

IN THE COURT OF APPEALS OF IOWA

FILED

JAN 29 1985

CLERK SUPREME COURT

RONALD JAMES MILOTA,

)

Petitioner-Appellant,

)

Filed January 29, 1985

vs.

)

4-474
84-180

DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION,

)

Respondent-Appellee.

)

Appeal from the Iowa District Court for Linn County - Vern L. Robinson,
Judge.

Petitioner appeals from the district court decision affirming Respondent
Department of Transportation's revocation of his driver's license. AFFIRMED.

Gary T. Shea, of Shea Law Offices, Cedar Rapids, for petitioner-appellant.

Thomas J. Miller, Attorney General and Craig Gregersen, Assistant Attorney
General, for respondent-appellee.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

Milota was arrested for operating a motor vehicle while intoxicated. He submitted to a blood test which determined that his blood alcohol content was .231%. The Department of Transportation notified him his driving privileges would be revoked for 240 days.

Milota was subsequently charged with driving in violation of §321.281, the Code. Milota filed a motion to suppress the blood test, contending that there was no probable cause to stop Milota's vehicle. The district court found there was no probable cause to stop the vehicle and sustained the motion and dismissed the charge.

A hearing was then held on Milota's drivers license revocation. The only issue raised by Milota at the hearing was the validity of the stop and the effect of the court's determination in the criminal proceeding. The hearing officer concluded they were not bound by the district court's finding of lack of probable cause to stop Milota's vehicle. The hearing officer further found that there had been reasonable cause to stop Milota's vehicle. Milota's license was revoked. On appeal the district court affirmed the agency's decision. Milota appeals contending the Department of Transportation is estopped from relitigating the issue of lack of probable cause to stop Milota's vehicle because of the decision by the district court in the criminal cause. Milota further contends that the determination made by the hearing officer that the police officer had probable cause to stop the vehicle is not supported by the evidence.

L.

Milota contends that the finding in the criminal cause of lack of probable cause by the stopping officer is binding on the Department of Transportation and that the department is estopped from relitigating the issue in this cause. We disagree.

In Carroll v. Ia. Dept. of Pub. Safety, 231 N.W.2d 19, 21 (Iowa 1975) the Iowa Supreme Court said in ordering the revocation of the license of a motorist acquitted on a charge of OMVUI:

"The criminal, judicial prosecution for driving while under the influence of intoxicants and the civil, administrative proceedings for license revocation are separate and distinct; the outcome of the criminal prosecution does not affect the civil proceedings. When a motorist appeals to district court from a license revocation in the administrative proceedings, the case is tried anew upon the transcript from the Department of Public Safety and such additional evidence as the parties may introduce; the burden of proof rests on the motorist; to prevail he must establish his case by a preponderance of the evidence. . ."

The criminal prosecution and the civil action for license revocation are two separate and distinct actions. They proceed independently of one another and the outcome of one is of no consequence to the other. Acquittal of the criminal charge of operating a motor vehicle while intoxicated does not preclude the State from revoking the drivers license of the person so acquitted. See Severson v. Suppel, 260 Iowa 1169, 1176 152 N.W.2d 281 (1967). The outcome of any criminal prosecution is of no consequence in a civil drivers license revocation hearing even if they arise out of the same motor vehicle operation. Shellady v. Sellers, 208 N.W.2d 12, 14 (Iowa 1973).

We hold that the trial court here was correct in affirming the agency's finding that the Department of Transportation was not bound by the trial court's finding of lack of probable cause.

II.

Milota next contends that the determination made by the hearing officer that the police officer had reasonable cause to stop his car is not supported by the evidence. Judicial review of the Department of Transportation decision is restricted to a determination of whether the agency action violates one of the seven criteria of §17A.19(8), The Code. Schmitt v. Ia. Dept. of Social Services, 263 N.W.2d 739, 743 (Iowa 1978). When the agency action complained of is a decision

in a contested case proceeding, as is the case here 17A.2(2), 17A.18(3), the standard of review is whether "substantial rights of the petitioner have been prejudiced because the agency action is: . . . (f) In a contested case unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole . . ." 317A.19(8)(f).

The officer who stopped Milota testified that his attention was first drawn to the Milota vehicle because the feet of the passenger in the car were sticking out the window. After noticing the vehicle he pulled behind it. Milota's vehicle was north bound. The officer observed Milota's vehicle being driven erratically and specifically noted the vehicle to be weaving back and forth inside its own lane, but utilizing the whole lane, back and forth. The officer further testified that the vehicle didn't completely cross the center line, but touched upon the center line and also on the other line that divided the two north bound lanes. The officer described the vehicle as having sort of an "S" pattern within its own lane of traffic.

Erratic driving such as weaving across the center line of the street is sufficient to justify an officer in stopping a vehicle and conducting an investigation. Saunders v. Commission of Public Safety, 226 N.W.2d 19, 21 (Iowa 1975). Erratic driving in an "S" pattern, touching the center line and the other line that divided the two north bound lanes is sufficient to justify an officer stopping the vehicle and conducting an investigation. See Shellady v. Sellers, 208 N.W.2d 12, 14 (Iowa 1973). The decision of the hearing officer that the police officer had probable cause to stop Milota's vehicle is supported by substantial evidence.

AFFIRMED.