

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (3d) 110852-U

Order filed July 25, 2012

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT  
A.D., 2012

---

CITY OF PEKIN,	)	Appeal from the Circuit Court
	)	of the 10 <sup>th</sup> Judicial Circuit,
Plaintiff-Appellant,	)	Tazewell County, Illinois,
	)	
v.	)	Appeal No. 3-11-0852
	)	Circuit No. 11-DT-320
TIMOTHY A. HUNTER	)	
	)	Honorable
Defendant-Appellee.	)	Lisa Wilson,
	)	Judge, Presiding.

---

JUSTICE McDADE delivered the judgment of the court.  
Justices Carter and Lytton concurred in the judgment.

---

**ORDER**

¶ 1 *Held:* Where a police officer observes multiple lane deviations, for no obvious reason, an investigatory stop is proper.

¶ 2 Defendant, Timothy A. Hunter, was charged in the circuit court of Tazewell County with driving under the influence (DUI) (625 ILCS 5/11-501 (West 2010)). Defendant filed a motion to quash arrest and suppress evidence, arguing that “the arresting officer had no reasonable

grounds nor articulable facts to believe that defendant was committing or had committed an offense at the time defendant was driving a motor vehicle.” After a hearing, the trial court granted defendant’s motion. We now reverse the judgment of the trial court and remand the matter for further proceedings.

¶ 3

### FACTS

¶ 4 At the hearing on defendant’s motion to suppress, the City of Pekin (the City) called Officer Nathan Ujinski to testify. Ujinski, a Pekin police officer for seven years was the only witness called. He testified that on June 22, 2011, at approximately 1:18 a.m., he was parked in a parking lot when he observed a Ford SUV (the vehicle) – which he later determined was driven by defendant – rapidly accelerate through a nearby intersection. Ujinski began to follow the vehicle.

¶ 5 Ujinski described the road way as having two driving lanes running north and south and one center lane for left turns. As the vehicle was heading south, Ujinski observed it swerve towards the left turn lane, with both left tires subsequently going over the line dividing the southbound driving lane and the center turn lane. The vehicle then swerved back into the southbound driving lane. Defendant did not activate his turn signal while swerving into the center turn lane. Ujinski observed the vehicle make the same deviations on two more occasions. Ujinski also observed the vehicle swerving within the southbound driving lane itself. After witnessing these deviations, Ujinski activated his lights and stopped the vehicle. Ujinski testified the basis for the traffic stop was defendant’s failure to activate his turn signal when breaching the dividing line and temporarily moving into the center turn lane. Defendant was cited for failure to signal a lane change and also driving under the influence.

¶6 Ujinski could not recall how far the vehicle’s left tires had traveled into the center turn lane; however, he testified that the vehicle did not travel completely into the center turn lane. Ujinski was also unsure about the exact amount of time the vehicle’s tires were over the dividing line; however, he testified that it was not a long period of time.

¶7 Defendant argued that Ujinski’s decision to stop his vehicle was unreasonable where defendant only momentarily crossed the dividing line. Counsel noted that no pedestrians were present at the time of the incident. Counsel also noted that swerving within an individual lane does not constitute a traffic violation.

¶8 The City in turn argued that a vehicle’s breaching of a highway/road dividing line constitutes a lane usage violation, which is sufficient to justify an investigative stop. The City also asserted that the “investigative stop” was valid due to defendant’s failure to activate his turn signal when breaching the dividing line and temporarily moving into the center turn lane.

¶9 Relying upon our decision in *People v. Hackett*, 406 Ill. App. 3d 209 (2010), the trial court granted defendant’s motion to quash arrest and suppress evidence. At the time of the trial court’s decision, the supreme court had granted leave to appeal in *Hackett*.

¶10 ANALYSIS

¶11 The sole issue on appeal is whether Ujinski had a “reasonable articulable suspicion” to justify the investigative stop of defendant’s vehicle. While we acknowledge the parties’ briefs were submitted prior to the supreme court’s decision in *Hackett*, we find the holding in *Hackett* dispositive. The *Hackett* court expressly held that multiple lane deviations justify an investigative stop. *Hackett*, 2012 IL 111781 at 28.

¶12 The defendant in *Hackett* was stopped for improper lane usage (625 ILCS 5/11-709(a))

West 2010)). Ultimately, the defendant was charged with aggravated driving under the influence of alcohol (625 ILCS 5/11-501(a)(2), (d)(1)(A) (West 2010)) and aggravated driving while license revoked (625 ILCS 5/6-303(d-3) (West 2010)). The trial court granted the defendant's motion to quash and suppress because the deputy testified that defendant's vehicle's passenger-side tires "barely" or "slightly" crossed from the left lane into the right lane on two occasions and that "those momentary crossings" did not provide reasonable grounds to make the stop. *Hackett*, 2012 IL 111781 at 12-14. The appellate court affirmed, holding that for a driver to violate the improper lane usage statute, he or she must drive "for some reasonably appreciable distance in more than one lane of traffic." *Hackett*, 2012 IL 111781 at 26.

¶ 13 In rejecting the appellate court's position, the supreme court found that there is no distance requirement imposed by section 11-709(a). *Hackett*, 2012 IL 111781 at 26. The court went on to hold that an officer has a "reasonable articulable suspicion" to effect an investigatory stop where he observes a driver breach a highway/road dividing line on multiple occasions. *Hackett*, 2012 IL 111781 at 28. Specifically, the court stated:

"[A] traffic stop may be justified on something less than probable cause. A police officer can effect a lawful *Terry*[/investigatory] stop without first 'considering whether the circumstances he or she observed would satisfy each element of a particular offense.' [Citation.] *Where, as here, a police officer observes multiple lane deviations, for no obvious reason, an investigatory stop is proper.*" (Emphasis added.) *Hackett*, 2012 IL 111781 at 28.

¶ 14 The court went on to clarify, however, that an officer’s observation of a driver’s deviation from his established lane of travel does not automatically establish probable cause to *arrest* for a violation of section 11-709(a). *Hackett*, 2012 IL 111781 at 27. It must also be established that it was “practicable” for the driver to remain in his lane. *Hackett*, 2012 IL 111781 at 27. Specifically, the court stated:

“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.

¶ 15 Thus, the supreme court has made clear: Where a police officer observes multiple lane deviations, for no obvious reason, an investigatory stop is proper. *Hackett*, 2012 IL 111781 at 28. During this stop the officer can investigate further into the reason for the deviations. *Hackett*, 2012 IL 111781 at 28. If, upon investigation, the officer develops *probable cause* that a crime has in fact been committed the officer may then arrest the individual. *Hackett*, 2012 IL 111781 at 28.

¶ 16 The issue before us is not whether Ujinski had probable cause to arrest defendant. Instead, the issue is whether Ujinski had a “reasonable articulable suspicion” to justify the investigative stop of defendant’s vehicle. Upon review, we find the record reveals specific and

articulable facts which, taken together with rational inferences from those facts, reasonably warrant the investigative stop. See *Hackett*, 2012 IL 111781 at 20. Initially, Ujinski observed defendant accelerate through an intersection. Ujinski then observed the left tires of defendant's vehicle go over the line dividing the southbound driving lane and the center turn lane on three separate occasions. Defendant failed to activate his turn signal on each occasion. Ujinski also observed defendant swerving within the southbound driving lane itself. The investigative stop of defendant's vehicle was valid.

¶ 17 The fact that defendant in the instant case was initially cited for failure to signal a lane change (625 ILCS 5/11-804(d) (West 2010)) and the defendant in *Hackett* was cited for improper lane usage (625 ILCS 5/11-709(a) West 2010)) is of no consequence. It is the actions or conduct of the individual that serve to formulate the basis for the investigative stop. Both defendants engaged in multiple lane deviations. Thus, the officers in both cases, at a minimum, were justified in conducting an investigatory stop of the defendants' vehicles. See *Hackett*, 2012 IL 111781 at 31.

¶ 18 For the foregoing reasons, we reverse the judgment of the trial court and remand the matter for further proceedings.

¶ 19 Reversed and remanded.