

2012 IL App (2d) 110793-U  
No. 2-11-0793  
Order filed September 6, 2012

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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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 Du Page County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-CF-648
	)	
KEITH M. MORAN,	)	Honorable
	)	George J. Bakalis,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Zenoff and Burke concurred in the judgment.

**ORDER**

*Held:* The trial court's granting of defendant's motion to quash and suppress is vacated where the statute required defendant to use his turn signal even though he was turning from a right-turn-only lane; thus, the court erred in ruling that the stop of defendant was improper even if he did not signal, and the cause is remanded for the court to resolve the disputed issue of whether defendant signaled and to enter the appropriate order.

¶ 1 Defendant, Keith M. Moran, was stopped for failing to activate his turn signal when he merged into traffic from an exit ramp (see 625 ILCS 5/11-804 (West 2010)). After defendant was stopped, officers discovered heroin in defendant's car. As a result, defendant was charged with

unlawful possession of a controlled substance (720 ILCS 570/402(a)(1)(A) (West 2010)) in addition to unlawful possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2010)). Defendant moved to quash his arrest and suppress the evidence seized, arguing that the arresting officer lacked probable cause to stop him for the turn signal violation. The trial court granted the motion. After the trial court denied the State's motion to reconsider, the State filed a timely notice of appeal and a certificate of impairment. For the reasons that follow, we must vacate the trial court's order granting defendant's motion to quash and suppress and remand this cause for further proceedings.

¶ 2 The relevant facts presented at the suppression hearing are as follows. On March 22, 2011, at approximately 5:30 p.m., Officer Michael Rimdzius, who was assigned to a narcotics and vice enforcement group, and his partner were in an unmarked squad car conducting surveillance of a strip mall parking lot in Naperville. The officers, who were conducting a narcotics investigation, were conducting surveillance of this parking lot because several drug arrests had taken place there. While conducting surveillance, Officer Rimdzius observed defendant and his male passenger standing outside of defendant's car. The two men were checking whether the brake lights and turn signals on defendant's car were working properly. Defendant testified that he checks his lights frequently because he does not want the police to stop him for that type of violation. After the men finished checking the lights, they got into defendant's car and left the parking lot. Defendant, who had been arrested for drug-related offenses in the past, was driving.

¶ 3 After observing this unusual activity, Officer Rimdzius and his partner closely followed defendant to Chicago, where they observed defendant stop his car on Chicago Avenue. Within five minutes, another car drove up alongside defendant's car. After a few seconds passed, the other car drove off, and defendant followed in his car. The cars met up in a nearby alley, they remained in the

alley for approximately one minute, and then defendant drove out of the alley. As defendant began driving back to Naperville, Officer Rimdzius followed him closely, contacting a Naperville canine unit as he was driving. Officer Rimdzius advised the canine officer that, even though defendant had not committed any traffic violations up to this point, Officer Rimdzius might need the canine officer's help in a subsequent traffic stop of defendant's car.

¶ 4 As Officer Rimdzius continued to follow defendant on I-88, he saw defendant exit the highway at Route 59. At that location, two exit lanes become four exit lanes, with two lanes turning right and two lanes turning left. All four lanes are clearly marked with large solid white arrows. Defendant drove his car into the far right-hand lane, and Officer Rimdzius followed. One car was between defendant and Officer Rimdzius. At the top of the ramp, Officer Rimdzius saw defendant stop at a stop light. When the light changed, Officer Rimdzius saw defendant turn north onto Route 59. According to Officer Rimdzius, defendant did not activate his right-turn signal before turning. In contrast, defendant testified that he activated his right-turn signal when he exited I-88 and that his turn signal remained on until he turned north onto Route 59. Because Officer Rimdzius did not see defendant activate his turn signal, he stopped defendant for failing to signal his turn (see 625 ILCS 11-804 (West 2010)). Officer Rimdzius did not give defendant a ticket or issue a written warning for this violation.

¶ 5 The trial court granted defendant's motion to quash his arrest and suppress the evidence seized. In doing so, the court first found that the stop of defendant was "clearly a pretextual stop." Although the court noted that, even though the stop was pretextual, the stop would be proper if the officer had a valid basis to stop defendant, the court questioned whether the officer did. Specifically, the court stated:

“The officer testified that throughout these drivings [*sic*] back into the city, back from the city, there were cars in front of him, he couldn’t see whether defendant activated his turn signals. He follows them up the ramp where there’s a car between them. Now he says—he says that the turn signal was not put into play. It doesn’t mean that it wasn’t working. That isn’t the question whether it was working or not. The question is whether he even failed to work them, or did the defendant activate them.

I find it interesting that the State doesn’t call the other officer who’s sitting in the right-hand side of the [unmarked squad car] who would be in a much better position to make a determination as to whether the vehicle used the turn signal or not; they don’t call him to confirm any of this. But beside all that, I’m not sure there’s any violation even if he did [not] use a turn signal.”

¶ 6 The court then examined section 11-804 of the Illinois Vehicle Code (Code) (625 ILCS 5/11-804 (West 2010)), which governs the use of a turn signal, and found that defendant was not required to activate his turn signal, because, given where defendant was located, he could have only turned right.

¶ 7 The State moved the trial court to reconsider, claiming in its motion that the court had found Officer Rimdzius credible. The trial court denied the motion to reconsider, noting that it never indicated that Officer Rimdzius was credible. Specifically, the court stated:

“I never said [Officer Rimdzius] was credible. I said, in fact, that after following [defendant] from wherever he started out into Chicago and back and never being able to recall whether the defendant used a turn signal or didn’t use a turn signal, and then after

calling in knowing he was going to make a stop, after calling in for a K9 unit before the stop, he then says [defendant] didn't use a turn signal.

Now, all I said was that we had contradictory evidence because the defendant said he did use a turn signal. What I said was that I found it strange that the second officer, who was in the car who was present in court, was not called by the State to confirm what this first officer said, so I never said that I found [Officer Rimdzius] to be credible.

In fact, clearly it is a protectoral-type [*sic*] of stop and I have some questions as to whether or not [Officer Rimdzius] actually made that observation.”

The court then explained that, “even if [defendant] did not use his turn signal,” the court questioned whether defendant was required to use a turn signal given the facts presented.

¶ 8 At issue in this appeal is whether Officer Rimdzius had probable cause to stop defendant for violating section 11-804 of the Code. “Vehicle stops are subject to the fourth amendment’s reasonableness requirement.” *People v. Hackett*, 2012 IL 111781, ¶ 20. Generally, a stop of a vehicle is considered reasonable if the officer has probable cause to believe that a traffic violation was committed.<sup>1</sup> *Id.* Probable cause is not proof beyond a reasonable doubt that an offense

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<sup>1</sup>In *Hackett*, our supreme court determined that both the probable cause standard and the less exacting reasonable and articulable suspicion standard may apply in suppression cases involving traffic stops. *Id.* However, the court observed that “[t]he distinction between these two standards may or may not be relevant depending upon the facts of the case under consideration and the [traffic offense] at issue.” *Id.* Given the facts of this case and the offense involved, we determine that the distinction is irrelevant. Because the officer knew all the pertinent facts, he could not have had a reasonable suspicion without also having probable cause.

occurred. *People v. Davis*, 2012 IL App (2d) 110581, ¶ 50. Rather, probable cause exists when the arresting officer is aware of facts and circumstances that would lead a reasonably cautious person to conclude that the defendant committed a crime. *People v. Wear*, 229 Ill. 2d 545, 563 (2008). Thus, “the existence of probable cause depends upon the totality of the circumstances at the time of the arrest.” *Id.* at 564.

¶ 9 Resolving this appeal requires us to consider two matters. That is, we must address (1) whether section 11-804 of the Code, which details the turning violation allegedly supporting the stop, applies to the facts here, and (2) whether Officer Rimdzius saw defendant use his turn signal.

¶ 10 We begin by addressing the first issue. As this issue requires us to construe a statute, we apply the *de novo* standard of review. *People v. Donoho*, 204 Ill. 2d 159, 172 (2003). Section 11-804 of the Code provides, in relevant part:

“(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.

(b) A signal of intention to turn right or left when required must be given continuously during not less than the last 100 feet traveled by the vehicle before turning within a business or residence district, and such signal must be given continuously during not less than the last 200 feet traveled before turning outside a business or residence district.

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(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[.]” 625 ILCS 5/11-804 (West 2010).

¶ 11 In interpreting section 11-804 of the Code, we are guided by the familiar rules of statutory construction. “The primary objective in construing a statute is to ascertain and give effect to the legislature’s intent.” *People v. Pohl*, 2012 IL App (2d) 100629, ¶ 16. “The surest and most reliable indicator of legislative intent is the statutory language itself.” *Id.* “We must construe the statute as a whole, giving the statutory language its plain and ordinary meaning.” *Id.* “In doing so, when the statutory language is clear and unambiguous, we must apply the statute without resorting to any extrinsic aids of construction.” *Id.*

¶ 12 With these principles in mind, we turn to the statute at issue here. Nothing in section 11-804 of the Code indicates that, when a defendant is turning from a clearly marked turn lane, the defendant does not need to activate his turn signal before turning. Rather, section 11-804 of the Code makes clear that, whenever a defendant intends to turn, the defendant must activate his turn signal at the relevant distance before the defendant makes the turn. If we were to construe the statute as the trial court did, we would be reading into it an exception for which the legislature has not provided. This is something we cannot do. See *Haywood*, 407 Ill. App. 3d at 546. Thus, given that section 11-804 of the Code required defendant to activate his turn signal before making a turn, we conclude that Officer Rimdzius had probable cause to stop defendant if in fact defendant failed to activate his turn signal.

¶ 13 This leads us to the second issue we must consider. That is, whether defendant activated his turn signal. This, of course, is a question of fact. “[W]e must accord great deference to the trial

court's factual findings and credibility assessments and will reverse those findings only if they are against the manifest weight of the evidence." *People v. Lurz*, 379 Ill. App. 3d 958, 965 (2008).

Factual findings or credibility determinations are "against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *People v. Tate*, 367 Ill. App. 3d 109, 113 (2006).

¶ 14 Here, Officer Rimdzius testified that defendant did not activate his turn signal. However, defendant testified that he did. The trial court did not make a finding regarding whether defendant activated his turn signal. Rather, although the court "questioned" Officer Rimdzius's testimony, the court ruled that the stop was improper even if defendant did not signal. Because that ruling was erroneous, we must vacate the trial court's order granting defendant's motion to quash and suppress and remand the cause so that the court can resolve this issue of fact and enter the appropriate order.

¶ 15 For these reasons, the judgment of the circuit court of Du Page County is vacated, and this cause is remanded for further proceedings.

¶ 16 Vacated and remanded.