

**IN THE COURT OF APPEALS OF IOWA**

No. 0-958 / 10-0830  
Filed February 23, 2011

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

**vs.**

**KEVIN DONALD ROHRER,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Tama County, Marsha M. Beckelman (motion to suppress), Nancy A. Baumgartner (trial), and Mitchell E. Turner (sentencing), Judges.

Kevin Rohrer appeals his conviction for operating while intoxicated, second offense. **AFFIRMED.**

Jerald W. Kinnamon and J. Dean Keegan, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Darrell Mullins, Assistant Attorney General, and Brent D. Heeren, County Attorney, for appellee.

Considered by Mansfield, P.J., Danilson, J., and Huitink, S.J.\* Tabor, J., takes no part.

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**MANSFIELD, P.J.**

Kevin Rohrer appeals from the judgment and sentence entered following a stipulated bench trial finding him guilty of operating while intoxicated, second offense. See Iowa Code § 321J.2 (2009). Rohrer contends the district court erred in denying his motion to suppress because the officer who stopped his vehicle did not have reasonable grounds to do so. After reviewing both the suppression hearing transcript and the DVD taken from the officer's patrol car, we affirm.

**I. Background Facts and Proceedings**

Tama County Deputy Sheriff David Rangel was the sole witness at the suppression hearing. He testified that on Saturday, June 27, 2009, at around 2:00 a.m., he was driving eastbound on Highway 96 near Gladbrook. His attention was drawn to a white pickup truck being driven in front of him. According to Deputy Rangel, the truck was "hitting the fog line, coming back over to the left, hitting the center line, coming back onto its lane. In other words, what I would call swerving within your own lane." Deputy Rangel followed the truck for the next one to two miles observing the truck hit the fog line and center line "[a] couple times each." Based upon his observations, Deputy Rangel activated his top lights and stopped the truck.

Because Deputy Rangel activated his lights, the thirty seconds of video recording that had just elapsed before the activation were saved by the patrol car's recording system. The DVD during those thirty seconds shows the truck drift onto the white fog line once before gradually returning to the center of the

lane. According to Deputy Rangel, what was captured on the video was typical of the driving he had observed. Other than the driver's veering onto the fog and center lines, Deputy Rangel conceded the driver was not speeding or violating any other traffic laws.

After initiating the stop, Officer Rangel identified the driver of the vehicle as Rohrer. As Deputy Rangel spoke with Rohrer, he detected the odor of an alcoholic beverage. Rohrer eventually admitted he had been drinking. Rohrer then failed three standardized field sobriety tests and a preliminary breath test and was placed under arrest. Rohrer was transported to the Tama County Sheriff's Office where he was read the implied consent advisory and consented to a breath test. The test indicated his blood alcohol concentration was .139.

On August 6, 2009, the State filed a trial information charging Rohrer with operating while intoxicated, second offense. Rohrer pled not guilty. On September 29, 2009, Rohrer filed a motion to suppress claiming the stop of his vehicle was without reasonable and articulable grounds in violation of the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Iowa Constitution. Based on the record described above, the district court denied the motion, determining the stop was justified.

Rohrer subsequently waived his right to a jury trial and agreed to a stipulated bench trial on the minutes of testimony. The district court found Rohrer guilty of operating while intoxicated, second offense. Rohrer now appeals, arguing the district court erred in denying his motion to suppress.

## II. Standard of Review

We review an alleged violation of a constitutional right de novo. *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004). In doing so, we make an independent evaluation of the totality of the circumstances as shown by the entire record. *Id.* We give deference to the district court's findings of fact due to its opportunity to assess the credibility of the witnesses, but we are not bound by them. *Id.*

In addition, although Rohrer invokes both the federal and the state constitutional prohibitions against unreasonable searches and seizures, see U.S. Const. amend. IV; Iowa Const. art. I, § 8, he has not argued that the interpretation of the two provisions should differ. We will construe them together. *State v. Jones*, 666 N.W.2d 142, 145 (Iowa 2003).

## III. Analysis

The law is well-settled as to when an officer may stop a vehicle to investigate possible intoxication:

[T]he police need only have reasonable suspicion, not probable cause, to believe criminal activity has occurred or is occurring. 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. Mere suspicion, curiosity, or hunch of criminal activity is not enough. Whether reasonable suspicion exists for an investigatory stop must be determined in light 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.

*Tague*, 676 N.W.2d at 204 (citations omitted). When a stop is not justified, “all evidence flowing from it is inadmissible.” *Id.* at 206.

In this case, it is undisputed that Rohrer remained within his own lane of traffic. Iowa's courts have had several opportunities to evaluate whether an officer's observations of a vehicle "weaving within its own lane of traffic" can give rise to reasonable suspicion that a driver was operating while intoxicated. *Compare id.* at 204–05 (concluding officer lacked reasonable suspicion to stop driver when officer observed the vehicle's "left tires barely cross[] the edge line once for a very brief period"), *with State v. Otto*, 566 N.W.2d 509, 511 (Iowa 1997) (determining officer had reasonable suspicion to stop driver who was weaving constantly for almost four miles, veering left and right at sharp angle, fluctuating speed, and closely following the car in front of her); *State v. Tompkins*, 507 N.W.2d 736, 739–40 (Iowa Ct. App. 1993) (listing multiple cases from other jurisdictions and finding officer had reasonable suspicion after observing the vehicle weaving from the center line to the boundary line, but never crossing them, three to six times).

Based on our de novo review of the evidence, we conclude the facts and circumstances in this case justified the stop. Deputy Rangel first noticed Rohrer's vehicle because it was "swerving within [its] own lane." However, additional facts reflect that Rohrer was driving his vehicle in a manner that cannot be simply described as swerving in his own lane of travel. After Deputy Rangel's initial observations, Deputy Rangel proceeded to follow Rohrer for one to two miles where he saw Rohrer drive on the center and fog lines "a couple times each." Deputy Rangel's observations are confirmed and supported by the video recording showing Rohrer drifting and then driving directly on the fog line for a

period of time before returning to the middle of the lane. In addition, the officer encountered Rohrer at about 2:00 a.m. This is a time when people are often returning home from a bar. See *State v. Kreps*, 650 N.W.2d 636, 647 (Iowa 2002) (noting that late-night activity, when combined with other specific and articulable facts, may be a factor giving rise to reasonable suspicion that criminal activity was afoot).

For the foregoing reasons, we uphold the district court's denial of Rohrer's motion to suppress.

**AFFIRMED.**