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2013 IL App (3d) 120209-U

Order filed April 1, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois,
Plaintiff-Appellant,)	
v.)	Appeal No. 3-12-0209
)	Circuit No. 11-DT-616
SARAH BACHTIGER,)	Honorable
Defendant-Appellee.)	Richard D. McCoy, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice s Lytton and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court erred in rescinding the summary suspension of the defendant's driver's license because the arresting officer had reasonable suspicion to stop the defendant.
- ¶ 2 The defendant, Sarah Bachtiger, was charged with driving under the influence (DUI) (625 ILCS 5/11-501(a)(1) and (2) (West 2010)) and served with a statutory summary suspension (625 ILCS 5/11-501.1 (West 2010)). The defendant filed a motion to quash arrest and suppress

evidence. After conducting a hearing, the circuit court granted the defendant's motion. The circuit court subsequently granted the defendant's motion to rescind the summary suspension based upon the evidence presented at the hearing on the defendant's motion to quash. The State appeals.

¶ 3

FACTS

¶ 4 On December 28, 2011, the defendant was stopped by East Peoria police officer Patrick Patterson and ticketed for DUI. According to Officer Patterson's police report, the defendant was stopped for a lane violation. She had red, glassy eyes, an uneven gait, smelled of an alcoholic beverage, and showed signs of impairment on all standard field sobriety tests. The report also stated that the defendant admitted to consuming alcohol.

¶ 5 The defendant filed a motion to quash arrest and suppress evidence, and the matter proceeded to a hearing. During the hearing, Officer Patterson testified that he was patrolling a section of I-74 at 3:55 a.m. on the morning of the incident when he observed the defendant traveling eastbound in the left-hand lane. The defendant was weaving slowly within her lane in a regular, "serpentine" motion. The defendant's vehicle continued to weave within her lane for approximately one-eighth of a mile. Officer Patterson then observed both of the tires on the driver's side of the defendant's vehicle cross the yellow lane line which divided the left-hand eastbound lane from the median. The defendant's vehicle crossed the yellow line by approximately six inches for approximately two seconds. The crossing was "noticeable." Officer Patterson did not observe any pedestrians, animals, or other obstructions in the road that would have required the defendant to travel outside of her lane. He testified that he stopped the defendant solely for the lane violation.

¶ 6 The defendant argued that the circuit court should grant her motion to quash and suppress evidence because Officer Patterson lacked probable cause or a reasonable suspicion to stop the defendant. In making this argument, the defendant relied heavily on *People v. Hackett*, 406 Ill. App. 3d 209 (2008), in which a divided panel of our appellate court held that an arresting officer did not have probable cause or a reasonable suspicion to stop a motorist for a possible lane violation where the "defendant's tires only slightly crossed the lane divider for mere seconds." *Id.* at 215. The State attempted to distinguish *Hackett* and argued that Officer Patterson's observations of the defendant's driving prior to the stop provided him with a reasonable suspicion to stop the defendant.

¶ 7 After considering Officer Patterson's testimony and the arguments of the parties, the circuit court granted the defendant's motion. The court reasoned that it was "duty bound to follow" *Hackett*, which, the court found, "clearly leads to a conclusion that the Motion has to be granted." The circuit court then rescinded the defendant's summary suspension based upon the evidence and argument presented at the hearing on the defendant's motion to quash and suppress evidence. The State appeals the circuit court's rescission of summary suspension.

¶ 8 ANALYSIS

¶ 9 On appeal, the State argues that the circuit court erred in rescinding the defendant's summary suspension because Officer Patterson had reasonable suspicion to stop the defendant. We agree.¹

¹ The defendant has not filed an appellee's brief, but we reach the merits of the case because the record is simple, the case is not complex, and we can easily decide the matter without the aid of an appellee's brief. See *People v. Dovgan*, 2011 IL App (3d) 100664, ¶ 10.

¶ 10 When reviewing a circuit court's decision on a petition to rescind or 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. *People v. Hackett*, 2012 IL 111781, ¶ 18; *People v. Flint*, 2012 IL App (3d) 110165, ¶ 12. However, we are free to undertake our own assessment of the facts as they relate to the legal issues presented by the case, and, therefore, we review the circuit court's ultimate ruling on the motion under the *de novo* standard. *Hackett*, 2012 IL 111781, ¶ 18; *Flint*, 2012 IL App (3d) 110165, ¶ 12.

¶ 11 Vehicle stops are subject to the fourth amendment's reasonableness requirement. *Whren v. United States*, 517 U.S. 806, 810 (1996); *Hackett*, 2012 IL 111781, ¶ 20. Under this standard, a vehicle stop is permissible if the arresting officer has a "reasonable, articulable suspicion" that justifies an investigative stop. *Hackett*, 2012 IL 111781, ¶ 12. A police officer may lawfully stop a vehicle if he has a reasonable, articulable suspicion that the vehicle has deviated from its established lane, in possible violation of section 11-709(a) of the Illinois Vehicle Code (Code). 625 ILCS 5/11-709(a) (West 2010).²

² Section 11-709(a) provides that "[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)). A police officer has a reasonable, articulable suspicion that this statute has been violated (thereby justifying an investigatory stop) when he observes a motorist deviate from his lane for no obvious reason. *Hackett*, 2012 IL 111781, ¶ 28. However, to establish probable cause or to convict the defendant of violating section 11-709(a), the State must provide "affirmative testimony that [the] defendant deviated from his proper lane of travel *and* that no road conditions

¶ 12 Here, the evidence clearly shows that Officer Patterson had a reasonable suspicion to stop the defendant. The officer testified that he saw the tires on the driver's side of the defendant's vehicle cross the yellow line which divided the eastbound lane from the median for approximately two seconds. He did not observe any pedestrians, animals, or other obstructions in the road that would have required the defendant to travel outside of her lane. This testimony, standing alone, was sufficient to justify an investigative stop for a possible violation of section 11-709(a). See *Hackett*, 2012 IL 111781, ¶ 28; *Flint*, 2012 IL App (3d) 110165, ¶¶ 8, 17 (police officer's testimony that he observed defendant's vehicle cross over the center line into the oncoming lane of traffic for "possibly a few seconds" established a reasonable, articulable suspicion to justify an investigatory stop for a possible violation of section 11-709(a)). Indeed, Officer Hackett's testimony was sufficient to establish probable cause, which is a more exacting standard than the reasonable suspicion standard which governs here. *Hackett*, 2012 IL 111781, ¶ 28.

¶ 13 The circuit court reached the opposite conclusion because it was bound to follow our appellate court's decision in *Hackett*, 406 Ill. App. 3d 209. As noted, in *Hackett*, a divided panel of this court held that a stop was not supported by probable cause or reasonable suspicion that section 11-709(a) had been violated where "defendant's tires only slightly crossed the lane divider for mere seconds." *Id.* at 215. However, *Hackett* has since been reversed by our supreme court and is no longer good law.

¶ 14 Moreover, in addition to the possible violation of section 11-709(a), there were other facts that justified an investigatory stop in this case. Officer Patterson testified that, before he

necessitated the movement." *Id.*

saw the defendant's vehicle cross the yellow line, he observed the defendant weaving within her lane in a regular, serpentine fashion. The defendant continued to weave within her lane for approximately one-eighth of a mile. These facts could support a reasonable, articulable suspicion that the defendant was driving under the influence, thereby providing an additional justification for an investigatory stop. See, e.g., *People v. Greco*, 336 Ill. App. 3d 253, 258-59 (2003); see also *People v. Decker*, 181 Ill. App. 3d 427, 430 (1989) ("[e]rratic driving, such as weaving across a roadway *or even weaving within a lane*, may provide a sufficient basis for an investigative stop of a motor vehicle.") (Emphasis added.) Although the circuit court was not required to credit this testimony because the summary suspension form did not include any reference to the defendant's weaving within her own lane (*Decker*, 181 Ill. App. 3d at 430), there is no indication that the circuit court found Officer Patterson's testimony lacking in credibility. In addition, Officer Patterson's testimony that the defendant was weaving within her own lane could justify his stopping the defendant even though he testified that he stopped her solely on the basis of the subsequent lane violation. See, e.g., *Hackett*, 2012 IL 111781, ¶ 29 ("In judging a police officer's conduct, we apply an objective standard, considering whether the facts available to the officer at the moment of the seizure justify the action taken."); *People v. Thompson*, 283 Ill. App. 3d 796, 798 (1996) ("The constitutional reasonableness of a traffic stop does not depend on the actual motivations of the police officers involved."). What matters is whether the facts observed by Patterson would have provided a police officer with a reasonable, articulable suspicion justifying an investigatory stop, not whether Patterson actually subjectively relied upon those facts in deciding to stop the defendant.

¶ 15 For the foregoing reasons, we hold that the circuit court erred when it ruled that Officer Patterson lacked a reasonable suspicion to stop the defendant. Because the court's decision to grant the defendant's petition to rescind statutory summary suspension was predicated on that erroneous ruling, we hold that the court erred when it granted the defendant's petition to rescind statutory summary suspension.

CONCLUSION

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

¶ 17 Reversed and remanded.