

IN THE COURT OF APPEALS OF IOWA

No. 2-266 / 11-1233
Filed May 9, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID GONZALES-VERA,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Gregory D. Brandt,
District Associate Judge.

David Gonzales-Vera appeals from his conviction for operating while
intoxicated. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, John Sarcone, County Attorney, and Jessica Tucker, Assistant County
Attorney, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

BOWER, J.

David Gonzales-Vera appeals from his conviction for first-offense operating while intoxicated (OWI). He contends the district court erred in denying his motion to suppress all statements and evidence obtained after the stop of his vehicle because the arresting officer did not have reasonable suspicion to conduct an investigative stop. Because there was reasonable suspicion Gonzales-Vera had committed a crime, we affirm.

I. Background Facts and Proceedings.

At approximately 4:40 a.m. on March 20, 2011, the Des Moines Police Department received a report that a silent alarm had been tripped at Courtside Bar & Grill (Courtside) near the intersection of E. 14th Street and Freemont in Des Moines, Iowa. Iowa State Patrol Trooper Jave Colburn heard the report and traveled to the location to wait for other officers before checking the building. Trooper Colburn arrived within two minutes and parked his vehicle across the street to observe the building. Several minutes later, he observed a gray Mustang emerge from the alley behind Courtside and turn right on E. 14th Street. Because the trooper had not seen any other vehicles entering or leaving the alleyway during that time and there were no other persons observed in the area, he believed the Mustang had been parked behind Courtside at the time the alarm was tripped.

Trooper Colburn began following the Mustang south on E. 14th Street. He activated his emergency lights to initiate a traffic stop, but the vehicle continued

traveling at a low rate of speed. Des Moines Police Officer Ben Carter joined in the pursuit of the vehicle with his emergency lights activated as well.

The Mustang traversed the E. 14th Street bridge over I-235, made a right-hand turn, and entered the exit ramp from I-235 going the wrong way. At that time, Trooper Colburn pulled in front of the vehicle and Officer Carter pulled up behind. The driver of the Mustang, Gonzales-Vera, was handcuffed. Trooper Colburn could smell the strong odor of alcoholic beverage when he came in contact with Gonzales-Vera.

After it was determined Gonzales-Vera was not involved with any burglary at Courtside, Trooper Colburn advised he was going to process Gonzales-Vera for operating while intoxicated and a traffic violation for proceeding the wrong way on the exit ramp. Gonzales-Vera admitted to drinking "a couple of beers," and the trooper initiated field sobriety tests. He noticed Gonzales-Vera's eyes were dilated and blood shot. Gonzales-Vera failed field sobriety testing, and a preliminary breath test showed a blood alcohol content of .140.

Gonzales-Vera was arrested for OWI and submitted to a breath test, which revealed a blood alcohol content of .151. He was charged with OWI on April 28, 2011, and entered a plea of not guilty. On June 6, 2011, he filed a motion to suppress, alleging his vehicle was stopped in violation of the federal and state constitutions. Following a hearing, his motion was denied.

On July 27, 2011, Gonzales-Vera waived his right to a jury trial, and a bench trial was held on the minutes of testimony. The court found Gonzles-Vera

guilty and sentenced him to a one-year jail term with all but three days of his sentence suspended. He filed a timely notice of appeal.

II. Scope and Standard of Review.

Our review of a challenge to the district court's denial of a motion to suppress on federal and state constitutional grounds is de novo. *State v. Pals*, 805 N.W.2d 767, 771 (Iowa 2011). We make "an independent evaluation of the totality of the circumstances as shown by the entire record." *Id.* Although we give deference to the fact-findings of the district court due to its opportunity to evaluate witness credibility, we are not bound by such findings. *Id.*

III. Analysis.

Gonzales-Vera challenges the stop of his vehicle under both the Fourth Amendment of the United States Constitution and article I, section 8 of the Iowa constitution. Although these provisions use nearly identical language and were designed with the same scope, import, and purpose, our court retains its authority to follow an independent approach under our state constitution. *Id.*

To conduct an investigatory stop, an officer must have reasonable suspicion that criminal activity is occurring. *State v. Hicks*, 791 N.W.2d 89, 93 (Iowa 2010). The State is required to 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," led to the reasonable belief criminal activity may have occurred. *Id.* We evaluate reasonable suspicion in light of the totality of the circumstances facing the officer at the time of the stop. *Id.*

Under the record before us, we conclude Trooper Colburn had a reasonable suspicion to believe Gonzales-Vera was involved in criminal activity. Trooper Colburn was the first peace officer to arrive at the scene of a possible burglary, arriving within minutes after a silent alarm at Courtside was tripped. Trooper Colburn parked his vehicle across the street from Courtside, watched the area for several minutes, and saw no one in the area. No vehicles had pulled into or out of the alleyway behind Courtside until Gonzales-Vera's vehicle appeared. Given these facts, the trooper could reasonably believe a burglary was occurring and Gonzales-Vera was involved. The State has shown by a preponderance of the evidence Trooper Colburn had a reasonable basis for conducting an investigatory stop of Gonzales-Vera's vehicle. Accordingly, we affirm.

Because we find reasonable suspicion to conduct an investigatory stop existed at the time the trooper initially activated his emergency lights, we need not consider the State's alternative argument that the trooper had reasonable suspicion to stop Gonzales-Vera for a traffic violation.

AFFIRMED.