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2012 IL App (3d) 110545-U

Order filed May 1, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF
ILLINOIS,

Plaintiff-Appellant,

v.

JOHN R. GRIFFITHS,

Defendant-Appellee.

) Appeal from the Circuit Court
) of the 13th Judicial Circuit,
) La Salle County, Illinois,
)
) Appeal No. 3-11-0545
) Circuit No. 11-CF-56
)
) Honorable
) H. Chris Ryan, Jr.,
) Judge, Presiding.

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

ORDER

¶ 1 *Held:* The trial court did not err by granting defendant's motion to suppress where defendant was unlawfully detained at the time of the canine alert.

¶ 2 Defendant, John R. Griffiths, was charged with unlawful possession with intent to deliver more than 5,000 grams of cannabis. 720 ILCS 550/5(g) (West 2010). Defendant filed a motion to suppress evidence, which the trial court granted. The State appeals, arguing the trial court erred when it granted defendant's motion to suppress. We affirm.

FACTS

¶ 3 On January 28, 2011, at approximately 10 a.m., defendant was driving eastbound on Interstate 80 and was stopped by Illinois State Police trooper John Morcheiser. Following the stop, defendant was charged with unlawful possession with intent to deliver more than 5,000 grams of cannabis. 720 ILCS 550/5(g) (West 2010). Defendant filed a motion to suppress evidence.

¶ 4 At the hearing on defendant's motion, Morcheiser testified. Additionally, a video recording of the stop, taken from Morcheiser's squad car, was played in open court. Morcheiser testified that prior to stopping defendant, he observed defendant's vehicle traveling under the speed limit and also momentarily drifting on or over the white fog line. Morcheiser followed defendant's vehicle onto an exit ramp, illuminated his overhead lights, and stopped the vehicle. Morcheiser pulled defendant's vehicle over to verify defendant was not tired or impaired.

¶ 5 Morcheiser approached defendant's passenger window and informed defendant he was driving under the speed limit and crossed over the white line a few times. Morcheiser questioned defendant about being tired, but defendant denied being tired and said he was stopping to get some windshield washer fluid. Morcheiser testified that as defendant handed over his driver's license, he was shaking. While defendant was looking for his insurance card, Morcheiser questioned him about where he was traveling from and what he did for a living. Defendant stated he was in California for a couple days because he was thinking about moving there. However, defendant stated he had rarely gone to California in the past. Morcheiser testified that defendant's story did not make much sense to him.

Morcheiser then returned to his squad car to process the stop and radioed for backup and a canine unit. A few minutes later, trooper Kent Patterson arrived and approached defendant's passenger window to converse with defendant while Morcheiser finished writing defendant a warning. Eventually, a third trooper, Anthony Brucker, arrived at the scene, but did not have any contact with defendant.

¶ 6 Approximately 10 minutes after the initial stop of defendant's vehicle, Morcheiser returned to defendant's passenger window and handed defendant a written warning for improper lane usage, along with his driver's license and insurance card. Morcheiser again asked if defendant was tired, to which defendant responded no. Morcheiser then asked if there was anything illegal in the vehicle, and defendant said no. Morcheiser also asked if he could search the vehicle, and defendant responded no. Morcheiser asked why not, and defendant responded he was in a hurry. Morcheiser then asked if defendant had any objection to having a canine walk around the vehicle. Defendant said "you're going to do what you're going to do," but further stated he did not know if Morcheiser had a dog with him. Morcheiser responded there was a dog on the way. In response, defendant attempted to explain he would like to purchase windshield washer fluid and said "well, can I go get my—can you follow me up—[.]" Morcheiser interrupted and said yes. Morcheiser then asked which gas station defendant wanted to go to, Love's Truck Stop or the Shell gas station. Defendant chose Love's. Morcheiser testified if the canine had not arrived by the time defendant exited the store, he would have let defendant leave.

¶ 7 Morcheiser, along with the other two troopers, followed defendant's vehicle to Love's gas station and parked adjacent to defendant, but did not block in his vehicle. Defendant went into Love's to purchase windshield washer fluid. Shortly thereafter, canine officer Jerry Nanouski

arrived and parked directly behind defendant's vehicle. Patterson was instructed to keep an eye on defendant inside of Love's. Approximately 8 minutes after defendant was issued a written warning, Nanouski walked the canine around defendant's vehicle, and it made a positive alert. It took approximately 18 minutes from the initial stop of defendant's vehicle until the canine finished the free-air sniff.

¶ 8 It is disputed whether the canine alerted before or after defendant came out of Love's, because this was not visible on the video recording. Morcheiser and Patterson testified the canine alerted while defendant was inside of Love's. However, defendant testified that when he exited Love's, he was pulled to the side and was not allowed to go to his vehicle because the canine was still working. Defendant testified he was not told until later that the canine made a positive alert.

¶ 9 Morcheiser testified that after the canine made a positive alert to the rear of defendant's vehicle, the vehicle was subsequently searched, cannabis was discovered, and defendant was arrested. Patterson's testimony supported Morcheiser's recollection of events, except that Patterson indicated when he spoke with defendant during the initial stop, defendant was no more nervous than any other person stopped by police.

¶ 10 Defendant testified he did not consent to let the canine sniff his vehicle, but instead said "you're going to do what you're going to do." Defendant testified that before driving to Love's, he was told he was not under arrest and he could leave. Despite this, defendant felt he was not free to go and he had to choose to either go to Love's or the Shell station for fear he would be pulled over again if he refused.

¶ 11 After hearing all the evidence, the trial court ruled there was probable cause to stop

defendant's vehicle, the period of time that Morcheiser actually talked to defendant was not excessively long, and defendant allowed Morcheiser to conduct the canine free-air sniff. However, the trial court found that under *People v. Sinclair*, 281 Ill. App. 3d 131 (1996), defendant should have been released after he declined the request to search his vehicle because to continue "badgering" or requesting an explanation was a violation of the law. Accordingly, the trial court granted defendant's motion to suppress. The State appeals.

¶ 12

ANALYSIS

¶ 13 On appeal, the State argues the trial court erred when it granted defendant's motion to suppress evidence. Specifically, the State contends the trial court's decision was an unwarranted expansion of *Sinclair* because defendant was not unreasonably detained at the time of the canine alert to his vehicle. The State argues the police and defendant were involved in a consensual encounter until the canine unit arrived. However, based on the evidence presented at the suppression hearing, we do not agree.

¶ 14 In reviewing a trial court's ruling on a motion to suppress, we will defer to the trial court's findings of fact, unless they are against the manifest weight of the evidence; however, *de novo* review is appropriate for the ultimate determination of whether the evidence should be suppressed. *People v. Luedemann*, 222 Ill. 2d 530 (2006).

¶ 15 The fourth amendment of the United States Constitution and article I, section 6, of the Illinois Constitution guarantee citizens the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. A police officer may make a valid investigatory stop, without probable cause, if the officer has a reasonable suspicion of criminal activity to justify the stop at issue. *Terry v. Ohio*, 392 U.S. 1 (1968). Nevertheless, an initially

lawful seizure can become unlawful if subsequent police conduct violates the fourth amendment's reasonableness standard. *Illinois v. Caballes*, 543 U.S. 405 (2005).

¶ 16 Determining the reasonableness of an officer's actions during a traffic stop involves a two-part inquiry: (1) whether the officer's actions in stopping defendant were justified at their inception; and (2) whether the officer's subsequent actions were reasonably related in scope to the circumstances which justified the interference in the first place. *Terry*, 392 U.S. 1. In the case at bar, defendant was pulled over for improper lane usage. Assuming the initial stop of defendant's vehicle was proper due to a traffic violation, we must determine, under the second prong of *Terry*, whether the officer's conduct impermissibly prolonged the duration of the detention or independently triggered the fourth amendment, thereby rendering the seizure unlawful. *People v. Harris*, 228 Ill. 2d 222 (2008).

¶ 17 A suspicionless canine sniff conducted during a lawful traffic stop does not independently trigger the fourth amendment, so long as it does not unreasonably prolong the duration of the traffic stop. *Caballes*, 543 U.S. 405. The duration of a traffic stop is analyzed under a totality of the circumstances approach, which considers the brevity of the stop and whether the police acted diligently during the stop. *People v. Baldwin*, 388 Ill. App. 3d 1028 (2009).

¶ 18 In this case, Morcheiser pulled defendant over for improper lane usage. After Morcheiser obtained defendant's information, he returned to his squad car to run the information and call for backup and a canine unit. Approximately 10 minutes after the stop, Morcheiser issued defendant his written warning. Once defendant was issued a written warning, Morcheiser continued to question defendant regarding a search of his vehicle. In response to defendant's refusal to consent to a search, Morcheiser asked why not and if defendant had any objection to a canine

walking around the vehicle. Defendant eventually complied with this request, but felt as if he had no choice.

¶ 19 Furthermore, Morcheiser and two additional troopers followed defendant to another location in order to conduct the canine sniff. It took approximately eight minutes from the time defendant was issued a written warning until the canine sniff was completed at the second location. Under these circumstances, we hold the duration of the detention was prolonged beyond the time reasonably required to complete the initial traffic stop. See *Caballes*, 543 U.S. 405; *People v. Koutsakis*, 272 Ill. App. 3d 159, 164 (1995) (“An officer’s authority to investigate a traffic violation may not become a subterfuge in order to obtain other evidence merely based on the officer’s suspicion”).

¶ 20 Moreover, the further detention and questioning of defendant was not justified by a reasonable, articulable suspicion of other illegal activity because Morcheiser’s only evidence was that defendant’s hands were shaking and his story did not make much sense. See *Caballes*, 543 U.S. 405; *People v. Stewart*, 242 Ill. App. 3d 599 (1993). As such, once the written warning was issued, the purpose of the stop ceased and Morcheiser was required to allow defendant to leave. See *Koutsakis*, 272 Ill. App. 3d 159 (if no further suspicion is aroused, the traffic stop must cease and the individual should no longer be detained); *Stewart*, 242 Ill. App. 3d 599. Thus, the subsequent discovery of cannabis flowed from the illegal detention of defendant and should be suppressed. See *Stewart*, 242 Ill. App. 3d 599. Accordingly, we affirm the grant of defendant’s motion to suppress.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of La Salle County is affirmed.

¶ 23 Affirmed.