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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of De Kalb County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	Nos. 13-CM-1591
	)	13-DT-445
	)	13-TR-13494
	)	
JASON WITMER,	)	Honorable
	)	Robert P. Pilmer,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Hutchinson and Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in suppressing evidence against defendant where police officer's stop of defendant was based on defendant purportedly disobeying one of two conflicting traffic control signals.

¶ 2 I. INTRODUCTION

¶ 3 The State appeals a pre-trial order of the circuit court of De Kalb County granting a motion to suppress evidence made by defendant, Jason Witmer. For the reasons that follow, we affirm.

¶ 4 The facts of this case are rather straight forward. On October 12, 2013, defendant was arrested for a number offenses, including driving under the influence. The purported basis for the stop was defendant's failure to stop at a stop sign. Defendant filed a motion to quash his arrest and suppress evidence, challenging the basis of the seizure.

¶ 5 At the evidentiary hearing on defendant's motion, defendant first called Trooper Erin Anderson, of the Illinois State Police. At approximately 6 p.m., she was on duty, stationed at a toll plaza for an exit from I-88 at Annie Glidden Road. Another state trooper, Trooper Gunderson, was also present. They were on foot. There are two lanes at this toll plaza. One for motorists with an I-Pass transponder only, and the other is for motorists using cash. The I-Pass lane was closed (the Troopers closed it when they arrived), and the Troopers were standing next to the cash lane. The cash lane accepted I-Pass as well.

¶ 6 Anderson agreed that the I-Pass system includes a signal to an approaching motorist that tells them that they may proceed. Specifically, there is a light that tells the motorist "thank you." The light would activate at about the time when the motorist pulls even with the "cash box." At the Annie Glidden toll plaza, there is also a stop sign on the cash lane. The stop sign is "pretty much right next to" the cash box. Defendant approached the toll plaza and slowed "[m]aybe a little bit," "but he never stopped." Anderson could not recall whether the "light went off" as defendant approached the toll plaza.

¶ 7 On cross-examination, Anderson testified that despite the light going off, "there's still a stop sign there." Further, while there is a sign that says 15 miles an hour for I-Pass, there is also a sign that says "all vehicles" under the stop sign. On redirect, she stated that she did not believe that a stop line had been painted in the toll lane.

¶ 8 Defendant next called Jonathan Bingham. He testified that he was riding with defendant. They were on their way to work. As they approached the Annie Glidden toll plaza, Bingham noted that the I-Pass only lane was blocked. In the cash lane, Bingham noted a stop sign to the right of the lane. There were no lines painted in the lane to indicate where you were supposed to stop. They pulled up, paused, an officer shined a flashlight at them, the light turned green, and they proceeded. The officer ran after them shouting “stop.” They stopped. Bingham did not see defendant violate any traffic laws.

¶ 9 The State recalled Anderson. She testified that she normally writes in her report if there is a passenger in a vehicle. Moreover, at one point, due to subsequent developments, she searched the vehicle. She stated that at that point, she would have directed people to exit the vehicle. She only recalled one person exiting. Further, she had the vehicle towed, and if there had been another person present, she would have released it to him.

¶ 10 On rebuttal, Bingham testified that after the stop, the officers told him he was free to go. He walked to a nearby motel and called for a ride. Defendant’s brother came and picked him up.

¶ 11 The trial court granted defendant’s motion. It first found that defendant was travelling on a toll road with a functional I-Pass transponder. He exited at the Annie Glidden toll plaza. The I-Pass lane was operable, but Anderson and Gunderson shut it down. In the cash lane, there was both a red-and-green-light-signal system and a stop sign. Anderson testified defendant failed to come to a complete stop. The trial court took judicial notice of how the I-Pass system operates. As defendant’s vehicle “proceeded through the lane with the cash box, the \*\*\* toll was paid and the light turned from red to green.” Defendant then proceeded on without coming to a complete stop. Anderson yelled for defendant to stop, and he complied. The court noted that while the signal light is red as a car approaches, it will turn to green without requiring a complete stop. It

then found that “the green light is an indication that the vehicle may proceed through the toll plaza at that lane.” It noted that this was “in conflict with the positioning of a stop sign to the right of [the] cash box.” It reiterated, “[T]he use of the green light when there’s a stop sign is somewhat contradictory.” Under such circumstances, the trial court found that there were “no specific articulable facts of a traffic violation which would justify the stop of the defendant’s vehicle.” It therefore granted defendant’s motion.

¶ 12 Here, the facts are not in dispute in any material sense; accordingly, our review is *de novo*. *People v. James*, 365 Ill. App. 3d 847, 850 (2006). The outcome of this case turns on whether defendant had to stop for the stop sign despite receiving a contradictory signal from the I-Pass system directing him to proceed. It is true that a violation of a traffic statute or ordinance is a sufficient basis to justify a seizure. *People v. Jones*, 215 Ill. 2d 261, 270-71 (2005).

¶ 13 The State asserts that the stop of defendant was justified based on a violation of section 11-1204 of the Illinois Vehicle Code (625 ILCS 5/11-1204 (West 2012)). That section provides, in pertinent part, as follows:

“Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle and every motorman of a streetcar approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.” 625 ILCS 5/11-1204(b) (West 2012).

The entirety of the State's reasoning is that there was a clearly labeled stop sign at the toll plaza, and Anderson testified that defendant did not stop. The State does not address the plain language of the statute.

¶ 14 Of course, if it is clear, we are bound by the language of a statute. *People v. Hari*, 218 Ill. 2d 275, 292 (2006). The prefatory phrase, "Except when directed to proceed by a police officer *or traffic control signal*" (emphasis added), would seem to negate the requirement that a motorist stop for a stop sign when directed otherwise by a traffic control signal, such as the I-Pass system's light system that directs a motorist to proceed when it recognizes that the toll has been paid. As the appellant, the State bore the burden on appeal of establishing error. See *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1173 (2008). As the State has provided no analysis of this apparently-dispositive language, it has not carried its burden on appeal. Moreover, particularly given the fact that a penal statute must be construed in favor of the accused (*People v. Perry*, 224 Ill. 2d 312, 333 (2007)), it does not appear to us that the State could construct an argument that would overcome the effect of the prefatory phrase.

¶ 15 In light of the foregoing, we affirm the judgment of the circuit court of De Kalb County.

¶ 16 Affirmed.