

IN THE COURT OF APPEALS OF IOWA

No. 6-277 / 05-0293

Filed May 10, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RANDALL LEE ZIEHL,
Respondent-Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes,
Judge.

Defendant-appellant, Randall Lee Ziehl, appeals following his convictions
for operating a motor vehicle while intoxicated and driving while barred.

AFFIRMED.

David Scieszinski, Wilton, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney
General, William E. Davis, County Attorney, and Marc Gellerman, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

SACKETT, C.J.

Defendant-appellant, Randall Lee Ziehl, appeals following his convictions for third-offense operating while intoxicated and driving while barred, in violation of Iowa Code sections 321J.2(2)(c) and 321.561 (2005). Defendant contends that a stop and interrogation was conducted in violation of his Fourth Amendment right against warrantless searches and seizures. We disagree and affirm the convictions.

We review constitutional claims de novo. *State v. Cline*, 617 N.W.2d 277, 280 (Iowa 2000); *State v. Seager*, 571 N.W.2d 204, 207 (Iowa 1997). “In doing so, we independently evaluate the totality of the circumstances shown in the record.” *Seager*, 571 N.W.2d at 207. “We give deference to the district court's fact findings due to its opportunity to assess the credibility of witnesses, but we are not bound by those findings.” *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001).

Defendant drove off a public road on to private property. A local resident drove his farm truck behind defendant's automobile cutting off defendant's access to the public road. The resident had his wife call 911, continued to block defendant's access, and carried on a conversation with the defendant until law enforcement arrived. The resident told the law enforcement officers who came to the scene that he believed the defendant might have been drinking. The arresting officer visited with defendant, smelled alcohol on his breath, and noted his eyes were bloodshot and watery and there was a slight stumbling motion in defendant's walk. The officer asked defendant how much he had to drink and the defendant responded, “seven shots.” Defendant was arrested.

Defendant filed a motion to suppress contending that he was prohibited from leaving the private property by the actions of the resident, he was not violating any laws against trespass, and was not causing any damage to property.

The Fourth Amendment's prohibition against unreasonable search and seizure imposes a reasonableness standard upon the exercise of discretion by law enforcement officials. *State v. Losee*, 353 N.W.2d 876, 878 (Iowa Ct. App. 1984). Ordinarily this proscription against unreasonable searches and seizures does not apply to searches and seizures conducted by private individuals. *State v. Holliday*, 169 N.W.2d 768, 771-72 (Iowa 1969); *State v. Chambers*, 529 N.W.2d 617, 620 (Iowa Ct. App. 1994). If, however, a private citizen acts as an agent of the state, the protections provided by the Fourth Amendment apply. *State v. Coy*, 397 N.W.2d 730, 731 (Iowa 1986). The resident testified he was not a member of any law enforcement agency but he was just a "plain and simple farmer." There is no evidence the resident acted other than as a private citizen, nor does the defendant argue that he did. Consequently, defendant's Fourth Amendment protections do not apply to the resident's actions and we do not consider them in assessing defendant's claim. *Chambers*, 529 N.W. 2d at 620.

The officer questioned defendant but did not seize him until he was arrested. See *State v. Pickett*, 573 N.W. 2d 245, 247 (Iowa 1997). Before the time of the arrest the officer had detected an odor of alcohol on defendant's breath, observed his bloodshot and watery eyes, and noted he stumbled in the grass. Defendant had also failed field sobriety tests, told the officer he had seven shots, and had driven his car off a dead-end road. When defendant was

arrested the officer had probable cause to believe defendant was operating a motor vehicle while intoxicated.

AFFIRMED.