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2015 IL App (3d) 130914-U

Order filed February 13, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellant,	)	
	)	Appeal No. 3-13-0914
v.	)	Circuit Nos. 12-DT-1634, 12-TR-
	)	103586, and 13-CM-75
	)	
PHILIP F. REITZ,	)	Honorable
	)	David M. Carlson,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justice O'Brien concurred in the judgment.  
Justice Wright dissented.

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**ORDER**

¶ 1 *Held:* The trial court did not err in granting defendant's motion to suppress evidence.

¶ 2 The State appeals from the trial court's order granting defendant's motion to quash arrest and suppress evidence. On appeal, the State argues that the trial court erred when it held that the arresting officer did not have reasonable, articulable suspicion to stop defendant's vehicle for improper lane usage. We affirm.

¶ 3

## FACTS

¶ 4

Following a traffic stop, defendant, Philip F. Reitz, was cited for driving under the influence (DUI) (625 ILCS 11-501(a)(2) (West 2012)) and improper lane usage (625 ILCS 5/11-709 (West 2012)). Defendant was later charged by information with unlawful possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2012)).

¶ 5

Defendant filed a motion to quash arrest and suppress evidence. At the hearing on the motion, defendant called Mokena police officer Joseph Ballantine to testify. Ballantine stated that on December 6, 2012, he was dressed in full uniform and driving an unmarked patrol car. At approximately 1:15 a.m., Ballantine was in a left turn lane on 191st Street, waiting to turn into Mindy's restaurant. Ballantine described 191st Street as a four-lane road that runs east and west with a center turn lane. The turn lane for Mindy's restaurant was 50 to 100 feet west of the turn lane for LaGrange Road. While waiting to turn, Ballantine observed defendant's vehicle move from the eastbound lane of 191st Street into the center turn lane. Defendant approached Ballantine's position at a high rate of speed, nearly collided with Ballantine's patrol car, and swerved back onto 191st Street. Thereafter, defendant's vehicle veered into the left turn lane for LaGrange Road. At the time, no other traffic was close enough to cause an accident.

¶ 6

As defendant passed, Ballantine turned on his overhead lights and pursued defendant into the LaGrange Road turn lane. At the time, the traffic light was red, and Ballantine pulled behind defendant. When the light turned green, defendant began to move forward until Ballantine blew his air horn and flashed his spotlight at defendant's vehicle. Defendant stopped, Ballantine approached the vehicle, and defendant was later arrested for DUI.

¶ 7

On cross-examination, Ballantine stated that he initiated the traffic stop because defendant was driving in an unsafe manner. Specifically, Ballantine said defendant had made an

unsafe lane change, came close to striking Ballantine's vehicle, followed too closely, committed improper lane usage, and did not signal before turning back into traffic. Ballantine could not remember if defendant had used his turn signal at the time he entered the turn lane for Mindy's restaurant. Ballantine only remembered defendant's headlights approaching at a high rate of speed.

¶ 8 Defendant testified that on December 6, 2012, at approximately 1:10 a.m., he left his friend's house in Mokena and drove east on 191st Street toward LaGrange Road. Defendant was not exceeding the speed limit as he drove down the street. As he approached Mindy's restaurant, defendant put on his left turn signal and began to pull into the center turn lane. However, defendant realized he was turning into the wrong lane and moved back into the eastbound lane of 191st Street. Defendant then pulled into the left turn lane to drive north on LaGrange Road. While waiting to turn, defendant observed a police car behind him with its overhead lights turned on. When the light turned green, defendant drove forward, thinking that the police car was stopping the vehicle in front of him. The officer activated his horn, and defendant stopped his vehicle. Defendant was later arrested for DUI.

¶ 9 On cross-examination, defendant stated that he initially moved into the turn lane for Mindy's restaurant because he thought he was turning into the left turn lane for LaGrange Road. However, when defendant saw a car in the turn lane, he moved back into the eastbound lane of 191st Street and drove to the next turn lane for LaGrange Road. Only the left wheels of defendant's vehicle crossed into the turn lane for Mindy's restaurant before he signaled and moved his vehicle back into the eastbound lane of 191st Street.

¶ 10 The trial court stated "there has to be a reasonable and articulable suspicion of some sort of violation of the law" to justify the stop, and noted the State argued two violations, improper

lane usage and failure to reduce speed or traveling too fast for conditions. Defendant was not cited for any speed violation, and the court found that there was not reasonable, articulable suspicion to stop defendant for any speeding violation.

¶ 11 Regarding the lane violation, the court found that defendant's vehicle moved into the turn lane for Mindy's restaurant where Ballantine's patrol car was waiting to turn left. Defendant went around a stopped vehicle in the turn lane, but there was no evidence of how close defendant's vehicle came to the patrol car. The evidence did not indicate that any other cars were forced to make an evasive maneuver to avoid defendant. The court found that defendant's movement from one lane of traffic into another was not a lane usage violation. The court also found that defendant had not committed any other offenses when he did not immediately stop his vehicle after Ballantine had pulled behind him with his overhead lights activated. The court granted defendant's motion to quash arrest and suppress evidence.

¶ 12 The State filed a motion to reconsider, which the court denied, and the State appeals.

¶ 13 ANALYSIS

¶ 14 The State argues that the trial court erred when it held that Ballantine did not have reasonable, articulable suspicion to stop defendant's vehicle for improper lane usage. Defendant did not file an appellee's brief; however, because the record is simple and the claimed error is such that we can reach a decision without the aid of an appellee's brief, we shall do so. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976); *People v. Johns*, 153 Ill. 2d 436, 441 (1992).

¶ 15 In reviewing a trial court's ruling on a motion to suppress evidence, the trial court's findings of fact and credibility determinations are accorded great deference and will not be reversed unless they are against the manifest weight of the evidence. *People v. Haleas*, 404 Ill.

App. 3d 668, 672 (2010). The trial court's legal ruling as to whether suppression is warranted is reviewed *de novo*. *People v. Hackett*, 2012 IL 111781, ¶ 18.

¶ 16 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, ¶ 20. For example, an officer may lawfully stop a vehicle if the officer 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 2012); see also *Hackett*, 2012 IL 111781, ¶ 28 (where a police officer observes multiple lane deviations, for no obvious reason, an investigatory stop is proper). In this situation, an investigatory stop allows the officer to inquire further into the reason for the lane deviation. *Hackett*, 2012 IL 111781, ¶ 28. However, for probable cause and conviction, there must be more—*i.e.*, affirmative testimony that defendant deviated from his lane of travel and no road conditions necessitated the movement. *Id.*

¶ 17 In the instant case, Ballantine did not possess reasonable articulable suspicion of a lane usage violation sufficient to stop defendant's vehicle. Section 11-709(a) of the Code requires 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 2012).

¶ 18 The evidence established that defendant deviated into the center turn lane near Mindy's restaurant, but then moved back into the eastbound lane of 191st Street. Defendant explained that he initially moved into the turn lane by Mindy's restaurant because he thought he was getting

into the turn lane for LaGrange Road. When he realized his mistake, he moved back into the eastbound lane of 191st Street and drove to the LaGrange Road turn lane. The trial court implicitly found defendant's explanation for the temporary lane change credible and stated that defendant's actions did not cause any other vehicle to take an evasive action. We find no error in the trial court's factual conclusion. As a result, Ballantine did not have reasonable, articulable suspicion of a lane usage violation to initiate a traffic stop. The trial court did not err in granting defendant's motion to quash arrest and suppress evidence.

¶ 19 CONCLUSION

¶ 20 The judgment of the circuit court of Will County is affirmed.

¶ 21 Affirmed.

¶ 22 JUSTICE WRIGHT, dissenting.

¶ 23 I respectfully dissent. This court has determined that the Illinois Vehicle Code requires a driver to use “an appropriate signal” before a driver “changes lanes.” People v. Tramble, 2012 IL App (3d) 110867, ¶ 14.

¶ 24 In this case, the officer testified that defendant did not signal at least one lane change, which gives rise to an articulable basis to perform the traffic stop. I would reverse the trial court’s decision quashing the arrest and suppressing the evidence.