

No. 1-11-1661

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 10 CR 10625
)	
VEDA MANNING-SANDERS,)	Honorable
)	James Michael Obbish,
Defendant-Appellant.)	Judge Presiding.
)	

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Neville and Justice Steele concurred in the judgment.

ORDER

¶ 1 *HELD:* The circuit court did not err in denying defendant's motion to suppress evidence where the search of the vehicle was justified as a search incident to a lawful arrest for a violation of Illinois' open container law. It was reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle where the officer observed an unsealed container of alcohol in the vehicle and also observed defendant making furtive movements toward the area that was searched.

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¶ 2 Following a bench trial, defendant Veda Manning-Sanders¹ was convicted of unlawful use of a weapon and sentenced to one year of probation. On appeal, defendant contends that the trial court erred in denying her motion to suppress evidence where the search of her vehicle's console was not a valid search incident to arrest. For the reasons that follow, we affirm.

¶ 3 **BACKGROUND**

¶ 4 Following a traffic stop, defendant was arrested and charged with one count of illegal possession of a firearm owner identification (FOID) card and four counts of aggravated unlawful use of a weapon. Defendant filed a motion to suppress evidence on the grounds that the arresting officers did not have probable cause to search her vehicle.

¶ 5 At the hearing on the motion to suppress, defendant testified that she was driving a blue minivan belonging to her used car dealership on March 25, 2010, when she was pulled over by the Chicago police. An officer approached her vehicle and asked for her driver's license. Defendant gave the officer a number of items, including her driver's license, her dealership ID, insurance and registration, and her state ID. The officer told her that her driver's license had expired and asked her to step out of the vehicle. Defendant testified that her license had expired three days earlier and she had not realized it. She and her husband both exited the vehicle and stood outside with a second officer while the first officer searched the vehicle.

¶ 6 Defendant explained that the minivan contained a center console with one compartment

¹The notice of appeal lists the defendant as Vida Manning-Sanders. However, on June 18, 2010, the State amended the charges to correctly reflect the defendant's first name as "Veda" and the defendant confirmed that was the correct spelling of her name.

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beneath the armrest and a second compartment below it that can be locked. She testified that the police found the weapon in the bottom compartment and that the compartment was closed and locked at the time. The gun was inside a gold-colored purse that was inside the console.

¶ 7 Officer Gonzalez testified that he observed a taillight out on defendant's vehicle and conducted a traffic stop. Defendant pulled the vehicle into a gas station and stopped. As Officer Gonzalez approached the vehicle, he noticed defendant making movements and reaching in the direction of the center console area. When Officer Gonzalez reached the window, defendant had her back to him and appeared to be doing something in the area of the center armrest. Officer Gonzalez asked to see her hands. She did not comply at first, but when he asked a second time, defendant placed her hands on the steering wheel. When Officer Gonzalez asked defendant for her driver's license, defendant produced her ID card. Officer Gonzalez again asked for her license and defendant rummaged through her purse but could not produce her license. Officer Gonzalez then asked defendant to step out of the vehicle. After defendant stepped out of the vehicle, Officer Gonzalez observed a large open bottle of vodka between the seat and the armrest. The bottle was on its side and he could see that it was half full. Officer Gonzalez retrieved the bottle and opened the center armrest, which was unlocked. There was a gold purse inside. The purse was open and Officer Gonzalez observed a gun inside the purse. He recovered the gun and determined that it was loaded with four live rounds of ammunition.

¶ 8 On cross-examination, Officer Gonzalez confirmed that when he testified at the preliminary hearing, he did not say that defendant was turned toward the center console when he reached the window of her vehicle. He further confirmed that the center console was not open

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when he reached the window and that he never saw defendant actually open the console. Finally, he confirmed that he wrote in his report that he observed a furtive movement toward the center armrest area.

¶ 9 The trial court stated that it found the officer to be a very credible witness. The court stated that the officer observed the defendant making furtive movements toward the center console and that defendant had her back to the window facing the console as the officer approached. The court stated that after the officer recovered the bottle of vodka, he proceeded to open the center console "to conduct a search for what he believed or in the area anyway that the officer had observed the defendant making gestures or movements." The trial court stated that the fact that the officer observed an open bottle of alcohol between the console and the seat, coupled with the fact that defendant was making gestures toward the center console allowed the officer to search the console. The trial court subsequently denied the motion to suppress.

¶ 10 At trial, Officer Gonzalez testified that after he and his partner pulled defendant over for a broken taillight, he exited the police vehicle and observed defendant making a movement toward the center armrest of her vehicle. As Officer Gonzalez approached the vehicle, defendant had her back toward him and her face was turned away. He asked her twice if he could see her hands and she then placed them on the steering wheel. Instead of providing her driver's license, defendant produced a state ID. When defendant could not produce a driver's license, Officer Gonzalez had her step out of the vehicle. Officer Gonzalez observed a large bottle of vodka between the driver's seat and the center armrest. He recovered the bottle and opened the center console. He observed a gold purse inside the console. The purse was open and he could see a blue steel

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revolver inside the purse. On cross-examination, Officer Gonzalez testified that he could not tell whether defendant placed anything inside the center console or even whether she opened the console, only that she appeared to be reaching in the direction of the console area as he approached the vehicle.

¶ 11 Defendant moved for a directed finding on the counts that required the weapon to be uncased, citing *People v. Diggins*, 235 Ill. 2d 48 (2009), in which our supreme court held that a closed center console is considered a case. The trial court agreed and entered a directed finding of not guilty on two of the four counts of aggravated unlawful use of a weapon. The defense then rested.

¶ 12 The trial court entered a finding of not guilty on the count of illegal possession of a FOID card. The court entered a finding of guilty on one count of aggravated unlawful use of a weapon and merged the remaining unlawful use of a weapon count. In a posttrial motion, defendant contended that the trial court erred in denying her motion to suppress where the police had no reason to search the closed center console of her vehicle. The motion was denied. In sentencing defendant to one year of probation, the trial court noted that defendant had no prior criminal record, was employed, and was supporting her seven children. The trial court further ordered an alcohol and drug evaluation, stating that if defendant had not engaged in the risky behavior of having open alcohol in her car, she never would have been arrested for possession of the gun. Defendant timely filed this appeal.

¶ 13 ANALYSIS

¶ 14 The only contested issue on appeal is whether the trial court erred in denying defendant's

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motion to suppress evidence. A motion to suppress involves mixed questions of law and fact. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). Because the trial court is in a superior position to determine the credibility of witnesses, findings of historical fact will be upheld on review unless they are against the manifest weight of the evidence. *Id.* However, a reviewing court is also free to undertake an independent assessment of the facts in relation to the issues presented. *Id.* The ultimate question of whether the evidence should be suppressed is reviewed *de novo*. *Id.*; see also *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006).

¶ 15 Defendant contends that the search of the center console of her vehicle was unreasonable in light of *Arizona v. Gant*, 556 U.S. 332 (2009). It is well established that warrantless searches are *per se* unreasonable under the fourth amendment, subject only to a few specific and well-defined exceptions. *Id.* at 338 (quoting *Katz v. United States*, 389 U.S. 345, 357 (1967)); see also *People v. Bridgewater*, 235 Ill. 2d 85, 93 (2009). A search incident to a lawful arrest is one such exception to the warrant requirement. *Gant*, 556 U.S. at 338. There are two circumstances in which a vehicle search incident to a recent occupant's arrest is authorized: (1) where the arrestee is unsecured and within reaching distance of the vehicle's passenger compartment at the time of the search; or (2) officers reasonably believe evidence relevant to the crime of arrest may be found in the vehicle. *Bridgewater*, 235 Ill. 2d at 94-95 (citing *Gant*, 556 U.S. at 343).

¶ 16 In the first circumstance, because the search-incident-to-arrest exception derives from interests in officer safety and evidence preservation, it is limited in scope to the arrestee's person and the area within his immediate control. *Id.* at 338-39. "If there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications

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for the search-incident-to-arrest exception are absent and the rule does not apply." *Id.* at 339.

¶ 17 Defendant and her husband, although not handcuffed, were outside the vehicle with Officer Gonzalez's partner while he searched the vehicle. There is nothing in the record to suggest any concern for officer safety or evidence preservation at the time of the search. There is also no indication in the record that there was any possibility that defendant could have reached into the center console, the area the officer was attempting to search. Thus, the search was not justified by the possibility of access to the vehicle by the arrestee, the first *Gant* circumstance.

¶ 18 The *Gant* Court further held that a search incident to a lawful arrest is also justified in a second circumstance that does not implicate either officer safety or evidence preservation, namely, when it is " 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.' " *Gant*, 556 U.S. at 343 (quoting *Thornton v. United States*, 541 U.S. 615, 632 (2004) (Scalia, J., concurring in judgment)); see also *Bridgewater*, 235 Ill. 2d at 94-95. The defendant in *Gant* was arrested for driving with a suspended license, an offense for which the Court noted police could not reasonably expect to find relevant evidence in the vehicle. *Gant*, 556 U.S. at 344. Similarly, the officer here could not have reasonably expected to find evidence related to defendant's expired license inside the vehicle. However, defendant concedes that the officers were justified in arresting her for violating Illinois' open container law. See 625 ILCS 5/11-502 (West 2010) (a driver may not transport an unsealed bottle of alcohol within the passenger area of the vehicle). Thus, we must determine whether it was reasonable to believe that evidence related to the open container violation (the crime of arrest) may have been found in the vehicle, the second circumstance under which a search incident to arrest is justified under

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Gant.

¶ 19 The State argues in its brief, and the record seems to indicate, that the trial court, after finding *Gant* distinguishable, relied on the automobile exception to the warrant requirement in determining that the search of the console was justified in that probable cause existed for the search. Under the automobile exception, a warrantless search is permitted if there is probable cause to believe that the vehicle contains evidence of criminal activity that the officers are entitled to seize. *People v. James*, 163 Ill. 2d 302, 312 (1994). We need not address the question of the applicability of the automobile exception and whether probable cause was present to justify the search because the second *Gant* circumstance under which the search of the vehicle is permitted sets forth a lower standard, namely, reasonable belief, a standard more akin to the standard used in determining the validity of *Terry* stops. In *Terry v. Ohio*, 392 U.S. 1, 27 (1968), the Supreme Court held that a police officer may briefly stop a person for temporary questioning if the officer has a reasonable, articulable suspicion of criminal activity. See also *People v. Ghera*, 203 Ill. 2d 165, 177 (2003). It is well settled that reasonable suspicion is a less demanding standard than probable cause. See, e.g., *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000); *People v. Hackett*, 2012 IL 111781, ¶ 20; *People v. Harrell*, 2012 IL App (1st) 103724, ¶ 50; *People v. Maxey*, 2011 IL App (1st) 100011, ¶ 46. See also *United States v. Vinton*, 594 F. 3d 14, 25 (D.C. Cir. 2010) (noting that the reasonable belief standard in the second *Gant* circumstance requires less than probable cause because otherwise it would merely duplicate the automobile exception).

¶ 20 A reviewing court may affirm the circuit court on any basis supported by the record.

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People v. Dinelli, 217 Ill. 2d 387, 403 (2005). The officer testified that he observed defendant making furtive movements toward the center console as he approached the vehicle, and that she initially had her back to the window and appeared to be doing something in the area of the center console when he reached the driver's side window. Defendant also had to be told twice to show her hands before she complied. Because the officer subsequently observed an open bottle of alcohol in the vehicle between the console and the seat, it was reasonable to believe that additional unsealed containers of alcohol might be found in the center console. Thus, the trial court did not err in denying the motion to suppress.

¶ 21 Defendant also contends that the trial court improperly assessed a \$5 court system fee where she was not convicted of a violation of the Illinois Vehicle Code. See 55 ILCS 5/5-1101(a) (West 2010) (fee may only be imposed for violations of the Illinois Vehicle Code or similar municipal ordinance). The State concedes that the \$5 court system fee was improperly assessed. Therefore, we vacate the \$5 court system fee. See *People v. Paige*, 378 Ill. App. 3d 95, 104-05 (2007).

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court and vacate the \$5 court system fee.

¶ 23 Affirmed.