IN THE COURT OF APPEALS OF IOWA

No. 6-677 / 05-1468
Filed September 21, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JODY PAUL BRUNK,
Defendant-Appellant.

Appeal from the Iowa District Court for Wapello County, Kirk A. Daily, Judge.

Jody Paul Brunk appeals his conviction, following a trial to the court on the minutes of evidence, for operating while intoxicated, second offense. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Nan Jennisch, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kristin Guddall, Assistant Attorney General, Mark Tremmel, County Attorney, and Rose Anne Mefford, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

MILLER, J.

Jody Paul Brunk appeals his conviction, following a trial to the court on the minutes of evidence, for operating while intoxicated (OWI), second offense. He contends the district court erred in denying his motion to suppress evidence. We affirm.

Around 10:00 p.m. on February 14, 2005, Ottumwa police received an anonymous 911 call reporting there was a man in a red pickup truck in the parking lot next to Wendy's and that he "did not look conscious" or "too healthy." A sergeant with the Ottumwa Police Department told Officer Brad Higgins there was an individual either asleep or passed out in a red pickup truck in the parking lot adjacent to Wendy's. Officer Higgins responded to the call and arrived at the parking lot approximately ten to fifteen minutes after officers received the 911 call. As he approached Wendy's he saw a red pickup truck leaving the adjacent parking lot. Higgins called dispatch to verify the description of the vehicle, and the description matched the pickup truck he saw leaving the lot. Although Higgins did not observe the vehicle commit any traffic violations, based on the earlier 911 call he stopped it after following it for a short distance.

After stopping the truck Higgins identified the driver as the defendant, Brunk. Higgins noticed a strong smell of alcoholic beverage on Brunk. He proceeded to have Brunk perform standardized field sobriety tests and administered a preliminary breath screening test (PBT). Brunk failed the field sobriety tests and registered a .141 percent alcohol concentration on the PBT.

Higgins arrested Brunk for OWI. Higgins invoked implied consent testing, Brunk consented, and the test result showed an alcohol concentration of .161.

The State charged Brunk, by trial information, with OWI, second offense, in violation of Iowa Code section 321J.2 (2005). Brunk filed a motion to suppress evidence arguing the stop of his vehicle was unconstitutional because Officer Higgins did not have an articulable suspicion of criminal activity at the time of the stop or any other legal basis sufficient to justify the stop. The district court agreed the stop could not be justified under either a probable cause standard or a reasonable suspicion of criminal activity standard. However, the court found the stop was justified under the "community caretaking function" often engaged in by officers. It denied Brunk's motion to suppress.

Brunk appeals his conviction, contending the court erred in denying his motion to suppress. He asserts the stop violated his rights under both the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution.[1] More specifically, he argues there was no need for a community caretaking check because he was not passed out when Officer Higgins arrived, he was able to drive without violating traffic laws, and the record does not show he posed a threat to public safety.

Because Brunk's motion to suppress was based on alleged constitutional violations, our review of the district court's ruling on his motion is de novo. *State*

[1] The language of the state and federal constitutions protecting citizens against unreasonable search and seizure is substantially identical and we have consistently interpreted the scope and purpose of article I, section 8, of the Iowa Constitution to track with federal interpretations of the Fourth Amendment. *State v. Breuer,* 577 N.W.2d 41, 44 (Iowa 1998); *State v. Showalter,* 427 N.W.2d 166, 168 (Iowa 1988). Accordingly, we analyze the validity of the stop here similarly under both the federal and state constitutions.

v. Carter, 696 N.W.2d 31, 36 (Iowa 2005); *State v. McConnelee*, 690 N.W.2d 27, 30 (Iowa 2004). We independently evaluate the totality of the circumstances found in the record. *State v. Reinders*, 690 N.W.2d 78, 82 (Iowa 2004). We give deference to the district court's fact findings because of that court's ability to assess the credibility of the witnesses, but we are not bound by those findings. *State v. Crawford*, 659 N.W.2d 537, 541 (Iowa 2003).

The Fourth Amendment to the United States Constitution guarantees a person's right to be free from unreasonable search and seizure.[2] Evidence obtained in violation of this provision is inadmissible in a prosecution, no matter how relevant or probative the evidence may be. *State v. Manna*, 534 N.W.2d 642, 643-44 (Iowa 1995). Warrantless searches and seizures are per se unreasonable unless they fall within one of the carefully drawn exceptions to the warrant requirement. *State v. Lovig,* 675 N.W.2d 557, 563 (Iowa 2004). One such exception formulated by the United States Supreme Court is what has been described as the community caretaking function local police officers are sometimes called upon to perform, a function "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady v. Dombrowski,* 413 U.S. 433, 441, 93 S. Ct. 2523, 2528, 37 L. Ed. 2d 706, 714-15 (1973). The community caretaking exception actually encompasses three separate doctrines: the emergency aid doctrine, the

[2] The rights guaranteed by the Fourth Amendment apply to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1694, 6 L. Ed. 2d 1081, 1090 (1961).

automobile impoundment/inventory doctrine, and the public servant exception noted in *Cady*. *Crawford,* 659 N.W.2d at 541.

> In a community caretaker case, a court determines reasonableness by balancing the public need and interest furthered by the police conduct against the degree and nature of the intrusion upon the privacy of the citizen.
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> This balancing requirement to determine reasonableness requires an objective analysis of the circumstances confronting the police officer. . . . To establish "reasonableness," the state has the burden of
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> > showing specific and articulable facts that indicate their actions were proper. In addition, the scope of the [stop] and search "must be limited to the justification thereof, and the officer may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance."
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> The specific-and-articulable-facts standard is of course less than the probable-cause requirement applied in criminal searches.

Id. at 542-43 (citations omitted). Community caretaking cases require a three-step analysis: (1) was there a seizure within the meaning of the Fourth Amendment?; (2) if so, was the police conduct bona fide community caretaker activity?; and (3) if so, did the public need and interest outweigh the intrusion upon the privacy of the citizen? *Id.* at 543.

Applying this three-step analysis we first conclude there was a seizure within the meaning of the Fourth Amendment when Officer Higgins stopped Brunk's truck. When the police stop a vehicle and temporarily detain a citizen, that detention is a seizure within the meaning of the Fourth Amendment. This is true even if the detention is only for a brief period and for a limited purpose. *Whren v. United States,* 517 U.S. 806, 809-10, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89, 95 (1996). Furthermore, "[i]mplicit in any community caretaking case is

the fact that there has been a seizure within the meaning of the Fourth Amendment. Otherwise there would be no need to apply a community caretaking exception." *Crawford,* 659 N.W.2d at 543.

The second step in the analysis, whether the action taken by the officer was a bona fide community caretaker activity, turns on whether the facts available to the officer at the moment of the seizure would have warranted a reasonable person to believe either an emergency or some other difficulty requiring general police assistance existed. *See id*. at 541-43. Thus, we consider what Officer Higgins knew at the moment he stopped the vehicle.

Higgins knew that an individual was either asleep or passed out in the parking lot adjacent to Wendy's in a red pickup truck. He then observed that same truck leaving the parking lot as he arrived. Officer Higgins testified at the suppression hearing that even though Brunk appeared capable of driving during the short time he observed him, a medical or other problem that posed a hazard to the public might still have existed. For example if it was a medical problem it could be ongoing and if Brunk had passed out once he could do so again while driving, either of which would pose a hazard to Brunk as well as other drivers in the vicinity.

We agree that there are several things that might have caused Brunk to fall asleep or pass out in his vehicle and could still have posed a hazard to him and those around him ten to fifteen minutes later when Higgins observed him driving. He could, among other things, have been ill, injured, affected by medication, or simply very tired, any of which might have posed a continuing

danger to public safety. Thus, it was reasonable for Higgins to briefly stop the vehicle to ascertain whether the driver needed assistance or was safe to continue on the public roadway. We conclude that based on the facts available to Officer Higgins at the time of the seizure a reasonable person would believe a situation existed that created a potential public hazard and thus he was performing a bona fide community caretaker activity in stopping Brunk's vehicle.

Finally, based on the totality of the circumstances discussed above, we conclude the public need and interest required Officer Higgins to determine Brunk's condition and such need and interest outweighed the minimal intrusion upon Brunk's rights caused by the stop. Furthermore, in making a brief investigatory stop Higgins did no more than was reasonably necessary to determine whether Brunk was in need of assistance. Because Higgins had a legitimate public safety responsibility which caused him to be where he was when he discovered the incriminating evidence of Brunk's intoxication, the evidence was admissible. *See State Mitchell,* 498 N.W.2d 691, 694 (Iowa 1993) ("When evidence is discovered in the course of performing legitimate community caretaking or public safety functions, the exclusionary rule is simply not applicable.")

Accordingly, we conclude the district court did not err in denying Brunk's motion to suppress evidence. Brunk's conviction for OWI, second offense, is affirmed.

AFFIRMED.