

IN THE COURT OF APPEALS OF IOWA

No. 6-1067 / 06-0519
Filed February 28, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

STEVEN JAMES HILL,
Defendant-Appellant.

Appeal from the Iowa District Court for Bremer County, Peter B. Newell,
District Associate Judge.

Steven James Hill appeals from the judgment and sentence entered
finding him guilty of third-offense operating while intoxicated. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, Kasey E. Wadding, County Attorney, and Bryan Barker, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

Stephen James Hill was driving in the right lane of Highway 218 when he noticed emergency vehicles with flashing lights parked on the right side of the highway. He remained in the right lane as he drove past them, forcing officers to dive towards a ditch to avoid him.

One of the officers got into his vehicle, pursued Hill, and pulled him over for failing to yield to emergency vehicles. Upon approaching Hill, the officer noticed signs of intoxication. Hill was administered field sobriety tests and a preliminary breath test. He failed these tests and was placed under arrest. A subsequent breath test revealed alcohol content of .146.

The State charged Hill with operating a motor vehicle while intoxicated (third offense) and driving with a revoked license. Iowa Code §§ 321J.2, .21 (2005). Hill moved to suppress evidence relating to these crimes on the ground that "[t]he traffic stop was not supported by a reasonable suspicion of criminal activity." After a hearing, the district court made the following findings:

The testimony of Trooper Souhrada and Deputy Hoff is that the Defendant had an opportunity to move into the left lane but did not do so, nor did the Defendant slow down to a proper or safe speed. The Defendant did not move to the center of the righthand lane, but rather drove right upon the farthest right portion of the righthand lane, either on or over the fog line. The Defendant drove so close to the squad cars that the officers feared for their lives and ran for cover.

Based on these findings, the court concluded Hill "clearly violated" Iowa Code section 321.323A, a traffic law requiring drivers to yield to emergency vehicles with flashing lights.¹ The court denied the suppression motion, citing an established

¹ Iowa Code section 321.323A(1) states:

principle that a traffic violation, however minor, generates probable cause for a vehicle stop. See *State v. Mitchell*, 498 N.W.2d 691, 693 (Iowa 1993).

In light of this ruling, Hill agreed to a trial on the minutes of testimony. The district court found him guilty as charged and imposed sentence.

On appeal, Hill challenges (1) the suppression ruling and (2) the district court's failure to "give [him] a favorable inference due to the State's failure to produce a videotape of the incident."

I. In arguing for reversal of the suppression ruling, Hill points to inconsistencies between the officers' testimony and his own on the question of whether he could have changed lanes. The district court resolved these inconsistencies in favor of the State, rejecting Hill's testimony that it was unsafe for him to change lanes. Although we are obligated to "make an independent evaluation of the totality of the circumstances as shown by the entire record," we may defer to the district court's fact findings, given that court's opportunity to evaluate witness credibility. *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). See also *State v. Lane*, 726 N.W.2d 371, 377 (Iowa 2007). The court's fact finding on the lane-change question finds ample support in the record. We defer to it. *Cf. State v. Tague*, 676 N.W.2d 197, 203 (Iowa 2004)(stating "Tague's single incident of crossing the edge line for a brief moment...did not give the

The operator of a motor vehicle approaching a stationary authorized emergency vehicle that is displaying flashing yellow, amber, white, red, or red and blue lights shall approach the authorized emergency vehicle with due caution and shall proceed in one of the following manners, absent any other direction by a peace officer:

a. Make a lane change into a lane not adjacent to the authorized emergency vehicle if possible in the existing safety and traffic conditions.

b. If a lane change under paragraph "a" would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

police probable cause to stop Tague for a traffic violation.”). Like the district court, we conclude the officers had probable cause to stop Hill’s vehicle based on his violation of Iowa Code section 321.323A. We affirm the court’s denial of his motion to suppress.

//. Hill’s second argument was not preserved for review. *State v. Manna*, 534 N.W.2d 642, 644 (Iowa 1995) (holding that where district court fails to rule on issue properly raised in motion to suppress there is nothing to review and error is not preserved).

AFFIRMED.