

NOTICE  
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2014 IL App (5th) 130388-U

NO. 5-13-0388

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Washington County.
	)	
v.	)	No. 13-DT-48
	)	
ANNIE M. BOROWIAK,	)	Honorable
	)	Eugene E. Gross,
Defendant-Appellee.	)	Judge, presiding.

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JUSTICE CATES delivered the judgment of the court.  
Presiding Justice Welch concurred in the judgment.  
Justice Chapman dissented.

**ORDER**

¶ 1 *Held:* Where a deputy testified that he stopped defendant's vehicle because he could not see the rear registration plate light illuminated in his side view mirror as he passed the vehicle, the court did not abuse its discretion in finding that the vehicle stop by the deputy was a pretextual stop.

¶ 2 The State appeals an order rescinding the statutory summary suspension of the driver's license of the defendant, Annie M. Borowiak. The deputy who arrested the defendant for driving under the influence stopped her vehicle on the grounds that her rear registration plate light was not lit (see 625 ILCS 5/12-201(c) (West 2006)). The court found that the deputy's testimony was not credible and concluded that he lacked a

reasonable articulable suspicion for the stop. On appeal, the State argues that (1) the court misinterpreted the relevant statute; (2) the court failed to consider the entire period of time before the stop in determining whether the officer had a reasonable articulable suspicion; and (3) the court's finding was against the manifest weight of the evidence. We affirm.

¶ 3 On June 16, 2007, at 11:30 in the evening, Washington County Sheriff's Deputy Joshua Cross pulled over a vehicle driven by the defendant. After stopping her vehicle, Deputy Cross approached the defendant, who was in the driver's seat, and indicated that he had stopped her because she had no rear registration plate light. After asking where she was going, Deputy Cross asked the defendant if she had been drinking. Deputy Cross indicated he could smell alcohol, and the defendant then admitted she had consumed "a little." Deputy Cross asked the defendant to exit her car and administered field sobriety and breathalyzer tests. After completion of the roadside testing, the defendant was handcuffed and placed into the deputy's squad car. Deputy Cross then began a search of the defendant's vehicle, which revealed that the defendant and her passenger had two open bottles of beer in the back seat of the car. The defendant was then arrested and charged with driving under the influence (625 ILCS 5/11-501(a)(1) & (2) (West 2006)). In addition, her driver's license was summarily suspended (see 625 ILCS 5/11-501.1(e) (West 2006)).

¶ 4 The defendant filed a petition to rescind the statutory summary suspension of her driver's license and a motion to quash her arrest and suppress evidence. Only the petition to rescind is at issue in this appeal. In her petition, the defendant alleged that the

arresting deputy did not have reasonable grounds to believe that she was driving under the influence when he initiated the stop.

¶ 5 At a hearing on the defendant's petition, Deputy Cross testified that he was driving east on West St. Louis Street in Nashville, Illinois, when he saw the defendant's vehicle pass him, traveling westbound on St. Louis Street. As the cars passed, Deputy Cross testified he looked in his side mirror and observed that the rear of the passing car had "no rear registration plate light." Deputy Cross turned around, followed the defendant's car, and activated a video camera located inside his vehicle. One minute later, his oscillating lights were activated and, shortly thereafter, he effectuated a traffic stop. Deputy Cross told defendant he had stopped her because she had "no rear registration plate light." In response to a question from the court, Deputy Cross testified that he "walked up to the rear registration plate and \*\*\* placed my hand under it, and there was no light illuminating onto my hand." In response to questioning by defense counsel, Deputy Cross testified that he had a camera, which he used to take a photograph of the open beer containers found in the vehicle. He acknowledged that he did not take a photograph of the defendant's registration plate light.

¶ 6 The defendant's mother, Sherrie Borowiak, testified on behalf of the defendant. She testified that on the day after the defendant's arrest, she went with the defendant to pick up her vehicle, which had been towed. Borowiak testified that in order to determine whether the license plate light was working, she asked the tow truck driver to turn the car's lights on. When he did so, she stated, the rear license plate light came on. Sherrie Borowiak further testified that when she got home, she took a photograph of the license

plate showing that the light was working. The photograph was admitted into evidence. In response to questioning by the State's attorney, Borowiak testified that she assumed the light was working when the defendant was stopped because it was working when she picked the car up the next day.

¶ 7 The defendant testified that she was with her mother when she picked up the car at the tow yard. She, too, testified that the rear license plate light was working at that time. She stated that nothing was done to repair the light. She further testified that she had no indication that the light was not working properly until Deputy Cross told her that he stopped her because the light was off. On cross-examination, the State's attorney asked the defendant if she could see the license plate light shining when Deputy Cross pointed it out to her during the stop. The defendant replied, "Honestly, I was so scared, I don't even know."

¶ 8 A video recorded by the dashboard camera in Deputy Cross's vehicle was entered into evidence. The video showed that Deputy Cross's vehicle turned around, followed the defendant's vehicle for a short distance, and then stopped behind defendant's car. The video revealed the entire encounter between Deputy Cross and the defendant during the traffic stop. The video clearly showed that during the traffic stop at the side of the road, the rear of the defendant's vehicle was continuously illuminated by the Deputy's squad car headlights. In fact, the squad car's headlights were so bright that the license plate on the rear of defendant's car was completely washed out and not visible. Although there were a few, brief periods where Deputy Cross, and another officer on the scene, stepped in front of one of the squad car headlights, it was not possible to tell whether the

defendant's rear registration plate light was on, although the lettering of the defendant's registration plate was legible.

¶ 9 Because the court's rationale in ruling as it did was central to the arguments in this appeal, we will set out the court's statements in some detail. Prior to viewing the video recording, the court told the parties:

"My personal opinion[,] and it has been this for many years, is that when a police officer says they can tell that a license plate [light] is out in the rearview mirror—that is incredible for me to believe. It only has to be visible for 50 feet. I don't know that a human being can look in a rearview mirror when cars are meeting head on going opposite directions and process the information fast enough to be able to make the determination that *the light* is not visible for 50 feet." (Emphasis added.)

¶ 10 After viewing the video and hearing the limited testimony and arguments of both parties, the court further expounded on its findings and conclusions, explaining, "You don't even have to have a lamp, but a tail lamp or separate lamp shall be so constructed and placed to illuminate with a white light the rear registration plate required and render it clearly legible from a distance of 50 feet." The court specifically framed the question before it as "whether or not there [was] a reasonable articulable basis to make the traffic stop." The court found, after reviewing the video: "Okay, well, I guess for purposes of the video, I don't know how helpful it is, because when the lights are on, it is bright. When it is not on, you can still see the license plate numbers." Therefore, after due consideration of the testimony and the video evidence, the court found, that under the

circumstances presented, Deputy Cross did not have a reasonable articulable basis for initiating a traffic stop. The court found that the basis for the traffic stop was pretextual, as the only reason identified for the stop was the deputy's testimony that as he passed the vehicle, he saw there was no rear registration plate light. The court did not believe it was possible for Deputy Cross to see that the light was out when he saw the defendant's car in his side view mirror as the vehicles passed each other. In making this finding, the court stated: "There was no erratic driving. There was no speeding, nothing else other than a glimpse of a license plate in a rear view mirror." Accordingly, the court entered an order rescinding the statutory summary suspension of the defendant's driver's license. This appeal followed.

¶ 11 In reviewing a trial court's ruling on a petition to rescind statutory summary suspension, we first consider the trial court's factual findings and credibility determinations, and then we review the court's ultimate legal ruling. *City of Highland Park v. Kane*, 2013 IL App (2d) 120788, ¶ 11, 991 N.E.2d 333. "We 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." (Internal quotation marks omitted.) *City of Highland Park*, 2013 IL App (2d) 120788, ¶ 11, 991 N.E.2d 333. In reviewing the trial court's legal ruling, we are "free to undertake [our] own assessment of the facts in relation to the issues and may draw [our] own conclusions when deciding what relief should be granted." *People v. Hackett*, 2012 IL 111781, ¶ 18, 971 N.E.2d 1058. Accordingly, "[the] trial court's ultimate legal ruling as to whether [rescission] is warranted is subject to *de novo* review." (Internal quotation marks

omitted.) *City of Highland Park*, 2013 IL App (2d) 120788, ¶ 11, 991 N.E.2d 333. We also review *de novo* any legal questions, such as the construction of the relevant statute. *People v. Howard*, 228 Ill. 2d 428, 432, 888 N.E.2d 85, 87 (2008).

¶ 12 The statute provides, "Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light a rear registration plate \*\*\* and render it clearly legible from a distance of 50 feet to the rear." 625 ILCS 5/12-201(c) (West 2006). The State argues that the court misconstrued this statute by focusing only on the officer's ability to read the plate at a distance of 50 feet and ignoring the fact that the statute also requires there to be a light. According to the State, the court found that it did not matter whether the light was operational "as long as the license plate was otherwise legible." This finding, the State argues, overlooks the statutory requirement that a vehicle be equipped with a light that illuminates the rear license plate.

¶ 13 We believe the State's argument mischaracterizes the court's ruling. While the court did make several references asking whether the defendant's license plate was visible from a distance of 50 feet, the court also clearly stated, more than once, that while there does not need to be a separate light directly over the license plate, the license plate does need to be illuminated either by the car's tail lights or a separate light. Likewise, the court found it irrelevant whether the light was operational either after the defendant completed the field sobriety tests or even the next day. Rather, the court found that the relevant inquiry was the credibility of Deputy Cross's testimony as to whether he could see that the rear registration plate light was working before he made the stop. This was

the only basis offered by Deputy Cross for initiating the traffic stop. We find that the court did not misinterpret the statute.

¶ 14 The State next argues that the court erroneously limited its consideration of Deputy Cross's credibility to the question of whether he could possibly determine that the rear registration plate light was not working from the fleeting glimpse of the defendant's car in his side view mirror as the two cars passed each other. The State contends that even if the deputy could not have seen that the light was out in his rear view mirror, the court erred in failing to consider whether Deputy Cross could determine the light was out at any point before the actual vehicle stop. As he followed the defendant's car, Deputy Cross had an additional opportunity to observe whether the rear registration light was operational.

¶ 15 While we agree with the State that the deputy's observations as he pursued the defendant's vehicle may have been a relevant consideration, the State never offered any testimony from the deputy regarding this issue. In fact, when given the opportunity to testify about the distance traveled prior to the stop and whether any additional observations played a role in the stop, the testimony elicited was as follows:

"State: Now would you repeat what you said while watching the video about the light?

Deputy: I said that a rear registration plate light will brightly illuminate the rear registration plate.

State: But that is not why you stopped her.

Deputy: I did stop her because she had no rear – *when she passed me I did not see a rear registration plate light*. The rear registration light was not illuminated." (Emphasis added.)

¶ 16 The State did not continue questioning the deputy regarding his observations while following the defendant's vehicle. The defendant clearly disputed whether the rear registration light was working as the deputy followed defendant, and even the court found the video of little help in determining this issue. Once stopped, as referenced previously, the deputy's squad car lights over-illuminated the rear of defendant's vehicle, making it impossible to determine whether the rear registration light was operable. Moreover, the deputy did not take a photograph or perform any action for the video recording that would have substantiated his observations. In summary, there was simply not enough evidence that would have allowed the court to have made the determination sought by the State.

¶ 17 The defendant calls our attention to *City of Highland Park v. Kane*, which involved facts similar to this case. There, an officer testified that he first saw the defendant's vehicle as he was parked on an overpass. Because he noticed that the defendant's rear license plate light was not working, he followed her vehicle. *City of Highland Park*, 2013 IL App (2d) 120788, ¶ 2, 991 N.E.2d 333. While following the vehicle, the officer noticed that it was weaving within the lane. *City of Highland Park*, 2013 IL App (2d) 120788, ¶ 3, 991 N.E.2d 333. "Eventually," the officer stopped the vehicle (emphasis added) (*City of Highland Park*, 2013 IL App (2d) 120788, ¶ 4, 991 N.E.2d 333) and told the defendant that he was stopping her because her license plate

light was out and she was weaving (*City of Highland Park*, 2013 IL App (2d) 120788, ¶ 5, 991 N.E.2d 333).

¶ 18 The trial court granted the defendant's petition to rescind the statutory summary suspension of her driver's license, finding that there was no reasonable basis for the stop. In reaching this conclusion, the trial court noted that (1) a video showed that the plate was clearly visible for at least 50 feet, and (2) the defendant presented evidence that the light was working. *City of Highland Park*, 2013 IL App (2d) 120788, ¶ 8, 991 N.E.2d 333.

¶ 19 On appeal, the court found that although there was also evidence to "suggest that the light was not working properly," the trial court's finding regarding the light was not against the manifest weight of the evidence because the opposite conclusion was not clearly evident. *City of Highland Park*, 2013 IL App (2d) 120788, ¶ 13, 991 N.E.2d 333. However, the court nevertheless reversed the trial court's ruling, finding that the stop was valid based on the fact that the defendant was weaving and failed to signal when she exited the highway, both vehicle code violations observed by the officer while he followed the defendant. *City of Highland Park*, 2013 IL App (2d) 120788, ¶¶ 14-15, 991 N.E.2d 333. Here, the deputy testified that his only purpose for stopping the defendant was the fact that her rear registration light was not operational. Unlike the additional vehicle code violation attested to in the *Highland Park* case, there was no such testimony offered by Deputy Cross, and the court made specific reference to the fact that the defendant had not been noticed to have been speeding or driving erratically. Because the court had no other evidentiary basis for the stop, such as testimony from Deputy Cross

that as he followed the defendant, he continued to observe that the light was not working, the trial court did not err in its ruling.

¶ 20 The State finally argues that the court's credibility determination was against the manifest weight of the evidence because the court made several statements that focused on Deputy Cross's ability to see the license plate from a distance of 50 feet. Again, we do not believe that those comments were determinative of the court's reasoning.

¶ 21 For the foregoing reasons, we affirm the order of the trial court rescinding the statutory summary suspension of the defendant's driver's license.

¶ 22 Affirmed.

¶ 23 JUSTICE CHAPMAN, dissenting:

¶ 24 I dissent for two reasons. First, I do not agree with the majority's conclusion that the evidence presented was insufficient to allow the court to consider Deputy Cross's ability to observe the defendant's license plate light as he followed her vehicle. In addition, I believe that some of the court's comments related to this question are tantamount to a finding that the statute is inherently flawed.

¶ 25 As my colleagues acknowledge, the deputy's observations of the defendant's vehicle up to the moment he effectuated the stop were a relevant consideration. See *Hackett*, 2012 IL 111781, ¶ 29, 971 N.E.2d 1058 (explaining that we determine whether a traffic stop is justified by considering all of "the facts available to the officer *at the moment of the seizure*" (emphasis added)). As the majority points out, Deputy Cross

testified that he stopped the defendant because he noticed that the light was out when he saw the back of her vehicle in his side view mirror. Although he also testified that an operational registration plate light "will brightly illuminate the rear registration plate," he was never asked whether he in fact noticed that the defendant's plate was not brightly illuminated as he followed her vehicle. Because of this, my colleagues conclude that the court did not have sufficient evidence to allow it to make the relevant determination. I disagree.

¶ 26 In determining the reasonableness of an officer's conduct, courts must "apply an objective standard" and consider "whether the facts available to the officer at the moment of the seizure" justify the stop. *Hackett*, 2012 IL 111781, ¶ 29, 971 N.E.2d 1058. The officer's subjective reason for making the stop is not determinative. *City of Highland Park*, 2013 IL App (2d) 120788, ¶ 15, 991 N.E.2d 333. Thus, the court is not required to limit its consideration to the reasons or factors given by the officer as the basis for the stop. *City of Highland Park*, 2013 IL App (2d) 120788, ¶ 15, 991 N.E.2d 333.

¶ 27 Applying these principles to the case at hand, the court here should have determined whether the stop was objectively reasonable based on all of the facts available to Deputy Cross before he made the stop—including any observations he was able to make during the minute he followed the defendant's vehicle before effectuating the stop. The court could make this determination based on the video from the dashboard camera and Deputy Cross's testimony that an operational registration light will "brightly illuminate" a license plate. Although the court did make several statements addressing in a general sense the ability of an officer to observe the registration plate light while following a

vehicle, the court did not resolve the question. For this reason, I would remand the matter to the trial court to allow the court to make this crucial determination.

¶ 28 The majority found it unnecessary to address the State's contention that the court's credibility determination was against the manifest weight of the evidence due to its focus on Deputy Cross's ability to determine whether the license plate was legible from a distance of 50 feet. This is because they found that the challenged statements were not determinative. As I have noted, the court ultimately did not resolve the question. As such, I agree that the statements were not determinative. However, I believe that one of the court's statements merits discussion.

¶ 29 Specifically, the trial court stated, "The only way I guess we could have a determination as to the fact is if you backed up your car 50 feet and turned all the lights off on a dark road out in the country and seeing if you could read the license plate because that is what matters." It is inconceivable that any officer would take this course of action. Therefore, the implication of the statement is that the statute may never form the basis for a valid traffic stop. This is a result our legislature could not have intended.

¶ 30 I would remand this matter to the trial court to allow it to consider Deputy Cross's ability to observe the defendant's license plate while following her vehicle. Further, I would instruct the trial court that, in making this determination, it must not impose a standard that would render the statute unenforceable. For these reasons, I respectfully dissent.