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2013 IL App (3d) 110740-UB

Order filed March 4, 2013
Modified Upon Denial of Rehearing March 22, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Plaintiff-Appellant,	)	Grundy County, Illinois,
)	
v.	)	Appeal Nos. 3-11-0740, 3-11-0741
	)	Circuit No. 11-CF-42
NATHAN BENAVIDEZ,)	
	)	Honorable
Defendant-Appellee.	)	Robert C. Marsaglia,
	)	Judge Presiding.

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Plaintiff-Appellant,	)	Grundy County, Illinois,
)	
v.	)	Appeal No. 3-11-0740, 3-11-0741
	)	Circuit No. 11-CF-42
APRIL WILLIAMS,)	
	)	Honorable
Defendant-Appellee.	)	Robert C. Marsaglia,
	)	Judge Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment of the court.

ORDER

¶ 1 *Held:* Following a traffic stop for improper lane usage, defendants were charged with unlawful possession of a controlled substance with intent to deliver and unlawful possession of a controlled substance. The circuit court granted defendants' motions to suppress. We reverse and remand.

¶ 2 The State charged defendants, Nathan Benavidez (Benavidez) and April Williams (Williams), with unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(c)(1) (West 2008); 730 ILCS 5/5-5-3(c)(2)(D) (West 2008)) and unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2008)). Defendants individually filed motions to quash arrest and suppress evidence arguing the police officer lacked a reasonable, articulable suspicion that a traffic violation had occurred and unreasonably prolonged the traffic stop. The court allowed defendants' motions on the grounds that the officer did not have a reasonable, articulable suspicion to stop the Impala based on recent case law from our court. On appeal, the State argues the officer's observations of the Impala before the stop provided a reasonable, articulable suspicion supporting the traffic stop. We reverse and remand.

¶ 3 **FACTS**

¶ 4 On April 6, 2011, the State indicted defendants, charging them with unlawful possession of a controlled substance with the intent to deliver (Class X felony) (720 ILCS 570/401(a)(1)(A) (West 2008)) and unlawful possession of a controlled substance (Class 1 felony) (720 ILCS 570/402(a)(1)(A) (West 2008)). On May 5, 2011, Benavidez filed a motion to suppress arguing the officer lacked a reasonable, articulable suspicion to effectuate a traffic stop and lacked probable cause to further prolong the stop.

¶ 5 On June 1, 2011, the State charged defendants, by superceding indictment, with unlawful

possession of controlled substance with the intent to deliver (Class 1 felony) (720 ILCS 570/401(c)(1) (West 2008); 730 ILCS 5/5-5-3(c)(2)(D) (West 2008)) and unlawful possession of a controlled substance (Class 4 felony) (720 ILCS 570/402(c) (West 2008)). On June 22, 2011, Williams also filed a motion to suppress arguing the officer lacked a reasonable, articulable suspicion to conduct a traffic stop and lacked probable cause to further prolong the stop.

¶ 6 Over the course of three separate days, the court conducted a hearing on defendants' motions to suppress. On July 15, 2011, August 4, 2011, and September 20, 2011, Illinois State Police trooper Matthew Matos testified before the court. Matos testified he was on duty on March 15, 2011, around 6:30 p.m., as a drug interdiction officer. Matos observed a 2011 Chevy Impala traveling westbound on I-80, after seeing it enter I-80 from I-55 in Will County. The Impala caught his attention because it had Iowa rental plates and was heading westbound.

¶ 7 Matos clocked the Impala at 70 m.p.h. in a posted 65 m.p.h. zone, and attempted to effectuate a traffic stop for speeding when the vehicle "ditched" him in a rest area. After losing the Impala in the rest stop, Matos continued westbound and then turned eastbound to assist Illinois State Police trooper Chad Martinez, who was conducting a traffic stop on another vehicle.

¶ 8 After assisting Martinez, Matos headed westbound on I-80, where he saw the Impala for a second time and observed the driver of the Impala travel over the right fog line twice near "milepost 112 ½" for "probably no more than two seconds" each time. Matos testified he could "see a space between the right tires and the left [*sic*] fog line." Matos was 100 to 300 feet from the Impala, with a clear line of sight, and did not notice any obstructions in the roadway or other vehicles which would have caused Williams to drive over the right fog line.

¶ 9 Matos stopped the Impala for the improper lane usage by activating his overhead lights which initiated the squad car's video recording equipment. After the Impala stopped, Matos approached the passenger side and requested identification from the three occupants. According to Matos, Williams was the driver, Benavidez was in the rear left passenger seat, and a third occupant was in the front passenger's seat.

¶ 10 When Matos explained to Williams why he pulled her over, Williams admitted to being distracted by her cell phone, causing her to drive over the fog line. Trooper Martinez arrived on the scene with his canine. After the canine alerted to the driver's side door and the trunk of the Impala, the officers searched the vehicle and the occupants. The officers discovered narcotics on each of the defendants, but did not locate narcotics in the Impala.

¶ 11 After arguments by the parties, the trial court explained that under *People v. Hackett* (406 Ill. App. 3d 209 (2010)) and even “before *People v. Hackett*, this is not a good stop.” The court found there was “not reasonable suspicion or probable cause to think the offense of improper lane usage had occurred.” The court emphasized Matos did not have articulable suspicion to stop the Impala and granted defendants' motions to suppress, but the court went on to state “that if [Matos] had had a good stop I would have denied the motion for a bunch of complicated reasons.”

¶ 12 The court filed a written order on September 21, 2011 granting defendants' motions “based on the trooper not having articulable basis to pull over the vehicle.” On October 5, 2011, the State filed a certificate of impairment and notice of appeal. This court consolidated the cases for purposes of appeal on January 27, 2012.

¶ 13

ANALYSIS

¶ 14 The State appeals the trial court's ruling that the officer did not have a reasonable, articulable suspicion to stop Williams for improper lane usage. When reviewing a trial court's ruling on a motion to suppress, we defer to the trial court's findings of fact, unless they are against the manifest weight of the evidence. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). However, *de novo* review is appropriate for the ultimate determination of whether the evidence should be suppressed. *Id.*

¶ 15 The United States Constitution and Illinois Constitution guarantee citizens the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. The driver of a vehicle, and any passengers, are subjected to a lawful seizure when a police officer initiates a traffic stop based on probable cause. *People v. Baldwin*, 388 Ill. App. 3d 1028, 1031 (2009). An officer may conduct a brief, investigatory stop of a person where the officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. *People v. Hackett*, 2012 IL 111781, ¶ 20. “The officer's belief ‘need not rise to the level of suspicion required for probable cause.’ ” *Id.*

¶ 16 In this case, Matos testified he stopped Williams for improper lane usage. Section 11-709(a) of the Illinois Vehicle Codes 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).

¶ 17 Recently, in *People v. Hackett*, our supreme court clarified that section 11-709(a) contains two components: (1) the driver must have deviated from his established lane; and (2) it must have been practicable for the driver to remain in that lane. *Hackett*, 2012 IL 111781, ¶ 27. The supreme court 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, ¶ 28.

¶ 18 Similar to the circumstances considered by our supreme court in *Hackett*, Matos testified he observed the Impala, driven by Williams, cross over the right fog line on two separate instances for no apparent reason. After the stop, Williams acknowledged she had been distracted by her cell phone, causing her to cross over the right fog line.

¶ 19 The parties now agree our supreme court’s decision in *Hackett* controls the outcome of the first issue raised in this appeal. Applying the principles of our supreme court's *Hackett* decision to the facts in this case, it is clear trooper Matos had a reasonable, articulable suspicion to justify an investigatory stop for a possible violation of section 11-709(a).

¶ 20 For the foregoing reasons, we conclude the traffic stop in this case was supported by an articulable basis arising out of the officer's observations, prior to activating his overhead lights, of separate acts of crossing the right fog line without justification. The circuit court's order granting defendants motion to suppress on the grounds that the stop was not proper is reversed. Since this court sits as a court of review and does not rule on issues not decided by the trial court

(*People v. Rowland*, 223 N.E.2d 113, 114 (1967)), the matter is remanded for the trial court to consider the additional issues, including that of whether the stop was unduly prolonged, raised in defendants' respective motions to suppress and in this appeal which the court did not reach.

¶ 21

CONCLUSION

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

¶ 23 Reversed and remanded.