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2011 IL App (3d) 100766-U

Order filed July 6, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 14th Judicial Circuit,
)	Henry County, Illinois,
Plaintiff-Appellant,)	
)	Appeal No. 3-10-0766
v.)	Circuit No. 10-CM-147, 10-DT-68,
)	and 10-DT-69
)	
DEMARCO F. McCLENDON,)	Honorable
)	Dana R. McReynolds,
Defendant-Appellee.)	Judge Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Carter and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The vehicle code requires a driver to signal his intention to cross a double yellow line at the mid-point of a curve on a state highway in order to travel directly on to another secondary roadway rather than continuing around the curve. The court's decision to allow a petition to rescind the driver's statutory summary suspension and decision granting the motion to suppress on the grounds that the officer did not have an articulable reason to believe defendant committed the traffic offense by failing to activate his turn signal is reversed.

¶ 2 The trial court granted defendant's motion to quash arrest and suppress evidence and rescinded defendant's statutory summary suspension after finding that the officer did not observe defendant violate a traffic law prior to the traffic stop in this case. The court decided, as a matter of law, that the vehicle code did not require defendant to use a turn signal before crossing a double yellow line at the mid-point of a right hand curve off Route 81 in order to drive straight ahead onto another secondary roadway that intersected with the highway at that particular location. On appeal, the State argues that defendant violated the vehicle code by leaving Route 81 without using his left turn signal before traveling on to Osco Road. We agree. Reversed and remanded.

¶ 3 BACKGROUND

¶ 4 On April 6, 2010, defendant received two citations for driving under the influence of drugs following a traffic stop. On April 9, 2010, the State also charged defendant with the offense of unlawful possession of less than 2.5 grams of cannabis. Shortly thereafter, defendant filed a motion to quash arrest and suppress evidence in addition to filing a petition to rescind his statutory summary suspension on the grounds that the officer had no "reasonable suspicion" to believe defendant committed a traffic offense since he was not required to use a turn signal at this location before merging onto Osco Road.

¶ 5 The hearing was not recorded but the parties filed a written stipulation of agreed facts after the hearing on November 11, 2010. According to the agreed facts, on April 6, 2010, Officer Wilkinson was traveling in his squad car on Route 81 while following defendant's car around one of two curves on Route 81. As the officer followed defendant's vehicle near the mid-point

of the second curve on Route 81, defendant did not follow the right hand curve but drove straight onto “the Osco slab,” or Osco Road. According to the officer, defendant’s vehicle did not slow down or display a turn signal before crossing a double yellow line on Route 81 and driving onto Osco Road. The officer testified that he felt defendant committed a traffic violation and initiated a traffic stop on this basis. After the stop, the officer approached the defendant seated in the driver’s seat. According to the officer, defendant responded that defendant was unaware that he had left the highway.

¶ 6 The officer testified he believed defendant should have slowed down to look for oncoming traffic before crossing the double yellow lines and continuing north on Osco Road. The officer stated that defendant was required to use his turn signal to show his intent to leave the highway in order to travel onto the secondary road. The officer agreed that defendant did not change the direction of his car in order to exit onto Osco Road but, in the officer’s opinion, defendant “turned off” of Route 81 and left the main roadway.

¶ 7 The officer described several photographs of the scene which are included in the appellate record.¹ According to the officer, the photographs depicted several road signs posted at the location just before a second curve prior to the intersection of Osco Road. These posted signs showed yellow arrows indicating the highway curves to the right just ahead. In addition, the photographs depicted a white posted road sign that reads “curve in the road” with the number

¹ The actual photographs depict the intersection and curve as follows: four yellow arrow signs showing the curve on Route 81; a white sign with an arrow pointing to the right with “EAST ILLINOIS 81” above it; a yellow sign showing the T-intersection of “OSCO RD” onto Route 81; the double yellow lines following the curve in Route 81; and the yellow sign indicating “40 M.P.H.” and showing a curved arrow for Route 81’s curve with an intersecting secondary road branching off of the middle of the curve of the main road.

"81" marked on this sign. Also at this location, there was a posted yellow sign showing a no passing zone and another posted yellow road sign which indicated the curve in the road with a thinner, secondary road that continued north from the mid-point of the second curve on the highway.

¶ 8 Upon questioning by the court, the officer acknowledged that the Osco slab is “probably considered to coexist with Route 81 in the north-south section between the two curves involved in this case.” The agreed facts state that defendant testified, as he approached the curve, he did not slow down or signal when he continued to drive north on the Osco slab. Defendant said he did not see the double yellow lines that he crossed in order to reach Osco Road.

¶ 9 First, the court found there was reasonable suspicion for the officer to stop defendant’s vehicle and denied the motion to quash. However, approximately 20 minutes after the hearing, the judge recalled the case and changed his ruling finding the officer did not have any basis to make a traffic stop under the circumstances.

¶ 10 The record contains the following entry of the court’s findings preceded by the judge’s initials:

“Despite allegedly stopping the defendant for failing to signal, no ticket was issued for this alleged violation, nor was there any mention of the violation in the officer’s sworn report for the petition to rescind.”

Additionally, this docket entry stated that the court found there were several signs before Osco Road indicating Route 81 followed the curve and a vehicle could “proceed straight north across a double yellow line on Route 81 onto Osco Road without changing direction.” Ultimately, the court granted defendant’s motion to quash and suppress and allowed defendant’s petition to

rescind the statutory summary suspension.

¶ 11 The State filed a motion to reconsider which included additional case law and legal arguments as well as a copy of a written “warning notice” that the officer issued to defendant on the date of the traffic stop, April 6, 2010, indicating defendant committed the violation of “No Turn Signal.” The court denied the motion to reconsider finding that there was “no reasonable articulable suspicion that a traffic violation occurred.”

¶ 12 The State filed a timely notice of appeal. We reverse and remand.

¶ 13 ANALYSIS

¶ 14 On appeal, the State contends that the trial court erred by finding, as a matter of law, that defendant did not commit a traffic violation by failing to signal before leaving Route 81 and continuing straight onto Osco Road. Additionally, the State argues that the court erroneously considered the officer’s failure to issue traffic ticket or describe the initial traffic violation in the sworn statement filed by the officer for purposes of rescinding defendant’s driving privileges.

¶ 15 Although defendant did not file an appellate brief in this case, we conclude that the record is simple and the claimed errors are such that we can decide the issues without the assistance of an appellee's brief. Therefore, we will address the merits of the appeal in this case. *People v. Cosby*, 231 Ill. 2d 262, 285 (2008) (citing *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976)).

¶ 16 A two-part standard of review applies when reviewing a suppression order. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006); *Cosby*, 231 Ill. 2d at 271. Initially, the trial court's factual findings are entitled to great deference and will only be reversed if they are against the manifest weight of the evidence, but we review *de novo* the trial court's ultimate legal ruling as to

whether suppression is warranted. *Cosby*, 231 Ill. 2d at 271 (quoting *Luedemann*, 222 Ill. 2d at 542–43); *People v. Haywood*, 407 Ill. App. 3d 540, 542 (2011). In the instant case, the facts are not disputed, thus, our review of the suppression order in this case is *de novo*. *Haywood*, 407 Ill. App. 3d at 542–43.

¶ 17 Generally, when a police officer observes a traffic violation, the officer’s stop of the vehicle is justified. *People v. Sorenson*, 196 Ill. 2d 425, 433 (2001). In this case, the agreed facts reveal that the officer’s testimony was consistent with defendant’s version of the events. Both agreed defendant did not use a turn signal before driving his vehicle north onto Osco road. Thus, the only issue is whether the defendant’s admitted failure to use a turn signal before driving on to Osco Road violated section 11-804 of the Illinois Vehicle Code (Code). 625 ILCS 5/11-804 (West 2010).

¶ 18 The relevant portions of section 11-804 of the Code reads:

“When signal required. (a) No person may turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in Section 11-801 or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person may so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.

* * *

(d) The electric turn signal device required in Section 12-208 of this Act must be used to indicate an intention to turn, change lanes or start from a parallel parked position but must not be flashed on one side only on a parked or disabled vehicle or flashed as a

courtesy or “do pass” signal to operators of other vehicles approaching from the rear.

However, such signal devices may be flashed simultaneously on both sides of a motor vehicle to indicate the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking and passing.” 625 ILCS 5/8-804(a), (d) (West 2010).

Section 11-804(a) of the Code clearly prohibits any person from turning a vehicle *from a direct course or move right or left upon a roadway* unless and until such movement can be made with reasonable safety, without giving an appropriate signal. 625 ILCS 5/11-804(a) (West 2010).

Additionally, section 11-804(d) of the Code requires a driver to use a turn signal to indicate an intention to turn, *change lanes* or start from a parallel parked position. 625 ILCS 5/11-804(d) (West 2010).

¶ 19 In the instant case, Route 81 was clearly marked, with multiple signs, indicating that Route 81 continued to the right, following the curve, and that a secondary road, Osco Road, intersected with the highway in the mid-point of this right hand curve on the state highway. Additionally, clearly marked, double, yellow lines indicated a no-passing zone at this location for both directions of traffic traveling through the curve at the location where Route 81 and Osco Road intersect. Although defendant’s vehicle could follow a straight path onto Osco Road, defendant crossed a double yellow line thereby leaving his lane of travel without using a turn signal in violation of section 11-804(d). 625 ILCS 5/11-804(d) (West 2010).

¶ 20 Here, the trial judge initially made the correct ruling and then second guessed this decision after becoming troubled by the officer’s failure to issue a traffic ticket for a violation of section 11-804 of the Code. The court was also concerned that the officer’s sworn affidavit did not detail the basis for the traffic stop as part of writing his reasonable grounds to believe

defendant violated the DUI laws. While it is true the record reveals the officer did not issue a traffic citation for the initial observed traffic violation, the record contains the written warning citation issued by Officer Wilkinson to defendant for a violation of “No Turn Signal.” However, in spite of the court’s good faith concerns, an officer’s decision to not issue a traffic citation for the initial observed traffic violation is not a relevant factor for the court to consider when determining whether the officer had a reasonable suspicion to stop the defendant’s vehicle. *People v. Rozela*, 345 Ill. App. 3d 217, 226 (2003) (citing *People v. Hood*, 265 Ill. App. 3d 232, 242 (1994)).

¶ 21

CONCLUSION

¶ 22 For the foregoing reasons, we reverse the trial court’s decision granting defendant’s motion to quash the arrest and suppress the evidence, as well as the petition to rescind the statutory summary suspension, and remand the case to the trial court for further proceedings consistent with this order.

¶ 23 Reversed and remanded.