

IN THE COURT OF APPEALS OF IOWA

No. 0-247 / 09-1246
Filed May 12, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SCOTT ALLEN HICKS,
Defendant-Appellant.

Appeal from the Iowa District Court for Jackson County, David Sivright,
Judge.

Scott Hicks appeals from his conviction and sentence for operating while
intoxicated, second offense, following the district court's denial of his motion to
suppress evidence obtained following a traffic stop. **AFFIRMED.**

David A. Lemanski, Dubuque, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney
General, and Chris Raker, County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

DANILSON, J.

Scott Hicks appeals following his conviction and sentence for operating while intoxicated, second offense, in violation of Iowa Code section 321J.2(1)(a) and 321J.2(2)(b) (2007). Hicks contends the district court erred in (1) denying his motion to suppress because the arresting officer did not have reasonable suspicion to stop his vehicle, (2) failing to find that the arresting officer violated his right to contact an attorney or family member after the stop, and (3) admitting the arresting officer's testimony regarding administration of the horizontal gaze nystagmus test. Upon our careful and thorough review of the record, we affirm. See Iowa R. App. P. 21.29(1)(a).

We conclude the officer had reasonable grounds for the stop due to Hicks's manner of travel of speeding and weaving in the roadway. The facts do not reflect a momentary weave or slight mishap as noted in *State v. Tague*, 676 N.W.2d 197, 204-05 (Iowa 2004). Although the evidence presented at the suppression hearing that the officer paced Hicks's vehicle to determine its speed may not be sufficient to convict Hicks of speeding, the evidence was sufficient to support a reasonable basis for the stop. See *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968); *State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997).

We further find that the record indicates Hicks was permitted numerous opportunities to exercise his rights under section 804.20 to contact an attorney or family member. See *Bromeland v. Iowa Dep't of Transp.*, 562 N.W.2d 624, 626 (Iowa 1997). Lastly, we conclude that Hicks's objection to the testimony regarding the officer's administration of the horizontal gaze nystagmus test was

properly overruled as his complaints go to the weight that should be afforded such evidence. See, e.g., *State v. Casady*, 491 N.W.2d 782, 785 (Iowa 1992); *State v. Gibb*, 303 N.W.2d 673, 680-82 (Iowa 1981).

We have considered the arguments raised by Hicks on appeal, and we affirm his conviction and sentence.

AFFIRMED.