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2012 IL App (3d) 110239-U

Order filed August 8, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 12th Judicial Circuit,
)	Will County, Illinois
Plaintiff-Appellant,)	
)	Appeal No. 3-11-0239
v.)	Circuit No. 10-DT-1375
)	
BENJAMIN T. JOHNSON,)	
)	Honorable
Defendant-Appellee.)	Joseph C. Polito
)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Presiding Justice Schmidt specially concurred.

ORDER

¶ 1 *Held:* Following a traffic stop for improper lane usage, defendant was issued two citations for driving under the influence of alcohol. 625 ILCS 5/11-501(a)(1), (a)(2) (West 2010)). The circuit court granted defendant's motion to suppress based on the holding in *People v. Hackett*, 406 Ill. App. 3d 209 (2010). We reverse and remand.

¶ 2 The State charged defendant, Benjamin Johnson, with two alternative counts of driving under the influence. 625 ILCS 5/11-501(a)(1), (a)(2) (West 2010). Defendant filed a motion to

suppress evidence arguing the police officer lacked a reasonable, articulable suspicion to stop defendant based on the holding in *People v. Hackett*, 406 Ill. App. 3d 209 (2010). The court allowed defendant's motion. On appeal, the State argues defendant's crossing over the lane dividing line on three separate occasions without any apparent reason provided a reasonable, articulable suspicion for the officer to stop defendant's vehicle for further investigation. We reverse and remand.

¶ 3

FACTS

¶ 4 On August 14, 2010, defendant received two citations for driving under the influence. 625 ILCS 5/11-501(a)(1), (a)(2) (West 2010). Defendant filed a motion to suppress alleging the police officer lacked a reasonable, articulable suspicion to effectuate a traffic stop.

¶ 5 On March 8, 2011, the trial court conducted a hearing on defendant's motion to suppress. Defendant testified and denied leaving his lane of travel for any reason before a police officer stopped his vehicle shortly after 4:00 a.m., near Romeoville, Illinois. In addition, defendant advised the court that after merging onto I-55, he was driving in the center lane the entire distance, for approximately seven or eight minutes, traveling southbound at 65 miles per hour, until he was stopped by the arresting officer near mile marker 254.

¶ 6 The State called Trooper Alexander Pinto to establish the foundation for the admission of the videotape of the traffic encounter for the court's consideration and review. The officer indicated the in-dash video camera was activated approximately 30 seconds before he initiated his oscillating lights to stop defendant's vehicle. The officer stated that before activating his video camera, he observed defendant's vehicle veer into the right lane from the center lane "with both passenger side wheels." Consequently, the officer began to observe the defendant's vehicle

more closely, and witnessed defendant move outside his lane of travel two additional times within the distance of one mile, while defendant drove 65 miles per hour. Pinto stated there were no obstructions in the roadway that morning, but noted that it was raining.

¶ 7 During questioning from the court, the officer clarified the area on I-55 where he observed the lane violations has three southbound lanes. The officer also explained defendant's first lane violation involved defendant crossing the dividing line by "half a foot" with both passenger side wheels for "a couple seconds" and occurred before the video camera was activated. The second violation the officer witnessed involved defendant crossing the dividing line with both passenger side wheels by "less than half a foot" for another "couple seconds." After observing defendant cross the dividing line for a third time, this time by a "couple inches," Pinto activated his lights and stopped defendant's vehicle.

¶ 8 The court also reviewed the videotape in open court and allowed the attorneys to comment on the tape as it was published for the court. After receiving arguments from the parties, the court reluctantly followed the decision of *People v. Hackett* and indicated that until the supreme court announced the outcome of the State's petition for leave to appeal in *Hackett*, the trial court was obligated to follow the Third District's decision in that case. The court granted defendant's motion to suppress.

¶ 9 ANALYSIS

¶ 10 The State appeals the trial court's ruling on the motion to suppress on the grounds the officer did in fact have a reasonable, articulable suspicion to stop defendant. When reviewing a circuit court's decision on a motion to suppress, we grant great deference to the court's findings of historical fact and will not disturb those findings unless they are against the manifest weight of

the evidence. *Hackett*, 2012 IL 111781, at ¶ 18. However, the case law allows this court to examine the facts, and assess those findings of fact as they relate to the legal issues presented by the case, and then review the court's ultimate ruling on the motion *de novo*. *Hackett*, 2012 IL 111781, at ¶ 18.

¶ 11 In this case, the court found that the evidence established Trooper Pinto stopped defendant after observing defendant's vehicle cross the boundaries of the center lane on three separate occasions within a distance of one mile on the interstate. Section 11-709(a) of the Illinois Vehicle Code states: "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." 625 ILCS 5/11-709(a) (West 2010).

¶ 12 In *Hackett*, the decision the trial court relied upon in this case, the officer observed the defendant's passenger side tires " 'slightly' " or " 'barely' " cross over the black-and-white striped dividing line twice before performing a traffic stop. *Hackett*, 406 Ill. App. 3d at 211. Based on those circumstances, the majority in *Hackett* determined "the facts and circumstances surrounding the traffic stop did not provide a reasonable, articulable suspicion to stop defendant based on [the officer's] stated reason of a violation of section 11-709(a)." *Hackett*, 406 Ill. App. 3d at 215. The majority concluded section 11-709(a) makes a driver's lane deviation unlawful only when "the driver of the vehicle actually drives for some reasonably appreciable distance in more than one lane of traffic." *Hackett*, 406 Ill. App. 3d at 214. Ultimately, this court held that the officer in *Hackett* "lacked probable cause to stop a defendant for a violation of section 11-709(a)" based on the decision of *People v. Smith*, 172 Ill. 2d 289 (1996). *Hackett*, 406 Ill. App. 3d at 215.

¶ 13 Our supreme court granted leave to appeal in *Hackett* and reversed the majority's decision. Our supreme court noted in their unanimous decision, as follows:

"though traffic stops are frequently supported by 'probable cause' to believe that a traffic violation has occurred, as differentiated from the 'less exacting' standard of 'reasonable, articulable suspicion' that justifies an 'investigatory stop,' the latter will suffice for purposes of the fourth amendment irrespective of whether the stop is supported by probable cause." *Hackett*, 2012 IL 111781, at ¶ 20.

Our supreme court went on to hold "the distance a motorist travels while violating the proscription of section 11-709(a) is not a dispositive factor in the applicable analysis. *Hackett*, 2012 IL 111781, at ¶ 26. In addition, our supreme court clarified that section 11-709(a) contains two components: (1) the driver must have deviated from his or her established lane; and (2) it must have been practicable for the driver to remain in that lane. *Hackett*, 2012 IL 111781, at

¶ 27. The court also provided instructive guidance by stating:

"Where, as here, a police officer observes multiple lane deviations, for no obvious reason, an investigatory stop is proper. For probable cause and conviction, there must be something more: *affirmative* testimony that defendant deviated from his proper lane of travel *and* that no road conditions necessitated the movement. An investigatory stop in this situation allows the officer to inquire further into the reason for the lane deviation, either by inquiry of the driver or verification of the condition of the roadway where the deviation occurred." (Emphasis in original). *Hackett*, 2012 IL 111781, at ¶ 28.

After applying the law to the facts in *Hackett*, our supreme court reversed this court's *Hackett*

decision, and remanded the case to the circuit court for further proceedings. *Hackett*, 2012 IL 111781, at ¶ 31.

¶ 14 Similar to the circumstances considered by our supreme court in *Hackett*, the officer in this case testified he observed defendant's vehicle cross over the line dividing the center traffic lane, which was defendant's established lane of travel, on three separate instances for no apparent reason since there were no obstructions on the roadway. Applying the principles of our supreme court's *Hackett* decision to the facts of this case, it is clear to this court that this officer had a reasonable, articulable suspicion to justify an investigatory stop for a possible violation of section 11-709(a).

¶ 15 For the foregoing reasons, we hold the circuit court erred when it granted defendant's motion to suppress.

¶ 16 **CONCLUSION**

¶ 17 The judgment of the circuit court of Will County is reversed and the cause is remanded for further proceedings.

¶ 18 Reversed and remanded.

2012 IL App (3d) 110239-U, *People v. Benjamin T. Johnson*

¶ 19 PRESIDING JUSTICE SCHMIDT, specially concurring:

¶ 20 I concur in the judgment.