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2012 IL App (3d) 110408-U

Order filed October 15, 2012

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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. 3-11-0408
	)	Circuit No. 11-CF-14
	)	
ERIC R. SAENZ,	)	Honorable
	)	Carla Alessio-Policandriotes,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Carter and Holdridge concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* After viewing the videotape submitted by the State and assessing the officer's credibility, the trial court found the officer did not have a reasonable, articulable basis to stop defendant's vehicle until *after* the stop occurred, and this finding was not manifestly erroneous. The trial court's decision to allow defendant's motion to suppress is affirmed.
- ¶ 2 Defendant, Eric R. Saenz, was charged with aggravated driving while license suspended (625 ILCS 5/6-303(d) (West 2010)), a Class 4 felony. Defendant filed a motion to suppress

evidence, alleging the arresting officer did not have reasonable grounds to stop his vehicle. The trial court granted defendant's motion, and the State appealed. We affirm.

¶ 3

### FACTS

¶ 4 Officer Brian Wojowski was the only witness to testify at the hearing on defendant's motion to suppress. Wojowski testified that on January 2, 2011, at approximately 11:25 p.m., he was at the intersection of Haven and Cedar Road in New Lenox, Illinois. He was sitting in the middle of an "S-curve" on the side of the road when he observed a red pickup truck, driven by defendant, traveling southbound through the S-curve. Wojowski described defendant's vehicle as "a beater truck, red in color" with "a big trailer hitch." Wojowski testified the truck was approximately 25 feet from him when he first saw defendant's truck. At that time, he was unable to read the plate because it "was too far away." Consequently, Wojowski began following the truck because he could not read the license plate due to distance separating his stationary squad car from the moving vehicle. As Wojowski followed defendant south on Cedar Road, he testified that he noticed one of the two rear license plate lights was not illuminated. Wojowski turned on his overhead lights and stopped defendant. Following the traffic stop, the officer placed defendant under arrest for driving on a suspended license.

¶ 5 During direct examination, the court reviewed a video recording from Wojowski's on-board camera depicting defendant's truck traveling down the roadway and turning into a neighborhood just before the traffic stop. During cross-examination, Wojowski testified he could not see defendant's license plate when he was sitting in his squad car just five feet behind defendant. The officer's statement prompted the trial court to ask "[w]hy?" Wojowski

responded that defendant's trailer hitch was "rather large" and it was a "heavy-duty hitch with a hook."

¶ 6 After arguments from counsel, the court stated that based on the contents of the videotape, it could not find that defendant's license plate was obstructed as the officer described. While the trial court did not specifically address the issue of illumination, the court found that "there was no determination of reasonable basis for the stop until after the stop occurred." The State appeals the trial court's decision allowing defendant's motion to suppress.

¶ 7 ANALYSIS

¶ 8 On appeal, the State argues the trial court improperly granted defendant's motion to suppress. When reviewing the trial court's decision on a motion to suppress evidence, this court must allow great deference to the trial court's findings of fact and will disturb those findings only if they are against the manifest weight of the evidence. *People v. Jones*, 215 Ill. 2d 261, 268 (2005). A ruling is manifestly erroneous only when the opposite conclusion is clearly evident from the record. *People v. Rockey*, 322 Ill. App. 3d 832, 836 (2001). However, we review the trial court's ultimate decision on whether to suppress the evidence *de novo*. *Jones*, 215 Ill. 2d at 268.

¶ 9 The fourth amendment to the United States Constitution and article I, section 6 of the Illinois Constitution protect citizens from unreasonable searches and seizures. U.S. Const. amend. IV; Ill. Const. 1970, art. I, § 6. Generally, a police officer must obtain a warrant, supported by probable cause, before he may search persons or property. *People v. James*, 163 Ill. 2d 302, 311 (1994). However, in *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court found that it was in the public interest to allow police officers the ability to seize certain individuals for

the purpose of an investigatory stop. The *Terry* analysis consists of two steps: (1) the seizure must have been justified at its inception; and (2) it must be reasonable in scope to the circumstances that justified the stop. *People v. Jones*, 346 Ill. App. 3d 1101, 1104 (2004).

¶ 10 A traffic stop is justified at its inception when the officer reasonably believes a traffic violation has been committed. *Id.* at 1105. Here, section 12-201(c) of the Illinois Motor Vehicle Code (the Code) requires the rear registration plate to be illuminated and clearly legible from a distance of 50 feet. 625 ILCS 5/12-201(c) (West 2010). In addition, section 3-413(b) of the Code states “[e]very registration plate \*\*\* shall be maintained in a condition to be clearly legible, free from any materials that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers.” 625 ILCS 5/3-413(b) (West 2010).

¶ 11 Although Wojowski testified that defendant’s license plate was not clearly visible due to poor illumination and the obstruction caused by a large trailer hitch, the trial court was in the best position to judge the credibility of the witness. *People v. Frazier*, 248 Ill. App. 3d 6, 13 (1993). Obviously, after independently viewing the videotape, the court assessed the credibility of the officer’s testimony. Ultimately, contrary to the officer’s testimony, the trial court determined the officer did not have a reasonable basis for the traffic stop until after the stop occurred, and the court discounted Wojowski's testimony that the plate could not be seen. Having carefully reviewed the same videotape for purposes of review, and finding the video inconclusive, we hold the court’s findings were not manifestly erroneous and affirm the trial court's decision on the motion to suppress.

¶ 12 CONCLUSION

¶ 13 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 14 Affirmed.