

IN THE COURT OF APPEALS OF IOWA

No. 2-436 / 11-1522
Filed July 11, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BLAKE MICHAEL WILKERSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Ringgold County, Gary G. Kimes (suppression) and John D. Lloyd (trial), Judges.

Defendant appeals his conviction for operating while intoxicated, asserting the district court should have granted his motion to suppress. **REVERSED AND REMANDED.**

S.P. DeVolder of The DeVolder Law Firm, Norwalk, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Clinton L. Spurrier, County Attorney, and Grant Wilson, Legal Intern, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

EISENHAUER, C.J.

Blake Wilkerson appeals his conviction for operating while intoxicated. He challenges the existence of reasonable suspicion for his traffic stop.¹ We reverse and remand.

I. Background Facts and Proceedings.

Around 10:40 p.m. on January 17, 2011, Deputy Arends of the Ringgold County sheriff's office was patrolling a two-lane highway. He observed Wilkerson's pickup truck travelling ahead of him. Arends engaged his emergency lights, and the truck pulled over to the highway's shoulder. After questioning driver Wilkerson, Arends asked for consent to search the truck, and Wilkerson consented. Arends asked Wilkerson and his three passengers to exit the truck and asked Wilkerson to walk to his patrol car and sit in the front passenger seat. The back seat was occupied by the deputy's drug dog.

Another officer arrived on the scene, and the passengers were placed in his squad car. Deputy Arends impounded Wilkerson's truck, drove Wilkerson to the sheriff's office for field and chemical testing, and subsequently arrested him for possession of a controlled substance—marijuana. On June 15, 2011, Wilkerson filed a motion to suppress evidence. On June 24, after the results of Wilkerson's urine test were received, the State filed an amended trial information charging Wilkerson with operating while intoxicated—marijuana.

¹ Wilkerson also argues (1) his statements against interest were unlawfully obtained through custodial interrogation and (2) his consent to chemical testing was coerced and improperly obtained. Because we conclude the vehicular stop was unlawful, we do not address these issues.

At the July 2011 suppression hearing, deputy Arends testified he saw the truck “weaving within its own lane,” periodically crossing the center and fog (side) boundary lines, and jerking back quickly after drifting over the lines. Deputy Arends testified the truck crossed the center line and continued on the wrong side of the center line as it went up a hill immediately prior to the stop.

The first minute of the forty-minute patrol car recording shows the truck’s movement on the highway immediately before the stop. In the recording the truck’s taillights are always visible. While the highway’s center line and fog line are clearly illuminated in front of the patrol car, the lines are not as clearly illuminated near the truck.

During cross-examination, Deputy Arends acknowledged the recording does not confirm his observations the truck was jerking, crossing the fog line, and being driven continuously across the center line as it traveled up the hill immediately prior to the stop.

The court denied Wilkerson’s motion to suppress. Wilkerson thereafter stipulated to a trial on the minutes of testimony. The district court granted the State’s motion to dismiss the possession charge and found Wilkerson guilty of operating while intoxicated. Wilkerson now appeals.

II. Scope and Standard of Review.

Wilkerson appeals the district court’s denial of his motion to suppress asserting a violation of his constitutional rights. “We review constitutional issues *de novo*.” *State v. Otto*, 566 N.W.2d 509, 510 (Iowa 1997). We independently evaluate “the totality of the circumstances as shown by the entire record.” *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004). We give “deference to the trial

court's findings regarding the credibility of the witnesses, but are not bound by them." *Id.*

III. Reasonable Suspicion to Stop Wilkerson's Vehicle.

The State claims Wilkerson's driving suggested he was intoxicated, warranting the stop of his vehicle. Wilkerson argues the district court erred in overruling his motion to suppress because the record does not support a finding of a reasonable suspicion criminal activity had occurred or is occurring.

"The Fourth Amendment imposes a general reasonableness standard upon all searches and seizures."² *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002). A traffic stop is a seizure within the meaning of the Fourth Amendment. *Id.* An officer may "stop an individual or vehicle for investigatory purposes based on a reasonable suspicion that a criminal act has occurred or is occurring." *Id.* The investigatory stop's purpose "is to allow a police officer to confirm or dispel suspicions of criminal activity through reasonable questioning." *Id.* The evidence justifying a stop under reasonable suspicion does not need to rise to the level of probable cause. *State v. Scott*, 409 N.W.2d 465, 468 (Iowa 1987).

To meet the reasonable suspicion standard, "the State must 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, to reasonably believe criminal activity may have occurred." *Tague*, 676 N.W.2d at 204. "Mere suspicion, curiosity, or hunch of criminal activity is not enough." *Id.* Reasonable suspicion is determined by an objective standard: whether a

² Article I, section 8 of the Iowa Constitution also protects a motorist from unreasonable investigatory stops. Wilkerson does not argue the Iowa protections differ from the Fourth Amendment's protections.

reasonable person would deem the officer's actions appropriate given the totality of the circumstances confronting the officer at the time of the stop. *Kreps*, 650 N.W.2d at 641. If the State fails to meet its burden, the court must suppress evidence obtained through the stop. *Id.*

We have recognized an officer's observation of a vehicle weaving within its own lane, without crossing either side boundary, may justify an investigatory stop. *State v. Tompkins*, 507 N.W.2d 736, 740 (Iowa Ct. App. 1993). Subsequently, the Iowa Supreme Court cautioned: "We do not believe *Tompkins* should be read to hold that observation of a vehicle weaving within one's own lane of traffic will always give rise to reasonable suspicion for police to execute a stop of the vehicle." *Otto*, 566 N.W.2d at 511. Rather, the facts and circumstances of each individual case determine the reasonable suspicion analysis and whether stopping a vehicle for investigation is justified. *Id.*

More recently, the Iowa Supreme Court ruled crossing an edge line once on a divided highway, without weaving, veering, or erratic speed changes, is insufficient to support an investigatory stop. *Tague*, 676 N.W.2d at 205-06. The *Tague* court concluded a vehicle's failure to follow a perfect vector down the highway is not sufficient reason to suspect a person of driving while impaired. *Id.*

We turn to the application of the above cases to the stop of Wilkerson's truck. At the suppression hearing, on cross-examination, Deputy Arends acknowledged the recording does not confirm his description of Wilkerson's driving. Next, Arends reviewed the recording during the hearing's lunch break, and when the hearing reconvened, he reconfirmed the recording does not show

Wilkerson's truck jerking in its lane or being driven all the way across the center line as it ascends the hill before the stop.

From our de novo review of the patrol car's recording, it is apparent the recording does not show repeated weaving between boundary lines or sustained, inappropriate crossing of the center line while climbing the hill immediately prior to the stop. Rather, based on the position of the always-visible taillights, Wilkerson's driving is smooth, nondescript, and unremarkable. While Wilkerson does drive nearer the fog line as another vehicle approaches in the opposite lane, the recording does not show the truck repeatedly moving from side to side within the lane. An objective review of the totality of the circumstances requires us to find the evidence is insufficient to raise reasonable suspicion under the constitutionally-mandated test "which protects the security of one's privacy against arbitrary intrusion by the police." *Id.* at 206. Accordingly, we reverse Wilkerson's conviction and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.