

**IN THE COURT OF APPEALS OF IOWA**

No. 17-1044  
Filed April 4, 2018

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

**vs.**

**THOMAS NATHANIEL KEITH,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Bremer County, Christopher C. Foy,  
Judge.

Thomas Keith appeals from his conviction for operating while intoxicated,  
third offense. **AFFIRMED.**

Kevin D. Engels of Correll, Sheerer, Benson, Engels, Galles & Demro, PLC,  
Cedar Falls, for appellant.

Thomas J. Miller, Attorney General, and Darrel L. Mullins, Assistant  
Attorney General, for appellee.

Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ.

**DANILSON, Chief Judge.**

Thomas Keith appeals from his conviction for operating while intoxicated (OWI), third offense, a class “D” felony, in violation of Iowa Code section 321J.2 (2016). Keith maintains the district court erred in denying his motion to suppress on the basis there was no probable cause or reasonable suspicion for the traffic stop. On our review of the facts in this case, we find there was reasonable suspicion justifying the traffic stop and affirm the district court’s denial of the motion to suppress.

**I. Background Facts & Proceedings.**

At the hearing on the motion to suppress, Officer Thomas Power stated that shortly after 2:00 a.m. on November 5, 2016, he observed a truck that was traveling toward him from the opposite direction. In his opinion, the vehicle traversed the double yellow line in the middle of the road and corrected back over the white fog line on the opposite side of the road. For this reason, Officer Power was concerned the driver may be under the influence of alcohol, and he turned around and began following the truck.

A video recording taken from Officer Power’s dashboard camera captured the entire interaction. As Officer Power followed the truck and it went around an S curve, the truck’s wheels touched the inside yellow line of the road. Officer Power continued to follow the truck for a number of blocks as the truck made various turns onto different residential streets without lane markings. Eventually, the truck made a left turn and the video recording shows the truck’s wheels over the white fog line before correcting to the center of the lane. The truck’s wheels appear to touch the fog line once more before the truck made a right turn. Officer Power followed the

truck through the right turn and activated his emergency lights. Upon conducting the traffic stop, Officer Power learned Keith was the driver of the vehicle. Keith had bloodshot, watery eyes, smelled of alcoholic beverages, and failed field sobriety tests. Keith was charged with OWI, third offense.

Keith filed a motion to suppress on December 16, 2016. After a hearing held on January 23, 2017, the district court entered an order denying the motion to suppress, concluding Officer Power had reasonable suspicion to conduct the traffic stop. The court held:

Taken separately, each of the observations made by Officer Power may not have been sufficient to support his stop of [Keith]. However, when considered together, the factors noted by the officer—the time of day, the swerving of [Keith]’s vehicle, the route traveled by [Keith]—are enough to lead a reasonable person to conclude that criminal activity was occurring.

On appeal, Keith contends his OWI conviction resulting from the traffic stop should be dismissed because Officer Power had no probable cause or reasonable suspicion to stop his vehicle, violating his right to be free from unreasonable seizure. Keith maintains the district court should have granted his motion to suppress on that basis.

## **II. Standard of Review.**

We review Keith’s constitutional challenge *de novo*. *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004). “We give considerable deference to the trial court’s findings regarding the credibility of the witnesses, but are not bound by them.” *Id.*

### III. Analysis.

The United States and Iowa Constitutions provide protection from unreasonable searches and seizures. U.S. Const. amend. IV; Iowa Const. art. 1, § 8. A traffic stop constitutes a seizure. *State v. Tyler*, 830 N.W.2d 288, 292 (Iowa 2013). Thus, a traffic stop is constitutionally permissible when supported by probable cause or reasonable suspicion of a crime. *State v. McIver*, 858 N.W.2d 699, 702 (Iowa 2015).

When a person challenges a stop on the basis that reasonable suspicion did not exist, 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. “Whether reasonable suspicion exists for an investigatory stop must be determined in light of the totality of the circumstances confronting the officer, including all information available to the officer at the time the officer makes the decision to stop the vehicle.” *Id.* When a traffic stop is not justified, “all evidence flowing from it is inadmissible.” *Id.* at 206.

In *Tague*, our supreme court determined the officer did not have reasonable suspicion the driver of a vehicle was under the influence of alcohol when the tires of the vehicle “briefly crossed the left edge line” of the road and then returned to the roadway one time. *Id.* at 200. The court determined, “In reviewing the totality of the circumstances objectively, we believe that any vehicle could be subject to an isolated incident of briefly crossing an edge line of a divided roadway without giving rise to the suspicion of intoxication or fatigue.” *Id.* at 205. Keith argues Officer Power did not have reasonable suspicion to stop his vehicle under the same premise.

However, we must look to the totality of the circumstances surrounding the traffic stop. See *State v. Otto*, 566 N.W.2d 509, 511 (Iowa 1997) (“[T]he facts and circumstances of each case dictate whether or not probable cause exists to justify stopping a vehicle for investigation.”). Weaving within a lane of travel “alone does not necessarily support a reasonable suspicion to stop a vehicle, but adds to the totality of the circumstances.” *McIver*, 858 N.W.2d at 703.

Here, the video shows the right tires of Keith’s truck touched the yellow center line while driving around the S curve. After Officer Power followed Keith for a number of blocks, the left tires of Keith’s truck crossed the white fog line, after a few seconds returned to the lane, and then touched the fog line again before making a right turn. These events occurred just after 2:00 a.m., which Officer Power explained was just after the local bars closed for the night.

While the evidence is not overwhelming, it is sufficient to justify the traffic stop based on reasonable suspicion that Keith may have been driving while intoxicated.<sup>1</sup> See *State v. Tompkins*, 507 N.W.2d 736, 739-40 (Iowa Ct. App. 1993) (holding there was reasonable suspicion to conduct a traffic stop where an officer followed the defendant’s vehicle for approximately one mile and observed the car “weave from the center line to the right side boundary several times”); see also *State v. Allspach*, No. 15-0552, 2016 WL 2602655, at \*1-2 (Iowa Ct. App. Mar. 9, 2016) (concluding there was reasonable suspicion where the defendant’s weaving was not one isolated incident and the defendant’s “truck touched the fog

---

<sup>1</sup> For purposes of determining if there was sufficient evidence, we do not rely upon Officer Power’s claim that the vehicle crossed over the yellow line when the vehicle first approached him as we could not discern that action on the dashboard camera video.

line or the dash line at least five times in less than one and a half minutes”); *State v. Rohrer*, No. 10-0830, 2011 WL 646905, at \*2 (Iowa Ct. App. Feb. 23, 2011) (finding reasonable suspicion where the officer observed a vehicle parked in the street outside of a bar in the early morning hours and upon following the vehicle observed the vehicle swerving in its own lane and driving on the center and fog lines “a couple times each”); *State v. Fischels-Wordehoff*, No. 05-0762, 2006 WL 782447, at \*2 (Iowa Ct. App. Mar. 29, 2006) (concluding there was reasonable suspicion for the traffic stop where the officer observed the vehicle weave from the center line to the right side boundary line several times and drive on the white shoulder lane marker).

#### **IV. Conclusion.**

Under the circumstances of this case, we find there was sufficient evidence providing reasonable suspicion for the traffic stop, and we affirm the district court’s denial of the motion to suppress.

**AFFIRMED.**