

**IN THE COURT OF APPEALS OF IOWA**

No. 8-845 / 08-0629  
Filed November 26, 2008

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**SCOTT WILLIAM BAKULA,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Bremer County, Peter B. Newell,  
District Associate Judge.

Defendant appeals the district court's denial of his motion to suppress  
evidence obtained in connection with an arrest for operating a motor vehicle  
while intoxicated. **AFFIRMED.**

Kevin Kennedy of Kennedy & Kennedy, New Hampton, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney  
General, Kasey E. Wadding, County Attorney, and Jill Dashner, Assistant County  
Attorney, for appellee.

Considered by Huitink, P.J., and Vaitheswaran and Potterfield, JJ.

**VAITHESWARAN, J.**

Scott Bakula appeals the district court's denial of his motion to suppress evidence obtained in connection with an arrest for operating a motor vehicle while intoxicated. We affirm.

***I. Background Facts and Proceedings***

Bakula and his co-worker, Jody Elliott, finished working an overnight shift and stopped at a bar in Waterloo before returning to their hometown. After they resumed their commute, they passed a Bremer County deputy sheriff. The deputy noted nothing unusual about the vehicle Bakula was driving nor did he surmise that either of the occupants was in trouble. The deputy watched as Bakula turned onto a gravel road, came to a stop, got out of the car, and switched positions with Elliott. At this point, the deputy decided to investigate. He pulled up behind the car without turning on his overhead spinning lights. He approached the driver's side window, smelled alcohol, and asked Bakula to exit the vehicle. After performing field sobriety tests, the deputy arrested Bakula for driving under the influence.

The State charged Bakula with operating a motor vehicle while intoxicated, second offense. Iowa Code § 321J.2 (2007). Bakula moved to suppress the evidence gained during the encounter. Following a hearing, the district court denied the motion. The court subsequently found Bakula guilty of the charge and imposed sentence. This appeal followed.

On appeal, the preliminary and dispositive question is whether Bakula was subjected to a "seizure" under the Fourth Amendment to the United States Constitution and under Article I, section 8 of the Iowa Constitution. Because this

case involves a constitutional right, review is de novo. *State v. Kreps*, 650 N.W.2d 636, 640 (Iowa 2002).

## **II. Analysis**

“A seizure occurs when an officer by means of physical force or show of authority in some way restrains the liberty of a citizen.” *State v. Reinders*, 690 N.W.2d 78, 82 (Iowa 2004) (quoting *State v. Pickett*, 573 N.W.2d 245, 247 (Iowa 1997)).<sup>1</sup> Factors pointing to a seizure include:

the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officers request might be compelled.

*State v. Wilkes*, 756 N.W.2d 838, 842-43 (Iowa 2008) (quoting *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877, 64 L. Ed. 2d 497, 509 (1980)). “[O]bjective indices of police coercion must be present to convert an encounter between police and citizens into a seizure.” *Id.* at 843.

The facts in *Wilkes* were strikingly similar to the facts in the present case. There, two uniformed officers saw a truck parked in a quarry with its headlights on and its engine running. *Id.* at 840. The officers pulled into the quarry and parked about ten to fifteen feet away from the truck. *Id.* They did not activate the squad car’s emergency lights or siren but focused the car’s headlights on the truck. *Id.* One of the officers approached the driver’s side window while the other stood behind the truck. *Id.* at 841. The officer who approached the driver’s window smelled alcohol coming from the driver. *Id.* After administering several

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<sup>1</sup> In the absence of argument to the contrary, our analysis under the U.S. and Iowa Constitutions is the same. See *State v. Wilkes*, 756 N.W.2d 838, 842 n.1 (Iowa 2008).

tests to gauge intoxication, the officer arrested the driver, Wilkes, for operating a motor vehicle while intoxicated. *Id.* Wilkes moved to suppress the evidence. *Id.* The district court granted the motion. *Id.* On appeal, the Iowa Supreme Court reversed, concluding no seizure occurred. *Id.* at 844. The court reasoned that “the use of ordinary headlights at night is simply not coercive in the same manner as the activation of emergency lights which invoke police authority and imply a police command to stop and remain.” *Id.* The court also stated that one of the officers remained behind the car and “did not use physical force or show authority in any manner.” *Id.* As for the fact that the officers parked behind the vehicle driven by Wilkes, the court noted that egress from the quarry was only slightly restricted. *Id.* The court also applied the factors considered in an earlier opinion, noting there was no seizure in that case because “there was no threat of physical force, no use of language, no use of sirens, and no forced stop.” *Id.* (citing *State v. Harlan*, 301 N.W.2d 717, 720 (Iowa 1981)).

Applying the pertinent factors discussed in *Wilkes* and *Harlan*, we also conclude there was no seizure.

First, the record suggests Bakula’s vehicle was already stopped at the time the deputy pulled up behind it. See *Harlan*, 301 N.W.2d at 720. The deputy’s report stated as much and Bakula agreed with the prosecutor that he, rather than the deputy, stopped the vehicle. Although there is some indication Elliott was about to drive away, she had not yet done so when the deputy drove up.

Second, the deputy testified his overhead lights were not spinning when he pulled up behind the car Bakula was driving. See *id.* (“The use of sirens,

flashing lights or other signals to pull a moving vehicle to the side of the road might also constitute a show of authority that is a seizure.”). While the deputy did have his rear warning lights engaged, he testified the vehicle in front of him would not have seen those lights.

The only uncertainty in the record related to the front flashing lights of the squad car. The deputy testified he did not believe he had those lights engaged, but he was not certain. Elliott testified the deputy had his lights on, but she did not specify which lights were on. As the vehicle Bakula drove was already stopped and it is undisputed that the top lights of the squad car were not flashing or spinning, we believe resolution of this factual dispute is less important than it would have been otherwise. See *Wilkes*, 756 N.W.2d at 844 (noting activation of emergency lights implied police command to stop and remain). Additionally, we note that, in *Wilkes*, the fact that the patrol car’s headlights were trained on Wilkes’s truck was deemed insufficient to establish a seizure. *Id.* For these reasons, we conclude Elliott’s bare assertion that the deputy’s lights were on does not establish a seizure.

In sum, after examining the totality of the circumstances, we agree with the district court that there was no “seizure” triggering the constitutional protections guaranteed by the Fourth Amendment to the United States Constitution and Article 1, section 8 of the Iowa Constitution. In light of our conclusion, we need not address Bakula’s arguments that the caretaking exception to the warrant requirement did not apply or that reasonable suspicion to support the stop was lacking.

We affirm Bakula's judgment and sentence for operating while intoxicated, second offense.

**AFFIRMED.**