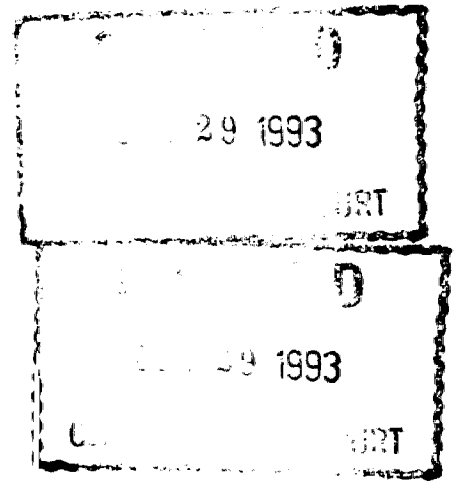


IN THE COURT OF APPEALS OF IOWA

No. 3-188 / 92-1210

000789



STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMIE LYNN JACOBSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County,
Steven P. Van Marel, Judge.

Jacobson appeals from her conviction following a jury
trial of operating while intoxicated, second offense, in
violation of Iowa Code section 321J.2 (1991). **AFFIRMED.**

Douglas Cook of Brekken, Deppe & Wynia, P.C., Jewell,
for appellant.

Bonnie J. Campbell, Attorney General, Amy M. Anderson,
Assistant Attorney General, Mary Richards, County Attorney,
and Michael J. Houchins, Assistant County Attorney, for
appellee.

Heard by Oxberger, C.J., and Donielson, J., and
McCartney, S.J.*

*Senior Judge from the 2nd Judicial District serving on
this court by order of the Iowa Supreme Court.

OXBERGER, C.J. 000700

At approximately 2:00 a.m. on February 23, 1992, Jamie Jacobson stopped at a stop sign and then made a left-hand turn. According to Story City police officer Donovan Hocking, Jacobson accelerated through the turn at a high rate of speed, causing her car to fishtail and her tires to squeal and throw gravel. Officer Hocking pulled behind Jacobson and activated his overhead emergency lights. He testified he was stopping Jacobson for nuisance driving and he had no other reason for stopping Jacobson at that point.

Officer Hocking followed Jacobson for approximately one-half mile before she stopped. He paced Jacobson as driving forty-five-miles-per-hour in a twenty-five-miles-per-hour zone and observed her drift onto the shoulder. He continually tried to get Jacobson to stop, including leaving his red overhead lights on, flashing his headlights, and honking his horn.

Officer Hocking called in Jacobson's driver's license number and talked to her about her driving. He saw her eyes were bloodshot, her speech was slurred, and noticed an odor of alcohol on her breath. He testified he "decided to do an OWI stop," which meant he decided to administer a preliminary breath test and field sobriety tests. She failed field sobriety tests and had a breath test of .167.

Jacobson filed a motion to suppress on the grounds the officer did not have reasonable grounds to stop her car and a motion to dismiss the nuisance charge. After a combined

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hearing, the district court held the nuisance driving ordinance was unconstitutional in that it purported to make general negligence a crime. The court dismissed the nuisance driving charge but denied the motion to suppress. The court found Jacobson's driving was erratic enough to provide Officer Hocking with specific and articulable cause to reasonably believe criminal activity was afoot.

A jury found Jacobson guilty of OWI, second offense. The district court entered judgment and sentence. Jacobson appeals.

The fighting issue in this case is whether Officer Hocking had reasonable cause to stop Jacobson. The governing constitutional principles are well-settled. An officer must have reasonable cause to stop a vehicle. State v. Cooley, 229 N.W.2d 755, 759 (Iowa 1975). In order to establish reasonable cause, the State must show the officer had specific and articulable cause to support a reasonable belief that criminal activity may have occurred. State v. Aschenbrenner, 289 N.W.2d 618, 619 (Iowa 1980). Officers are bound by their true reason for making the stop and may not rely on reasons they could have had but did not actually have. Id. However, the record must disclose objective facts available to the officer to justify the stop under the circumstances. State v. Wullner, 401 N.W.2d 214, 218 (Iowa 1986). The test is not the officer's subjective theory. Id.

Officer Hocking testified Jacobson's conduct was as follows:

She drove northbound, stopped at the stop sign -- Market and Broad -- There was another car that was westbound on Broad Street that passed in front of her; and as she moved from [the] stop sign onto Broad turning left, she accelerated at a high rate of speed, spun gravel, and squealed her tires coming around, making a left-hand turn.

Officer Hocking also testified Jacobson's vehicle fishtailed.

We do not reach the question of the constitutionality of the Story County nuisance driving statute. Based on Officer Hocking's testimony, we conclude the objective facts available to the Officer provided a reasonable basis to justify the stop. Jacobson's acceleration at a high rate of speed, throwing gravel, squealing her tires and fish-tailing were the objective reasons given for the stop. The underlying subjective theory need not be addressed. We affirm the district court.

AFFIRMED.