

IN THE COURT OF APPEALS OF IOWA

No. 9-642 / 08-1918
Filed December 17, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DOUGLAS RAY KNAPP,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Kellyann Lekar (motion to suppress) and George Stigler (trial), Judges.

Douglas Ray Knapp appeals from the judgment and sentence entered following several drug-related convictions. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Adams, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., Mansfield, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

ZIMMER, S.J.

Douglas Ray Knapp appeals from the judgment and sentence entered following his convictions of possession of methamphetamine, conspiracy to manufacture more than five grams of methamphetamine, and possession of pseudoephedrine with intent to manufacture methamphetamine. He contends the district court erred in denying his motion to suppress the evidence discovered as a result of a traffic stop. He further contends the court erred in failing to grant his motion for judgment of acquittal. We affirm.

I. Background Facts and Proceedings. Shortly after midnight on January 26, 2008, Officer Albert Bovy of the Waterloo Police Department was driving south along Eighteenth Street when he met a truck that was driving north. It was the officer's practice when on patrol at night to check his rearview mirror to make sure the license plate of any vehicle he passed was illuminated. As Officer Bovy looked in his rearview mirror that night, he noticed that the truck's rear license plate was not illuminated. At the time he made his observation, Officer Bovy estimates he was one to two vehicle lengths away from the truck.¹ Bovy estimates a vehicle to be seventeen feet in length.

The officer turned his patrol car around so he could follow the truck to confirm that the tag light was out. When he first turned around, Officer Bovy was approximately one-half block behind the truck. Bovy caught up to the truck and continued to follow it. After pulling up behind the truck, he turned off his headlights for a second to see if the license plate lamp was functioning and

¹ Because the area was dark and the weather conditions were good, Officer Bovy had a clear view of the unilluminated license plate.

confirmed the light was not working. While following the truck, Bovy observed that the truck's license plate was bent in at the bottom, which obscured his view of the numbers and letters on the plate. The bottom part of the plate was also obscured by the truck's bumper and a trailer hitch ball. Officer Bovy was unable to make out the numbers or letters on the license plate. After following the truck for a distance of approximately three and one-half blocks, Officer Bovy initiated a traffic stop. At the time he activated his emergency lights, Bovy was only a half car length, or about nine feet, behind the truck.

The driver of the truck identified himself as Douglas Knapp. Officer Bovy checked with the Department of Transportation and learned Knapp's license was suspended. The officer then placed Knapp under arrest. A search of Knapp's person yielded a baggie containing white powder. Knapp identified the powder as crushed "pseudo," short for pseudoephedrine, an ingredient commonly used to manufacture methamphetamine. A search of the vehicle and Knapp's passenger yielded a small amount of methamphetamine and additional items typically used to manufacture methamphetamine. Knapp admitted to delivering the items to others who made methamphetamine.

The white powder discovered on Knapp's person was tested and confirmed to be pseudoephedrine. The bag contained 16.8 grams of pure pseudoephedrine, which has a theoretical yield of 15.4 grams of pure methamphetamine. A criminologist from the Department of Criminal Investigations estimated that amount of pseudoephedrine would actually produce between six and seven grams of pure methamphetamine. Because

methamphetamine is mixed with other chemicals, the criminologist determined it would produce between 6.5 and 10 grams of final product.

Knapp was charged with possession of methamphetamine with intent to deliver, conspiracy to manufacture methamphetamine with intent to deliver, and possession of pseudoephedrine with intent to manufacture. Knapp filed a motion to suppress the evidence discovered after the traffic stop on the grounds Officer Bovy did not have reasonable cause to stop his vehicle. Following a hearing, the district court found the stop was justified and denied Knapp's motion.

The case proceeded to a jury trial. The charges were amended to simple possession of methamphetamine, conspiracy to manufacture more than five grams of methamphetamine, and possession of pseudoephedrine with intent to manufacture methamphetamine. Knapp moved for judgment of acquittal on the grounds the State failed to prove he had the necessary intent to manufacture more than five grams of methamphetamine. The court denied the motion and the jury found Knapp guilty of all three counts. Knapp appeals.

II. Motion to Suppress. Knapp first contends the court erred in denying his motion to suppress because Officer Bovy did not have reasonable grounds to stop his vehicle. Because his claim implicates his constitutional right to be free from unreasonable searches and seizures, we review this claim de novo. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). "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." *Id.*

An officer may stop a vehicle for investigatory purposes when there is a reasonable suspicion that a criminal act has occurred or is occurring. *State v.*

Kreps, 650 N.W.2d 636, 641 (Iowa 2002). The purpose of such a stop is to allow the officer to confirm or dispel suspicions of criminal activity through reasonable questioning. *Id.* A traffic violation, however minor, gives an officer probable cause to stop a motorist. *State v. Aderholdt*, 545 N.W.2d 559, 563 (Iowa 1996).

Here, the State contends Knapp was in violation of Iowa's traffic laws in two ways. First, the State asserts that Knapp's rear license plate was not illuminated as required by Iowa Code section 321.388 (2007). Second, the State asserts the plate was obstructed or bent under and therefore not in readable condition as required by section 321.38. Knapp claims he did not commit either of those traffic offenses. Knapp concedes that the State need only prove one such violation occurred in order to prevail.

Because we find the issue dispositive, we first address the State's claim that Officer Bovy had reasonable grounds to stop Knapp's truck for a violation of section 321.388. This section reads in part, "Either the rear lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear." Iowa Code § 321.388. For the reasons that follow, we conclude the evidence presented at the suppression hearing is sufficient to show Knapp violated section 321.388.

Knapp argues the stop was not reasonable, citing *State v. Reissetter*, 747 N.W.2d 792 (Iowa Ct. App. 2008). In that case, this court found a motion to suppress the evidence gathered after a vehicle stop should have been suppressed where the stop was made for a violation of section 321.388 and the officer did not observe the vehicle from a distance closer than one hundred feet.

Reisetter, 747 N.W.2d at 794-95. The majority in *Reisetter* concluded that the officer was not close enough to justify a stop to “resolve the ambiguity” as to whether “criminal activity [was] afoot.” *Id.* *Reisetter* holds that in order to form even reasonable suspicion, the officer must be within fifty feet or some distance that “reasonably approximates” fifty feet. *Id.*

We believe the circumstances of the case before us are quite different than the circumstances present in *Reisetter*. Here, Officer Bovy first observed Knapp’s license plate was not illuminated when he observed Knapp’s truck through his rear view mirror. When he made his initial observation, Bovy was just one or two car lengths, or seventeen to thirty-four feet away, from Knapp’s vehicle. Knapp complains this is insufficient. However, Officer Bovy did not rely only on this observation. He turned his patrol car around and caught up with the truck. He followed Knapp’s truck a distance of approximately three-and-one-half blocks. After pulling up behind Knapp’s truck, he turned his headlights off briefly to make sure the license plate lamp was not functioning. While Officer Bovy was approximately 150 feet behind Knapp’s truck when he turned his patrol car around, at the time he initiated a traffic stop he was only nine feet behind the truck. The record before the district court supports the conclusion that Officer Bovy was within fifty feet of Knapp’s truck when he observed that Knapp’s rear license plate was not illuminated.

Because Officer Bovy had reasonable suspicion to believe a violation of section 321.388 had occurred, we affirm the district court’s denial of his motion to suppress. Having reached this result, we find it unnecessary to address Knapp’s claim that he did not violate section 321.38.

III. Judgment of Acquittal. Knapp also contends the court erred in denying his motion for judgment of acquittal because the State failed to prove he had the necessary intent to manufacture more than five grams of methamphetamine. Our scope of review of sufficiency-of-evidence challenges is for correction of errors at law. *State v. Adney*, 639 N.W.2d 246, 250 (Iowa Ct. App. 2001). We will uphold a trial court's denial of a motion for judgment of acquittal if there is substantial evidence to support the defendant's conviction. *Id.* Substantial evidence is such evidence as could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.*

Iowa Code section 124.401 provides that it is unlawful for a person to conspire to manufacture a controlled substance. It is a class B felony to conspire to manufacture more than five grams—but less than five kilograms—of methamphetamine or “any compound, mixture, or preparation” that contains “any quantity or detectable amount of methamphetamine.” Iowa Code § 124.401(1)(b)(7).

In order to find Knapp conspired to manufacture methamphetamine, the State was required to show:

(1) the defendant agreed with one or more persons that one or both of them would manufacture or attempt to manufacture methamphetamine, (2) the defendant entered into such an agreement with the intent to promote or facilitate the manufacture of methamphetamine, (3) one of the parties to the agreement committed an overt act to accomplish the manufacturing of methamphetamine, and (4) the alleged coconspirator(s) was not a law enforcement agent or assisting law enforcement when the conspiracy began.

State v. Fintel, 689 N.W.2d 95, 102 (Iowa 2004). The agreement to manufacture need not be an explicit one; it may be inferred from circumstances. *State v.*

Mapp, 585 N.W.2d 746, 748 (Iowa 1998). It may consist of a tacit understanding and be inferred from all the circumstances shown and the conduct of the parties involved. *State v. Casady*, 597 N.W.2d 801, 805 (Iowa 1999).

Our supreme court has held that when prosecuting conspiracy to manufacture methamphetamine, the State can rely on evidence of the potential yield to prove the amount of methamphetamine conspired to be produced. See *State v. Royer*, 632 N.W.2d 905, 907 (Iowa 2001) (“[U]nder the conspiracy alternative to section 124.401(1) a potential rather than actual yield of five grams of methamphetamine was sufficient to establish guilt.”); *Casady*, 597 N.W.2d at 804-05 (finding the State proved a conspiracy to manufacture more than five grams of methamphetamine where the potential yield was 28.35 to 56.70 grams of methamphetamine). The amount of crushed pseudoephedrine found on Knapp’s person had the potential to yield more than five grams of methamphetamine. That, coupled with the other evidence presented, is sufficient for a factfinder to infer a conspiracy to manufacture more than five grams of methamphetamine.

We find no error in the district court’s denial of Knapp’s motion for judgment of acquittal. Accordingly, we affirm.

AFFIRMED.