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2012 IL App (3d) 120218–UB

Order filed December 20, 2012
Modified Upon Denial of Rehearing February 1, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	Appeal No. 3-12-0218
)	Circuit No. 11-DT-1009
ROBERT JOHNSON,)	
)	Honorable
Defendant-Appellee.)	Roger Rickmon,
)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Schmidt and Justice Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court's order granting defendant's motion to quash arrest and suppress evidence reversed because officer had reasonable suspicion to conduct traffic stop based on defendant's improper lane usage.
- ¶ 2 Defendant Robert Johnson was charged with two counts of driving under the influence after being stopped for improper lane usage. He filed a motion to quash his arrest and suppress evidence which the trial court granted in reliance on this court's decision in *People v. Hackett*, 406 Ill. App.

3d 209 (2010), *rev'd*, 2012 IL 111781. Because the Supreme Court reversed our decision in *Hackett*, we reverse the trial court and remand for further proceedings in accordance with *People v. Hackett*, 2012 IL 111781.

¶ 3

FACTS

¶ 4 Defendant Robert Johnson was stopped while driving on Interstate 80 in August 2010, after an Illinois State trooper noticed the passenger tires of his vehicle cross over the fog line on two occasions. As a result of that stop, Johnson was arrested and charged with two counts of misdemeanor driving under the influence (DUI). 625 ILCS 5/11-501(a)(1), (2) (West 2010). He filed a motion to quash his arrest and suppress evidence, arguing that his momentary lane crossing did not constitute reasonable suspicion or probable cause to make an investigatory stop, pursuant to this court's decision in *Hackett*, 406 Ill. App. 3d at 215.

¶ 5 A hearing took place on Johnson's motion where the sole witness was Illinois State Police (ISP) trooper Alex Pinto. He testified that he observed both passenger side wheels of Johnson's vehicle cross the fog line on two occasions. He had followed the vehicle for less than two minutes before stopping it. He issued citations for DUI and improper lane usage. In his report, he indicated that he stopped Johnson for improper lane usage. A video recording of the stop taken from Pinto's squad was played. Although the violations were unclear on the video, Pinto stated that he had followed Johnson and observed the improper lane usage prior to activating the recording. The trial court found Pinto's testimony credible and that Pinto stated he saw Johnson's vehicle twice cross the fog line. The trial court noted it was bound by this court's decision in *Hackett* and that the State presented no evidence regarding whether Johnson's lane violations were "for some reasonably appreciable distance." Finding that the State did not provide a factual basis on which to distinguish

Hackett, the trial court granted Johnson’s motion to quash and suppress. The State appealed.

¶ 6

ANALYSIS

¶ 7 The issue on appeal is whether the trial court’s grant of Johnson’s motion to quash arrest and suppress evidence should be reversed. The State maintains that the Supreme Court’s recent decision in *Hackett* necessitates reversal of the quash and suppress order. It argues that Johnson was stopped based on his improper lane usage which provided probable cause for the investigatory stop.

¶ 8 The Illinois Vehicle Code provides that “a vehicle shall be driven as nearly as practicable entirely within a single lane.” 625 ILCS 5/11-709(a) (West 2010). A driver’s traffic violation constitutes probable cause sufficient for a peace officer to conduct a traffic stop. *People v. Matous*, 381 Ill. App. 3d 918, 922 (2008). An officer's pretextual motives for making the stop do not invalidate the stop where the officer has probable cause to believe that the driver has violated the law. *People v. Thompson*, 283 Ill. App. 3d 796, 798 (1996). In reviewing the trial court's determination regarding a motion to quash and suppress, the trial court's factual findings should be reversed only if they are against the manifest weight of the evidence; the ultimate question of whether the motion should be granted is reviewed *de novo*. *People v. McCarty*, 223 Ill. 2d 109, 148 (2006).

¶ 9 The issue at bar appeal was recently decided by the Illinois Supreme Court in *People v. Hackett*, 2012 IL 111781. *Hackett* had been appealed from this court, which had determined that a momentary improper lane usage did not constitute reasonable suspicion or probable cause for a traffic stop. *Hackett*, 406 Ill. App. 3d at 215. In reversing and remanding our decision in *Hackett*, the supreme court found that an investigatory stop is proper when a police officer observes "multiple lane deviations, for no obvious reasons." *Hackett*, 2012 IL 111781, ¶ 28. To establish probable cause and sustain a conviction that a defendant violated section 11-709(a), “the officer must point to facts which

support a reasonable belief that defendant has deviated from his established lane of travel *and* that it was ‘practicable’ for him to have remained constant in his proper lane.” *Hackett*, 2012 IL 111781, ¶ 27. (Emphasis in original.) The *Hackett* court further stated that section 11-709(a) requires a fact-specific inquiry into the particular circumstances that may have caused the lane deviation, including weather, obstacles, or road conditions. *Hackett*, 2012 IL 111781, ¶ 27.

¶ 10 As stated above, the trial court relied on this court’s decision in *Hackett* in reaching its disposition. That decision is no longer good law. Here, Pinto testified that he saw Johnson cross the fog line on two occasions and the trial court found that Pinto was a credible witness. Because Pinto observed Johnson commit multiple lane violations, he had reasonable suspicion to conduct an investigatory stop. *Hackett*, 2012 IL 111781, ¶ 28 (when an officer observes a lane deviation, an investigatory stop “allows the officer to inquire further into the reason for the lane deviation”). The second element under section 11-709(a), whether it was practicable for Johnson “to have remained constant in his proper lane,” does not need to be established to justify an investigatory stop. *Hackett*, 2012 IL ¶ 28 (*affirmative* testimony regarding both elements necessary for probable cause and conviction; lesser standard of reasonable suspicion sufficient for investigatory stop). (Emphasis in original.) Accordingly, we reverse the trial court’s order granting Johnson’s motion to quash and suppress and remand for further proceedings.

¶ 11 For the foregoing reasons, the judgment of the circuit court of Will County is reversed and the cause remanded.

¶ 12 Reversed and remanded.