilty of failure to obey a traffic control device. While Stockton initially appealed this conviction was well, he voluntarily dismissed the appeal on July 21, 2010. Therefore, we do not address it in our opinion.

II. SCOPE OF REVIEW.

Because Stockton claims his constitutional rights were violated by the trial court's failure to suppress the evidence, our review is *de novo*. *State v. Kreps*, 650 N.W.2d 636, 640 (Iowa 2002). We give deference to the trial court's factual findings because of its opportunity to assess the credibility of the witnesses, but we are not bound by those findings. *State v. Louwrens*, 792 N.W.2d 649, 651 (Iowa 2010).

III. INITIAL STOP.

Stockton's first claim is the district court improperly denied his motion to suppress because Officer Grimes did not have reasonable cause to make the initial stop. He asserts Officer Grimes's testimony at the suppression hearing lacked credibility, because the testimony resulted in a "geometrical impossibility." Specifically, Officer Grimes testified he was about half-way through the intersection of MLK and Southwest Fifth Street in the left-hand lane when he first observed Stockton's vehicle. Officer Grimes estimated the distance between the two vehicles at approximately one hundred feet when he first observed Stockton. Officer Grimes also testified the intersection was approximately sixty feet wide. Stockton asserts there is no way Officer Grimes could have been half-way through a sixty foot wide intersection when he first observed Stockton and still be one hundred feet away from him at the same time. Because of this contradiction, Stockton asserts Officer Grimes's testimony should be disregarded.

If Officer Grimes's testimony is disregarded, Stockton asserts the only other credible evidence established he came to a complete stop at the

intersection and executed a lawful right turn on red into the right lane of MLK after determining the turn did not interfere with any other vehicular traffic or pedestrians. Stockton concludes because the only credible evidence—his own testimony—demonstrates his turn was lawful, there existed no reasonable grounds to justify the stop.

The State responds that Stockton is taking undue liberties with Officer Grime's testimony. In his testimony, Officer Grimes clarified his estimation of the width of the intersection described the width of the two westbound lanes of MLK and did not take into consideration the southbound lanes of Southwest Fifth Street. Thus, according to the State, Officer Grimes's testimony is "geometrically possible." In addition, the State urges this court to defer to the trial court's factual findings accepting Officer Grimes's version of the events while observing his testimony was "somewhat confusing."

We begin our analysis by noting it is established law a police officer has probable cause to stop a motorist if he observes a traffic violation, no matter how minor. *State v. Hoskins*, 711 N.W.2d 720, 726 (Iowa 2006). In addition, "an officer's reasonable mistake of fact supporting his belief that a traffic violation or other criminal activity is underway will suffice as probable cause for a stop." *Louwrens*, 792 N.W.2d at 652. In this case, we defer to the trial court's determination Officer Grimes's testimony was credible, which establishes Stockton failed to obey a traffic control device. *Id.* at 651. However, even if we were to find Officer Grimes made a mistake of fact as to what occurred that night,

his mistake of fact does not negate his reasonable suspicion, justifying the initial stop. *Id.*

We find the trial court did not err in denying Stockton's motion to suppress on this ground.

IV. HANDCUFFS.

Next, Stockton claims the trial court erred in denying his motion to suppress because Officer Ihde unlawfully arrested him when he was placed in handcuffs. By placing him in handcuffs, Stockton asserts the investigatory stop was elevated to an arrest and Officer Ihde lacked probable cause to arrest at that point in time. To support his claim that he was arrested when he was placed in handcuffs, Stockton looks to the five factors our court analyzed in *State v. Nucaro*, 614 N.W.2d 856, 860 (Iowa Ct. App. 2000). The five factors are used to determine if an officer's actions during an investigatory stop are reasonable. *Id.* If the actions are not reasonable, the use of force can elevate the seizure into an arrest. *Id.* The five factors include,

(1) the number of officers and police cars involved; (2) the nature of the crime and whether there is reason to believe the suspect might be armed; (3) the strength of the officers' articulable, objective suspicions; (4) the erratic behavior of or suspicious movements by the persons under observation; and (5) the need for immediate action by the officers and lack of opportunity for them to have made the stop in less threatening circumstances.

Id. Stockton asserts there were two police officers and two police cars on scene and he was the only suspect. He was being investigated for a routine traffic violation and not a crime of violence. There was no basis to believe he was armed and there was no erratic or suspicious movement, except for the removal

of his hat. The officers had complete control of the situation so the officers had abundant opportunity and plenty of time to complete their investigatory stop in a less threatening manner. Because the use of the handcuffs was unreasonable, Stockton asserts he was arrested without probable cause.

The State claims the act of placing Stockton in handcuffs during the investigatory stop did not transform the seizure into an arrest. The State argues, and the trial court found, the use of the handcuffs was justified, because the officer had a reasonable concern based on his training that a suspect might try to run if he removes his hat. In addition, the State points out the officer told Stockton on two occasions he was not under arrest and explained why he was using the handcuffs. Finally, the State asserts that even if this court were to find Stockton was arrested when he was placed in handcuffs, Officer Ihde had probable cause to place Stockton under arrest at that time. Stockton had bloodshot watery eyes, slurred speech, smelled strongly of alcohol, admitted he was drunk and should not have been driving, failed two field sobriety tests, and refused to take a third.

Ultimately, whether an arrest has occurred is determined on a case-by-case basis with no bright-line rule or test. *State v. Dennison*, 571 N.W.2d 492, 495 (Iowa 1997). Based on the facts of this case, we find Stockton was not arrested when Officer Ihde placed him in handcuffs. Handcuffing for the limited purpose of safety during an investigatory stop is permitted and does not automatically convert an investigatory stop into an arrest. *Nucaro*, 614 N.W.2d at 860. The reasonableness of the use of force by the officer is judged from the

perspective of a reasonable officer on scene and not “with the 20/20 vision of hindsight.” *Id.* While Stockton now asserts he had no intention to flee the scene, Officer Ihde’s law enforcement training told him a suspect is likely to run when he takes off his hat. It was therefore reasonable for Officer Ihde to handcuff Stockton in order to maintain the status quo to complete his investigation. See *id.*

In addition, what a suspect is told or not told about his arrest status is also a factor to be considered when determining whether an arrest has occurred. *State v. Wing*, 791 N.W.2d 243, 248 (Iowa 2010). Stockton was told on two occasions he was not under arrest and it was explained to him why he was being placed in handcuffs. Because we find Stockton was not arrested at the time he was placed in handcuffs, we conclude the trial court did not err in denying Stockton’s motion to suppress on this ground.²

V. IMPLIED CONSENT.

Stockton’s final claim supporting his contention the district court erred in denying his motion to suppress is that Officer Ihde improperly invoked implied consent. Specifically he asserts Officer Ihde used two conditions to justify invoking implied consent: (1) Stockton was placed under arrest for violating Iowa Code section 321J.2, and (2) Stockton submitted to a preliminary breath screening test which indicated an alcohol concentration of 0.08 or more. Stockton first claims he was not lawfully placed under arrest, because Officer

² As the State points out, even if we were to find Officer Ihde arrested Stockton when he placed Stockton in handcuffs, Officer Ihde likely had probable cause at that time to arrest Stockton. However, because we find Stockton was not under arrest, we need not reach the issue of probable cause.

Ihde did not comply with the requirements of Iowa Code section 804.14 when he placed the handcuffs on Stockton. Secondly, Stockton asserts he did not submit to a preliminary breath screening test because the test was done after the unlawful arrest; and therefore, the test was no longer preliminary.

Because we determined above Stockton was not arrested when Officer Ihde placed him in handcuffs, both of these claims fail. Stockton submitted to the preliminary breath screening test before he was placed under arrest and the test result indicated Stockton was well above the legal limit.³ In addition, prior to submitting to the chemical test, but after the preliminary breath screening test, Officer Ihde formally arrested Stockton in compliance with Iowa Code section 804.14.⁴ Both of these conditions independently provide necessary grounds for invoking implied consent.

³ Even if we found Stockton was arrested before he submitted to the preliminary breath test, there is nothing to support the argument a preliminary breath test cannot be requested after a person is placed under arrest. Iowa Code section 321J.5 provides the results of a preliminary breath screening test can be used to determine whether an arrest should be made *or* whether a chemical test should be requested. There is nothing in the Code preventing an officer from requesting a preliminary breath test to determine whether a chemical test should be requested after an arrest has been made. Because we determine Stockton was not under arrest at the time the preliminary breath test was requested, we need not address this argument.

⁴ Iowa Code section 804.14 provides:

The person making the arrest must inform the person to be arrested of the intention to arrest the person, the reason for arrest, and that the person making the arrest is a peace officer, if such be the case, and require the person being arrested to submit to the person's custody, except when the person to be arrested is actually engaged in the commission of or attempt to commit an offense, or escapes, so that there is no time or opportunity to do so; if acting under the authority of a warrant, the law enforcement officer need not have the warrant in the officer's possession at the time of the arrest, but upon request the officer shall show the warrant to the person being arrested as soon as possible. If the officer does not have the warrant in the officer's possession at the

We conclude Officer Ihde did not improperly invoke implied consent in this case; and therefore, the district court did not error in denying Stockton's motion to suppress.

AFFIRMED.

time of arrest, the officer shall inform the person being arrested of the fact that a warrant has been issued.