2018 IL App (2d) 170883-U
No. 2-17-0883
Order filed December 20, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. MICHAEL PIEPENBRINK, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Kane County. No. 16-CF-1869 Honorable Donald M. Tegeler, Jr., Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted defendant's petition to rescind and motion to quash and suppress: the court was entitled to find that defendant did not come to an abrupt stop, there were no lane markings where defendant might have gone outside his lane, and defendant's mere touching of the fog line did not constitute a lane deviation.

¶ 2 In this appeal, the State seeks review of an order of the circuit court of Kane County (1) granting defendant Michael Piepenbrink's petition to rescind the statutory summary suspension of his driving privileges and (2) granting defendant's motion to quash his arrest and

suppress evidence obtained during the course of a traffic stop that led to his arrest for driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(1) (West 2016)). We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was arrested on October 29, 2016. The arresting officer prepared a Law Enforcement Sworn Report stating that defendant refused to submit to chemical testing of the alcohol content of his blood, breath, or urine. The Office of the Secretary of State confirmed the statutory summary suspension of defendant's driving privileges, to take effect on December 14, 2016. On November 7, 2016, defendant filed his petition to rescind the statutory summary suspension, alleging, *inter alia*, that the arresting officer did not have reasonable grounds to believe that defendant had committed a traffic offense. On March 14, 2017, defendant filed his motion to quash his arrest and to suppress evidence.

¶ 5 At a joint hearing on the petition to rescind and the motion to quash and suppress, defendant testified that on October 29, 2016, at about 12:30 or 12:45 a.m., he was driving south on Route 31. The road consisted of one lane in each direction. Defendant came around a curve and saw a police car's emergency lights. The police car was stopped in the southbound lane. Defendant applied his brakes when he was "probably within the [*sic*] hundred yards" of the police car. Defendant "creeped [*sic*] forward," drove around the police car, and returned to the southbound lane. Asked how close he "ever got around to the [police] car," defendant responded, "Ten yards as [*sic*] a creep." Defendant was driving at a speed of 10 to 15 miles per hour when he went around the police car.

¶ 6 The police car followed defendant, and defendant saw its emergency lights flashing. Defendant pulled over and a police officer approached him. As a result of his encounter with the officer, defendant was arrested for DUI.

¶ 7 South Elgin police officer Brian Kmieciak testified for the State that, around 12:30 to 12:45 a.m. on October 29, 2016, he was conducting a traffic stop on Route 31, north of McLean Boulevard. The overhead lights on his vehicle were on. As Kmieciak was completing the traffic stop, he checked his side mirrors and saw a vehicle approaching. It did not appear to be slowing down. The vehicle—a pickup truck—came to a fast stop about 1 to 1½ car lengths behind Kmieciak's vehicle and then slowly went around Kmieciak's vehicle. Kmieciak followed the truck and observed it make a wide left turn. Kmieciak testified that he saw the truck "almost go off the roadway touching the fog line." Kmieciak then activated his emergency lights and conducted a traffic stop. Defendant was driving the truck.

¶ 8 Kmieciak's vehicle was equipped with a video camera, and a recording from the camera was played in court and admitted into evidence. Due to the position of the camera, the recording does not show the truck approaching Kmieciak's vehicle from the rear. The truck is first seen as it drives around the front of Kmieciak's vehicle. Kmieciak stopped defendant's truck after it drove through the intersection of Route 31 and McLean Boulevard. The roadway north of the intersection curves to left.

¶ 9 The trial court concluded that Kmieciak lacked a reasonable suspicion to conduct the traffic stop. The court stated:

> "[T]he first thing I see in the video is the Defendant's truck going around the squad car. You cannot see anything that happened prior to that.
>
> I have testimony from the Defendant that he slowed down as he approached, he left his lane to go around the squad car, and then went back to his lane. I have testimony of the police officer that his car came up at a very fast way, stopped ***, and then it went around. It appears to this Court that the actions of the Defendant are more closely related

> to the Defendant's testimony in this case, and that is based upon what I can see of the car. The car is going by at a speed that does not appear that the car has stopped suddenly, it stopped and tried to get up to speed. It was a consistent speed that I saw, it was slower than what you would expect on that road for the speed limit, and the *** car was maneuvering in such a way that it was quite clear of the squad car, it went past around the squad car, a reasonable distance."

¶ 10 The trial court noted that defendant's truck might not have been "in the complete lane." However, the trial court explained that "there are no lane markings to delineate what is and is not the lane at that point." The court added, "There's no question in my mind that the car very briefly touches the fog line or the white line with a tire." The court noted that the tire did not completely go over the line. The court concluded that the fact that defendant's truck briefly touched the fog line was not grounds for a traffic stop where the truck was going around a curve at night in poor visibility. After the court granted defendant's motion to quash and suppress and his petition to rescind, the State filed a timely notice of appeal.

¶ 11 II. ANALYSIS

¶ 12 Before proceeding, we note that defendant has moved to add an appendix to his brief. Defendant indicates that the appendix was inadvertently omitted. We grant the motion and turn now to the merits of the State's appeal.

¶ 13 Section 11-501.1 of the Illinois Vehicle Code (Code) (625 ILCS5/11-501.1 (West 2016)), which is commonly known as the "implied consent law," provides that a motorist operating a vehicle on a public highway in Illinois is deemed to have consented that, if arrested for DUI, he or she will submit to chemical testing to determine his or her blood alcohol level. If the motorist refuses to undergo testing, or submits to testing that reveals a blood alcohol level of 0.08 or

more, his or her driving privileges will be summarily suspended. However, the motorist is entitled to rescission of the suspension if it resulted from an unconstitutional seizure of the motorist. See *People v. Crocker*, 267 Ill. App. 3d 343, 345 (1994).

¶ 14 On review of the trial court's ruling on a petition to rescind a statutory summary suspension, the trial court's findings of fact will not be disturbed unless they are against the manifest weight of the evidence. *People v. Rush*, 319 Ill. App. 3d 34, 38 (2001). However, the trial court's ultimate conclusion as to the legality of the seizure is reviewed *de novo*. *Id.* at 38-39. The same standard of review applies to the trial court's ruling on a motion to quash an arrest and suppress evidence. *Id.*

¶ 15 In *People v. Hackett*, 2012 IL 111781, ¶ 20, our supreme court offered the following summary of the principles governing the constitutionality of traffic stops:

> "Vehicle stops are subject to the fourth amendment's reasonableness requirement. [Citations.] ' "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." ' [Citation.] However, as this court has observed, though traffic stops are frequently supported by 'probable cause' to believe that a traffic violation has occurred, as differentiated from the 'less exacting' standard of 'reasonable, articulable suspicion' that justifies an 'investigative stop,' the latter will suffice for purposes of the fourth amendment irrespective of whether the stop is supported by probable cause. [Citations.] A police 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. [Citation.] The officer's belief 'need not rise to the level of suspicion required for probable cause.' [Citation.] The distinction

between these two standards may or may not be relevant, depending upon the facts of the case under consideration and the Vehicle Code provision at issue."

¶ 16 According to the State, Kmieciak's testimony that defendant's truck came to an abrupt stop a short distance behind his own vehicle established that Kmieciak had a reasonable suspicion that defendant was under the influence of alcohol. However, the trial court credited defendant's testimony that he was probably "within the [*sic*] hundred yards" of Kmieciak's vehicle when he began to apply his brakes and that he did not slam on his brakes. The trial court found that defendant's testimony was consistent with the video recording from Kmieciak's vehicle. Based on the speed of defendant's truck when he drove it around Kmieciak's vehicle, the trial court remarked that it did not appear that the truck had stopped suddenly and "tried to get up to speed." The State contends that "no one could determine whether there was an abrupt stop by watching defendant's truck go by the squad car." According to the State, "[the] truck could have easily accelerated to between five and ten miles per hour from a stop, even if it was only one car length behind [Kmieciak's] squad."

¶ 17 As noted, we will not disturb the trial court's findings of fact unless they are against the manifest weight of the evidence. "A trial court's finding is against the manifest weight of the evidence only if it is unreasonable, arbitrary, and not based on the evidence presented, or if the opposite conclusion is clearly evident." *People v. Qurash*, 2017 IL App (1st) 143412, ¶ 20. The trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and determining what inferences to draw, and a reviewing court ordinarily will not substitute its judgment on these matters for that of the trier of fact. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). The State does not claim that it is "clearly evident" that defendant's truck abruptly stopped very close to Kmieciak's vehicle. The trial court's finding was based on evidence

presented at the hearing, namely, defendant's testimony and the video recording from Kmieciak's vehicle. Furthermore, the inference that the trial court drew from the video recording—that defendant's truck did not appear to be "[trying] to get up to speed" from an abrupt stop—was neither unreasonable nor arbitrary.

¶ 18 The State next argues that Kmieciak had a reasonable suspicion that defendant violated Section 11-709(a) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-709(a) (West 2016)), which provides, in pertinent part:

> "Whenever any roadway has been divided into 2 or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply.
>
> (a) 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."

The trial court remarked that, at some point, defendant's truck might not have been "in the complete lane." However, as the State acknowledges, the trial court observed that "there [were] no lane markings to delineate what is and is not the lane at that point."

¶ 19 The State also notes the trial court's finding that defendant's truck briefly touched the fog line with a tire. Citing *Hackett*, defendant contends that this was "more than enough for [Kmieciak] to make an investigatory stop." We disagree. *Hackett* held that a motorist violated section 11-709(a) of the Code when the two right tires of his vehicle *crossed* the line separating the left northbound lane from the right northbound lane. The *Hackett* court did not consider whether merely touching a lane marker violates section 11-709(a). However, we addressed the issue in *People v. Mueller*, 2018 IL App (2d) 170863, which was decided after oral argument in this case. In *Mueller*, we concluded that merely touching the fog line does not violate section

11-709(a). Accordingly, Kmieciak's observation of defendant's truck touching the fog line did not create a reasonable suspicion that defendant had violated that provision.

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County.

¶ 22 Affirmed.