

2012 IL App (1st) 111656-U

FOURTH DIVISION  
December 13, 2012

No. 1-11-1656

**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  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 20220
	)	
JOSEPH ALLEN,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Denial of defendant's motion for a new trial affirmed where the supreme court's decision in *People v. Harris*, 228 Ill. 2d 222 (2008), remains controlling on the issue of whether defendant was unlawfully seized during a traffic stop and asked for his identification.
- ¶ 2 Following a bench trial in the circuit court of Cook County, defendant Joseph Allen was convicted of being an armed habitual criminal. The court denied his motion for a new trial after an evidentiary hearing, then sentenced him to nine years' imprisonment. On appeal, defendant contends that his conviction must be reversed because he was unlawfully seized during a traffic

stop when eight or nine police officers surrounded the vehicle in which he was a passenger and immediately asked for his identification without an independent reasonable suspicion of criminal activity. He also contends that the trial court erred in finding that police did not impermissibly broaden the scope of the traffic stop by seizing his identification card without an independent reasonable suspicion of criminal activity.

¶ 3 The evidence adduced at trial showed that in 2007, an investigative alert for defendant was issued after police executed a search warrant in his name, at a home located at 3155 West Filmore Street in Chicago, Illinois. There, the officers uncovered a cache of loaded firearms in a bedroom closet containing men's clothing, 50 baggies containing suspected heroin inside a dresser, and, in the living room, several pieces of mail addressed to defendant.

¶ 4 Defendant was arrested in 2009, as a passenger in a vehicle stopped for two broken headlights, when a name check disclosed the investigative alert from 2007. At the police station, he was advised of his *Miranda* rights and confronted with a copy of the 2007 search warrant. Defendant stated that he was aware of the search warrant and maintained that he could not be arrested because "it had been too long since [police] got his guns out of his residence." Upon being told that the statute of limitations had not expired, defendant stated that he would tell police where he obtained his guns if they were to let him go, and that he should have known better "than to keep his guns at his house."

¶ 5 Additional evidence at trial included stipulated testimony regarding the chain of custody for the firearms, forensic analysis of the suspected heroin, and certified statements of defendant's prior drug-related convictions. After the State rested, the trial court granted defendant's motion for a directed finding as to the charge of possession of a controlled substance with intent to deliver, and continued the trial on the lesser-included and remaining offenses. Defendant rested

without testifying or presenting any witnesses on his behalf, and the trial court found him guilty of being an armed habitual criminal.

¶ 6 While he was still represented by private counsel, defendant filed a motion for a new trial alleging that the evidence adduced at trial was insufficient to prove him guilty beyond a reasonable doubt. The trial court then allowed private counsel to withdraw after defendant filed an Attorney Registration and Disciplinary Commission complaint against counsel. Defendant retained new counsel, who filed an amended motion for a new trial alleging, *inter alia*, that private counsel should have filed a motion to quash arrest and suppress statements. Following a hearing, the trial court denied defendant's motion for a new trial based on the supreme court's decision in *People v. Harris*, 228 Ill. 2d 222 (2008), and found that counsel was not ineffective for failing to file a motion to quash arrest and suppress statements.

¶ 7 In this appeal from the judgment entered, defendant presents the following issues for review: (1) whether an unlawful seizure occurs when eight or nine uniformed officers surround a car that was stopped for broken headlights, and then immediately ask him to produce his identification without reasonable suspicion; and (2) whether the trial court erred in finding that police did not impermissibly broaden the scope of the traffic stop by seizing his identification in the absence of an independent reasonable suspicion. Defendant argues that although the officers did not specifically accuse him of a crime, the immediate request for his identification without any justifying reason constitutes a perceived accusation of wrongdoing from his perspective as a passenger in a vehicle. He claims that his encounter with the officers and the seizure of his identification were not consensual given this immediate accusation of wrongdoing while surrounded by uniformed officers.

¶ 8 We review for abuse of discretion a trial court's denial of a motion for a new trial. *People v. Rincon*, 387 Ill. App. 3d 708, 726 (2008). New trials should only be granted when the

opposite conclusion is clearly apparent to the reviewing court or the findings of the trier of fact are unreasonable, arbitrary and not based on the evidence. *People v. Gibson*, 304 Ill. App. 3d 923, 930 (1999). Notwithstanding, we must initially determine whether defendant was unlawfully seized under the fourth amendment, a legal question which we review *de novo*. *People v. Lopez*, 229 Ill. 2d 322, 345 (2008). The same standard of review applies to the ultimate question of whether suppression was indicated. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001).

¶ 9 We observe, as does the State, that defendant's arguments were expressly rejected by our supreme court in *People v. Harris*, 228 Ill. 2d 222 (2008), where defendant was a passenger in a vehicle that was stopped for making an illegal left turn. The supreme court first determined that defendant was lawfully seized because the officer had probable cause to stop the vehicle after observing the driver make an illegal left turn. *Harris*, 228 Ill. 2d at 232. The supreme court then found that the officer could ask defendant for his identification because such a request did not unduly prolong the stop and no additional fourth amendment justification was required. *Harris*, 228 Ill. 2d at 242-44. In so finding, the supreme court abandoned the alteration of the fundamental nature of the stop approach originally pronounced in *People v. Gonzalez*, 204 Ill. 2d 220, 235 (2003). *Harris*, 228 Ill. 2d at 244. Ultimately, the supreme court held that the warrant check using defendant's identification did not infringe on a constitutionally protected privacy interest because "a warrant is a matter of public record" and does not reveal any private activity or information. *Harris*, 228 Ill. 2d at 237-38.

¶ 10 Here, as in *Harris*, defendant was lawfully seized by virtue of the traffic stop (*People v. Salinas*, 383 Ill. App. 3d 481, 498 (2008)), and asking defendant for his identification and then checking it did not unduly prolong the stop (*People v. Galarza*, 391 Ill. App. 3d 805, 814 (2009)), to give rise to fourth amendment concerns. As in *Harris*, validating the information on

defendant's identification card did not infringe on any privacy interest because, absent contrary facts, any information in the police database concerned matters of public record. *Galarza*, 391 Ill. App. 3d at 814. Although defendant asserts that *Harris* was wrongly decided, we note that the propriety of *Harris* is not before us, that we are bound by the decisions of the Illinois Supreme Court and may not overrule them. *People v. Artis*, 232 Ill. 2d 156, 164 (2009).

¶ 11 In light of the foregoing, we conclude that the trial court did not abuse its discretion in denying defendant's amended motion for a new trial because neither the officer's request for his identification, nor the check of that information violated his rights under the fourth amendment, as would arguably support his claim that trial counsel should have filed a motion to quash arrest and suppress statements.

¶ 12 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 13 Affirmed.