2012 IL App (2d) 120026-U 10/16/2012
Nos. 2-12-0026 & 2-12-1044 cons.
Order filed October 29, 2012



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE VILLAGE OF MUNDELEIN, | ) | Appeal from the Circuit Court |
| | ) | of Lake County. |
| Plaintiff-Appellant, | ) | |
| | ) | |
| v. | ) | No. 11-DT-1828 |
| | ) | |
| BETHANY WRIGHT, | ) | Honorable |
| | ) | Michael B. Betar, |
| Defendant-Appellee. | ) | Judge, Presiding. |

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JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held*: (1) We lacked jurisdiction of the village's appeal of the trial court's grant of defendant's motion to quash and suppress, as Rule 604(a) does not apply when charges are brought under village ordinance rather than a state statute; (2) the trial court erred in granting defendant's petition to rescind her statutory summary suspension, as the police had reasonable suspicion to stop her even for a single, momentary crossing of a lane marker.

¶ 2 These consolidated appeals by the Village of Mundelein (Village) arise from an order of the circuit court of Lake County (1) granting the motion of defendant, Bethany Wright, to quash her arrest pursuant to a local ordinance for driving under the influence of alcohol (DUI) and to suppress evidence (case No. 2-12-0026) and (2) granting her petition to rescind the statutory summary

suspension, pursuant to section 11-501.1 of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501.1 (West 2010)), of her driving privileges (case No. 2-12-1044). On the Village's motion, we dismiss its appeal from the former portion of the order. We reverse the latter portion of the order.

¶ 3 At a joint hearing on the motion to quash and suppress and the rescission petition, Ronald Medina, an officer with the Village's police department, testified that on August 7, 2010, at about 2 a.m., he observed and followed a motor vehicle operated by defendant that was proceeding west on Route 176. Medina's patrol car was equipped with a video camera that videotaped defendant's vehicle as it traveled along Route 176. According to Medina, when the vehicle was near the intersection of Route 176 and California Avenue, he saw the front and rear passenger-side tires cross the fog line. Just after the vehicle proceeded through the intersection of Route 176 and Midlothian Road, Medina observed a passenger-side tire touch the white line. As defendant's vehicle approached the intersection of Route 176 and Barnhill Drive, Medina observed both passenger tires cross over the line separating the lane for through traffic from the right turn lane. The vehicle then pulled back into the through lane. The record reflects that Medina conducted a traffic stop at that point. In addition to hearing Medina's testimony, the trial court viewed the videotape recorded by the camera in Medina's squad car.

¶ 4 In granting the motion to quash and suppress and the rescission petition, the trial court stated as follows:

> "I did not see on the video the first lane violation that the officer allegedly said happened where half of the defendant's car is over the right fog line. I just simply don't see any evidence of that at all on the video, and the officer testified that it would have been on the video.

> The only thing I saw on the video was a split second momentary touching of the right passenger tires on the dotted white line leading to a right turn lane which was immediately corrected ***.
>
> One cannot drive their car with mathematical precision where you stay exactly six inches from the left center lane and six inches from the right fog line for miles on end without deviating at all. That's just impossible. These aren't railroad tracks. You're driving a half ton vehicle and there's going to be slight deviations within the lane. It's just natural. Nobody can drive this mathematical rail like precision.
>
> Looking at the video, I just don't see enough to pull the defendant over."

¶ 5 The Village moved to reconsider the trial court's order. In denying that motion, the trial court stated:

> "On the video what it shows is the defendant's passenger tires briefly crossing over a dotted line of a right turn lane, where the road splits off or widens due to a right turn lane, and the defendant's passenger tires briefly cross over the dotted line of the right turn lane. That's the only violation that the video shows.
>
> So I'm going to stick with my original ruling and deny the motion to reconsider[.]"

¶ 6 We note that the Village invoked Illinois Supreme Court Rule 604(a) (eff. July 1, 2006) as the basis for its appeal from the ruling on the motion to quash and suppress. That rule authorizes the *State* to appeal from such an order. But here, the traffic tickets issued to defendant contain check marks in boxes indicating that they were issued by the Village, as plaintiff, and that defendant was charged with DUI in violation of the Village's ordinances. In past cases, we have held that Rule 604(a) does not permit appeals by municipalities prosecuting ordinance violations. *Village of*

*Mundelein v. Minx*, 352 Ill. App. 3d 216, 217 (2004); *Village of Mundelein v. Thompson*, 341 Ill. App. 3d 842, 846-47 (2003); *Village of Cary v. Pavis*, 171 Ill. App. 3d 1072, 1075 (1988).

¶ 7 Moreover, under our existing case law, jurisdiction to review the suppression order would be doubtful at best even if the Village had attempted to prosecute defendant for a violation of the Code (as opposed to an ordinance violation). Pursuant to section 16-102 of the Code (625 ILCS 5/16-102 (West 2010)), a municipal attorney is permitted to prosecute a violation of the Code with the written permission of the State's Attorney. Under those circumstances, "the municipal attorney is acting as the State, and an appeal under Rule 604(a) will lie." *Thompson*, 341 Ill. App. 3d at 847 (citing *City of Highland Park v. Lee*, 291 Ill. App. 3d 48, 49-50 (1997)). However, this court has stated that "when a municipality brings an appeal pursuant to Rule 604(a), the jurisdictional statement should include the fact that the prosecution was brought pursuant to some section of the Code and that the municipal attorney has the written authority of the State's Attorney to bring such prosecutions. There is no such statement in the Village's brief." *Id*. Here, the Village's jurisdictional statement cited the Code as the basis of the prosecution (even though, as noted, the record shows that defendant was actually prosecuted for an ordinance violation). However, the Village did not indicate that it had written authority from the Lake County State's Attorney to prosecute Code violations. A copy of a letter from the State's Attorney granting such authority is included in the appendix to the Village's brief. Significantly, however, the letter bears a date subsequent to the date of the notices of appeal in this case; thus, at the outset of the prosecution, the Village apparently lacked the requisite authorization.

¶ 8 Cognizant of these jurisdictional issues, we ordered the parties to file supplemental briefs "addressing this court's jurisdiction in light of [*Minx*]." Instead of filing a brief articulating a theory

of jurisdiction under existing law or asserting a good-faith argument for the modification or reversal of existing law on the jurisdictional question, the Village has simply moved to dismiss its appeal from the suppression ruling. We grant the motion.

¶ 9 We recognize that the complexities of appellate jurisdiction can sometimes trip up even the most conscientious practitioners. Thus a dismissal for lack of jurisdiction—either on the motion of a party or on our own motion—would ordinarily require no further comment. By now, however, the Village should be well versed in the jurisdictional hurdles it faces when it prosecutes traffic violations, and we will not countenance the Village's conduct with our silence. It is now more than nine years since we dismissed the Village's appeal from a suppression order in an ordinance-violation prosecution in *Thompson*. It is more than eight years since we did the same thing in *Minx* (in which the Village, again, was a party). Furthermore, we take notice of our records showing that, since *Minx*, in at least two cases that were not decided by published opinion we dismissed appeals by the Village, ostensibly under Rule 604(a), because there was no evidence that the Village was authorized to prosecute a violation of the Code. In all of these cases, the Village was represented by the same law firm that represents it in this case. We trust that we have finally disabused the Village and its counsel of the notion that, if it ignores a jurisdictional problem, we will too.

¶ 10 We turn now to the ruling on defendant's petition to rescind the statutory summary suspension of her driving privileges. Our jurisdiction to review this ruling is not in doubt. See *Minx*, 352 Ill. App. 3d at 218.

¶ 11 Section 11-501.1 of the Code, 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). Where a motorist seeks rescission of the summary suspension of his or her driving privileges, the trial court is charged with assessing the credibility of the witnesses and the weight to be given their testimony. *People v. Feddor*, 355 Ill. App. 3d 325, 330 (2005). On review, 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.

¶ 12 Defendant sought rescission solely on the basis that the traffic stop leading to her arrest was unconstitutional. The parties have not challenged the trial court's finding that the passenger-side tires of defendant's vehicle crossed the line dividing the through lane and the right turn lane at the intersection of Route 176 and Barnhill Drive. Based on this finding, we conclude that the traffic stop was constitutionally permissible.

¶ 13 We have noted that "[a]n officer's observation of a traffic violation is sufficient to provide the officer with probable cause to arrest a defendant for the violation, and, thus, a stop is proper." *People v. Geier*, 407 Ill. App. 3d 553, 557 (2011). However, "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." *People v. Hackett*, 2012 IL 111781, ¶ 20.

¶ 14 At issue here is whether Medina had at least a reasonable, articulable suspicion that defendant violated section 11-709(a) of the Code, which provides as follows:

> "Whenever any roadway has been divided into 2 or more clearly marked lanes for traffic the following rules *** 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." 625 ILCS 5/11-709(a) (West 2010).

In *People v. Smith*, 172 Ill. 2d 289 (1996), an Urbana police officer, Andrew Charles, followed the defendant's vehicle as it traveled on a four-lane street with a fifth lane in the center for turning. Charles "saw the driver's side wheels of defendant's car cross over the lane line dividing the left lane from the center lane by at least six inches." *Id.* at 293 He proceeded for 100 to 150 yards straddling the lanes. Shortly thereafter, he crossed about 6 inches into the right lane and straddled the right and left lanes for approximately 150 to 200 yards. The *Smith* court rejected the argument that "a violation of section 11-709(a) does not occur when a motorist momentarily crosses over a lane line, but occurs only when a motorist endangers others while moving from a lane of traffic." *Id.* at 296. The *Smith* court held that Charles was entitled to conduct a traffic stop, reasoning as follows:

> "The plain language of the statute establishes two separate requirements for lane usage. First, a motorist must drive a vehicle as nearly as practicable entirely within one lane. Second, a motorist may not move a vehicle from a lane of traffic until the motorist has determined that the movement can be safely made. It follows that when a motorist crosses

over a lane line and is not driving as nearly as practicable within one lane, the motorist has violated the statute.

Once Officer Charles saw defendant cross over a lane line and drive in two lanes of traffic, Officer Charles had probable cause to arrest defendant for a violation of the Code. [Citation.]" *Id.* at 296-97.

We note that, although the defendant in *Smith* crossed lane dividers on two occasions, it is abundantly clear from this passage that the outcome of the case would have been the same even if the defendant had done so on only one occasion.

¶ 15 In *People v. Leyendecker*, 337 Ill. App. 3d 678, 683 (2003) (quoting 625 ILCS 5/11-709(a) (West 2000)), we held that a motorist's "momentary one-foot crossing of the fog line as she maneuvered her vehicle through a left-hand curve on a hilly road with poor visibility would not cause a reasonable person to suspect that defendant was not driving 'as nearly as practicable' within her lane." Here, like the motorist in *Leyendecker*, defendant only momentarily crossed the lane marker. However, here there is no evidence of driving conditions comparable to those in *Leyendecker*. In *Hackett*, our supreme court held that an officer who "twice saw defendant deviate from his own lane of travel into another lane for no obvious reason" had a reasonable suspicion that the defendant had violated section 11-709(a). *Hackett*, 2012 IL 11781, ¶ 29. That the officer in this case may have observed only a single violation does not require a different result. In *Hackett*, the court noted that police may conduct an investigative stop "without first 'considering whether the circumstances he or she observed would satisfy each element of a particular offense.' " *Id.* ¶ 28 (quoting *People v. Close*, 238 Ill. 2d 497, 510 (2010)). The *Hackett* court explained that, where an officer observes multiple apparent lane violations, "[a]n investigatory stop *** 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." *Id.* This is no less true where the officer observes only a single unexplained lane deviation. It is reasonable in such circumstances to investigate whether the deviation was the result of driving conditions as opposed to careless operation of the vehicle.

¶ 16 *Hackett* is also significant for its repudiation of the idea that the holding of *Smith—i.e.*, that a motorist who deviates from his or her lane and who is not driving as nearly as practicable within a single lane violates section 11-709(a)—is limited to cases " 'where the driver of the vehicle actually drives for some reasonably appreciable distance in more than one lane of traffic.' " *Id.* ¶ 26 (quoting *People v. Hackett*, 406 Ill. App. 3d 209, 214 (2010), *rev'd*, 2012 IL 111781). The *Hackett* court explained:

> "Although this court in *Smith*, in its factual recitation of Officer Charles' testimony, mentioned the measure of defendant's deviation into an adjacent lane and the distance he traveled therein, nothing in this court's *analysis* indicated either was significant to the outcome. Neither was discussed therein, and neither factor is mentioned in section 11-709(a). We now make clear that the distance a motorist travels while violating the proscription of section 11-709(a) is not a dispositive factor in the applicable analysis. This court's pronouncement in *Smith* was without qualification in that regard: '[W]hen a motorist crosses over a lane line and is not driving as nearly as practicable within one lane, the motorist has violated the statute.' [Citation.] Thus, the appellate court erred when it attached a distance requirement to the statute's proscription." (Emphasis in original.) *Id.* ¶ 26.

¶ 17 This reasoning leads us to reject defendant's argument that various cases in which traffic stops for lane violations have been upheld are distinguishable from this case because they involved more "egregious" deviations from marked lanes. So long as a police officer's observations give rise to a reasonable suspicion that a motorist has not driven as nearly as practicable within a single lane, a traffic stop is permissible without regard to how "egregious" the observed violation was.

¶ 18 For the foregoing reasons, we reverse the portion of the order of the circuit court of Lake County that rescinded the statutory summary suspension of defendant's driving privileges and, on the Village's motion, we dismiss the Village's appeal from the portion of the order granting defendant's motion to quash and suppress.

¶ 19 No. 2-12-0026, Appeal dismissed.

¶ 20 No. 2-12-1044, Reversed.