2018 IL App (2d) 170372-U
Nos. 2-17-0372 & 2-18-0021 cons.
Order filed September 24, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. TATASHA L. HODGES, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Stephenson County. No. 16-DT-86 Honorable James M. Hauser, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted defendant's petition to rescind and motion to quash and suppress: the court was entitled to find from a recording that defendant's turn in front of the officer required him only to "tap" his brakes and that defendant did not thereafter swerve, and per those findings the officer lacked a reasonable suspicion that defendant had committed a traffic offense.

¶ 2 In these consolidated appeals, the State seeks review of orders of the circuit court of Stephenson County (1) rescinding the statutory summary suspension of defendant Tatasha L. Hodges's driving privileges (case No. 2-17-0372) and (2) granting her motion to quash her arrest

and suppress evidence obtained during the course of a traffic stop (case No. 2-18-0021). We affirm.

¶ 3 On July 18, 2016, defendant was arrested for driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2016)). Chemical testing of the alcohol content of defendant's blood, breath, or urine revealed a concentration of 0.177. The arresting officer prepared a Law Enforcement Sworn Report, and the Office of the Secretary of State confirmed the statutory summary suspension of defendant's driving privileges, to take effect on September 3, 2016. On August 18, 2016, defendant filed her petition to rescind the summary suspension, alleging, *inter alia*, that the arresting officer did not have reasonable grounds to believe that she had committed DUI.

¶ 4 The petition was heard on February 19, 2017. At the hearing, Richard McElmeel, an officer with the Freeport Police Department, testified that at about 11:10 p.m. he was traveling north on South Galena Avenue when a Mercury pulled out in front of him, causing him to brake in order to prevent an accident. McElmeel followed the vehicle as it turned south onto South Maple Avenue. McElmeel observed the Mercury "swerve to its right and almost hit a cluster of parked cars on two separate occasions." McElmeel testified that there were no lane markings on South Maple Avenue and that there were cars parked on both sides of the road. The Mercury turned onto Empire Street. According to McElmeel, the Mercury stopped at a stop sign and signaled before making the turn. After the Mercury turned onto Empire Street, McElmeel conducted a traffic stop.

¶ 5 McElmeel's vehicle was equipped with a video camera that recorded the Mercury's travel from the point it turned onto South Galena Avenue. The recording also displayed, *inter alia*, the speed at which McElmeel's vehicle was traveling. The recording, which was played during the

hearing, showed that McElmeel's vehicle was traveling 29 miles per hour before the Mercury turned in front of it. McElmeel reduced his speed to 22 miles per hour.

¶ 6 The trial court found that, when the Mercury turned in front of McElmeel's vehicle, it was not so close as to constitute an immediate hazard. The trial court also found that McElmeel did not slam on the brakes. Rather, McElmeel applied his brakes "very momentarily," in what the trial court characterized as "a tap." The trial court also indicated that it did not see the Mercury swerving. The trial court remarked that defendant "was driving just fine." The trial court noted that defendant "used her blinker whenever she was supposed to" and "stopped at the stop signs." The trial court therefore concluded that the traffic stop was improper and granted defendant's petition to rescind the statutory summary suspension. On February 21, 2017, the State moved to reconsider. The trial court denied the motion on May 12, 2017. The State filed its notice of appeal on May 24, 2017. On November 22, 2017, defendant moved to quash her arrest and suppress evidence. On December 21, 2017, the trial court granted the motion "based on the same findings [the court] made at the hearing on the petition to rescind." The State filed its notice of appeal on January 3, 2018.

¶ 7 Section 11-501.1 of the Illinois Vehicle Code (Code) (*id.* § 11-501.1 (West 2016)), 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). Likewise, if the seizure was unconstitutional, evidence obtained as a result of the seizure must be suppressed.

¶ 8 On review of the trial court's ruling on a petition to rescind a statutory summary suspension, 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).[1] However, the trial court's ultimate conclusion as to the legality of the seizure is reviewed *de novo*. *Id.* at 38-39. The same standard of review applies to the trial court's ruling on a motion to quash an arrest and suppress evidence. *Id.*

¶ 9 In *People v. Hackett*, 2012 IL 111781, ¶ 20, our supreme court offered the following summary of the principles governing the constitutionally of traffic stops:

> "Vehicle stops are subject to the fourth amendment's reasonableness requirement. [Citations.] ' "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." ' [Citation.] However, as this court has observed, 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. [Citations.] A police officer may conduct a brief, investigatory stop of a person where the officer can

[1] We recognize that, when the trial court's findings of fact are based *entirely* on a video recording that resolves *all* the issues, *de novo* review may be appropriate. *People v. Valle*, 405 Ill. App. 3d 46, 56 (2010). However, where, as in this case, the trial court also hears live testimony bearing on a disputed issue of fact, the *de novo* standard does not apply. *Id.*

> point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. [Citation.] The officer's belief 'need not rise to the level of suspicion required for probable cause.' [Citation.] The distinction between these two standards may or may not be relevant, depending upon the facts of the case under consideration and the Vehicle Code provision at issue."

¶ 10 According to the State, the evidence shows that McElmeel's observation of defendant's driving gave rise to a reasonable, articulable suspicion that defendant committed traffic violations. The State contends that, when defendant made a left turn in front of him, she violated sections 11-804(a) and 11-902 of the Code (625 ILCS 6/11-804(a), 11-902 (West 2016)). Section 11-804(a) (*id.* § 11-804(a) (West 2016)) provides, in pertinent part, that "[n]o person may *** turn a vehicle from a direct course *** unless and until such movement can be made with reasonable safety." Section 11-902 (*id.* § 11-902 (West 2016)) provides that "[t]he driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is so close as to constitute an immediate hazard, but said driver, having so yielded may proceed at such time as a safe interval occurs." The State further contends that the evidence shows that defendant failed to drive on the right half of the roadway as required by section 11-701(a) of the Code (*id.* § 11-701(a) (West 2016)).

¶ 11 The trial court's decision to grant defendant's petition and motion was based on the video recording of defendant's driving. The trial court concluded that, although McElmeel reduced his speed when defendant made a left turn in front of him, there was no danger of a collision. The trial court found that, although McElmeel reduced his speed, he merely "tapped" his brakes (as

opposed to "slamming" them) and he "never got that close" to her. Having viewed the video, we cannot say that these findings were against the manifest weight of the evidence.[2]

¶ 12 The question then becomes whether, by forcing McElmeel to "tap" his brakes, defendant drove in a way that gave rise to a reasonable suspicion that she turned unsafely. We hold that she did not. McElmeel's mere "tap" of his brakes established only that defendant was driving more slowly, requiring McElmeel to fulfill his "duty to maintain a lookout and decrease speed as necessary to avoid a collision." *Oothoudt v. Woodard*, 132 Ill. App. 2d 203, 207 (1971); see also *id.* (a driver on a preferred highway "does not have an unqualified right-of-way regardless of circumstances, distances, or speed. He may not plunge blindly ahead or proceed into obvious danger. Rather, there is a duty upon such a driver to observe due care in approaching and crossing intersections and to drive as a prudent person would to avoid a collision when danger is discovered)." A left turn is reasonably safe when an approaching motorist, by merely tapping his or her brakes, can easily reduce the vehicle's speed to prevent a collision. Under such circumstances the risk of a collision is minimal at most. Accord *State v. Wilson*, 2017-Ohio-9317 (No reasonable suspicion to stop civilian vehicle for failure to yield where police vehicle needed only to decelerate gently from 42 miles per hour to 35 miles per hour).

¶ 13 Accordingly, the trial court did not err in granting (1) defendant's petition to rescind the statutory summary suspension of her driving privileges and (2) her motion to quash and suppress. For the foregoing reasons, the judgment of the circuit court of Stephenson County is affirmed.

¶ 14 Affirmed.

[2] Likewise, in light of the video, the trial court's finding that defendant did not swerve was not against the manifest weight of the evidence.