

IN THE COURT OF APPEALS OF IOWA

No. 2-844 / 12-0311
Filed October 17, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARVYL JACKLE LAMBERT,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Gerald W. Magee, Judge.

Marvyl Lambert appeals her conviction of operating while intoxicated, first offense. **AFFIRMED.**

Brian R. McPhail of Gross & McPhail, Osage, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Kate Cigrand, Legal Intern, Carlyle D. Dalen, County Attorney, and Nichole Benes and Rachel Gibney, Assistant County Attorneys, for appellee.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

DOYLE, J.

Marvyl Lambert appeals following her conviction and sentence for operating while intoxicated (OWI), first offense, in violation of Iowa Code section 321J.2 (2011). She contends the district court erred in denying her motion to suppress evidence because the arresting deputy did not have reasonable suspicion to stop her vehicle. Upon our review, we affirm.

I. Background Facts and Proceedings.

During the late night hours of July 22, 2011, Cerro Gordo County Deputy Sheriff Russell Jensen was sitting in his marked squad car running radar on Thrush Avenue, a two-lane highway, about one mile south of Plymouth, Iowa. Deputy Jensen observed a vehicle travelling at “a very slow rate of speed.” He began following the vehicle. He testified at the suppression hearing:

Right as I began following the vehicle, I noticed that the vehicle slowly crossed over to the centerline of the road. As I continued to follow the vehicle, we came into Plymouth and there’s a bridge in the town of Plymouth, the vehicle started to veer towards the bridge, just touching the fog line and then right before it was—I thought it was going to hit the bridge—right before the vehicle hit the bridge, there was a violent jerk back into the road and shortly thereafter I stopped the vehicle.

After the stop, Lambert was identified as the driver. Lambert performed field sobriety tests, submitted to a preliminary breath test, and admitted to drinking. She was arrested for operating while intoxicated. Later testing confirmed Lambert’s blood alcohol content was above the legal limit.

The State filed a trial information charging Lambert with OWI, first offense. Lambert filed a motion to suppress all the evidence obtained as a result of the stop. Her motion contended Deputy Jensen did not assert Lambert violated any

traffic laws prior to the stop and she did not believe her driving was so erratic as to give rise to a reasonable suspicion that criminal activity was occurring. She asserted the stop of her vehicle was in violation of her federal and state constitutional rights. The district court denied the motion. At the time set for trial, Lambert renewed her motion to suppress and presented additional evidence in support of it. After submission of the renewed motion, a bench trial was held on the minutes of testimony. The district court denied Lambert's renewed motion to suppress and found Lambert guilty as charged.

Lambert now appeals, contending the district court erred in denying her motion to suppress.

II. Scope and Standards of Review.

Because Lambert contends the stop violated her rights under the Fourth Amendment of the United States Constitution and article I, section 8 of the Iowa Constitution, we review her claim de novo. See *State v. Fleming*, 790 N.W.2d 560, 563 (Iowa 2010). "This review requires an independent evaluation of the totality of the circumstances as shown by the entire record." *State v. Pals*, 805 N.W.2d 767, 771 (2011) (internal quotation marks and citation omitted). Although we defer to the factual findings of the district court because of its greater ability to evaluate the credibility of witnesses, we are not bound by that court's findings. *Id.*

III. Discussion.

On appeal, Lambert claims the district court erred in overruling her motion to suppress because the record does not show that Deputy Jensen had reasonable suspicion to stop the vehicle. The State must demonstrate Deputy

Jensen had a reasonable suspicion criminal activity was occurring or had occurred to justify stopping Lambert's vehicle. See *State v. Tague*, 676 N.W.2d 197, 204 (Iowa 2004). The evidence justifying a stop for reasonable suspicion does not need to rise to the level of probable cause. See *State v. Scott*, 409 N.W.2d 465, 468 (Iowa 1987). The stopping officer must have specific and articulable facts that, along with rational inferences, demonstrate that he or she reasonably believed criminal activity was occurring or imminent. *State v. Vance*, 790 N.W.2d 775, 781 (Iowa 2010). Reasonable suspicion is determined by an objective standard: whether a reasonable person would deem the officer's actions appropriate given the totality of the circumstances confronting the officer at the time of the stop. See *State v. Kreps*, 650 N.W.2d 636, 641-42 (Iowa 2002). Unparticularized suspicion is not an acceptable reason for a stop. See *id.* at 641.

While we have held that an officer's observation of a vehicle weaving within its own lane, without crossing either side boundary, may justify an investigatory stop, see *State v. Tompkins*, 507 N.W.2d 736, 740 (Iowa Ct. App. 1993); our supreme court has clarified that weaving within one's own lane does not always provide reasonable suspicion for a stop. See *State v. Otto*, 566 N.W.2d 509, 511 (Iowa 1997). "Rather, the facts and circumstances of each case dictate whether or not probable cause exists to justify stopping a vehicle for investigation." *Id.* In *Otto*, the court concluded reasonable suspicion existed in that case where the vehicle was constantly weaving within its own lane and fluctuating in speed. *Id.* at 510-11. However, our supreme court more recently found that crossing an edge line once on a divided highway without weaving,

veering, or erratic speed changes was insufficient to support an investigatory stop. *Tague*, 676 N.W.2d at 205-06. Our task is to apply the reasoning from *Tompkins*, *Otto*, and *Tague* to Deputy Jensen's stop of Lambert's car.

At the suppression hearing, Deputy Jensen testified he first noticed the car travelling at "a very slow rate of speed." He testified he believed the car was going less than forty miles per hour in a fifty-five mile per hour zone.¹ As he followed the car, he noticed it slowly crossed over to the centerline of the road. As they came into the town of Plymouth, Deputy Jensen observed the car start to veer towards the bridge, and he thought the car was going to hit the bridge. As the car touched the fog line, "there was a violent jerk back into the road." He stopped the car shortly thereafter. The deputy's testimony is consistent with his written report.

The deputy's dashboard camera was activated and the video begins at 11:13:51 p.m., sometime after the deputy started following the car, and we reviewed the video. About five seconds after the recording began, Lambert's car drifted to the right towards the bridge, and it appears the car's tires touched the fog line. A second later, the car jerked to the left, correcting its path. At 11:14:04 p.m., the car drifted to the right, and it appears the right tires of the car then began riding on the fog line. At 11:14:11 p.m., Deputy Jensen initiated the traffic stop by activating the squad car's emergency lights.

Although the deputy's characterization that Lambert's car "violently" jerked back into the road at the bridge is a bit overdramatic, the video confirms his

¹ It was not disputed at trial that the speed limit at the location was actually forty-five miles per hour.

observations of erratic driving, including that the car came close to hitting the bridge. This is not a case of a single instance of touching or crossing a fog line. There were multiple indicators of Lambert's intoxication that justified the stop. Upon our review of the record and applicable case law, we conclude the totality of the circumstances supported a reasonable suspicion that criminal activity had occurred or was occurring.² Accordingly, we affirm the district court's denial of Lambert's motion to suppress.

IV. Conclusion.

Because we conclude the totality of the circumstances supported a reasonable suspicion that criminal activity had occurred or was occurring, we affirm the district court's denial of Lambert's motion to suppress, as well as Lambert's conviction and sentence for operating while intoxicated, first offense.

AFFIRMED.

² In reaching our conclusion, we do not take into account any events that occurred after the deputy initiated the stop.