

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).

2012 IL App (4th) 110738-U

Filed 7/30/12

NO. 4-11-0738

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Macon County |
| CANDY C. HART, |) | No. 11DT83 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Scott B. Diamond, |
| |) | Judge Presiding. |

JUSTICE KNECHT delivered the judgment of the court.
Justice McCullough concurred in the judgment..
Justice Pope specially concurred.

ORDER

¶ 1 *Held:* The trial court erred in granting defendant's motion to suppress evidence and quash arrest.

¶ 2 Decatur police arrested defendant, Candy C. Hart, for driving under the influence (DUI) (625 ILCS 5/11-501(a)(2) (West 2010)). Decatur police also cited defendant for illegal transportation of alcohol (625 ILCS 5/11-502(a) (West 2010)) and improper lane usage (625 ILCS 5/11-709(a) (West 2010)). Defendant filed a motion to suppress evidence and quash arrest. The trial court granted defendant's motion. The State appeals, arguing the trial court erred in granting defendant's motion. We reverse.

¶ 3 I. BACKGROUND

¶ 4 On February 24, 2011, defendant left Mac's Tackle in Decatur, Illinois, at

approximately 2 a.m. Decatur police officer Larry Brooks observed defendant pulling out of the parking lot. Officer Brooks followed defendant for a short distance and stopped defendant's vehicle for crossing the centerline. After stopping defendant, another officer with Officer Brooks observed an open beer can in the front seat of defendant's car. Officer Brooks asked defendant to step out of the vehicle and he performed a field sobriety test on defendant. He then arrested defendant for DUI (625 ILCS 5/11-501(a)(2) (West 2010)) and cited defendant for illegal transportation of alcohol (625 ILCS 5/11-502(a) (West 2010)) and improper lane usage (625 ILCS 5/11-709(a) (West 2010)).

¶ 5 Defendant filed a motion to suppress evidence and quash arrest, alleging Officer Brooks stopped defendant without probable cause and carried out an illegal search and seizure. On July 12, 2011, the trial court held a hearing on defendant's motion to suppress.

¶ 6 At the hearing, Officer Brooks testified he followed defendant because "[i]t was near closing time, and [he] just took a chance to see how [defendant] was going to drive." Officer Brooks testified he stopped defendant because she "crossed the centerline a couple of times." Officer Brooks testified his report solely mentioned defendant crossing the centerline as the reason for stopping defendant's vehicle and did not mention her failure to obey a stop sign.

¶ 7 Defense counsel submitted an in-car video of defendant's stop and arrest, recorded from Officer Brooks' vehicle. Officer Brooks testified it clearly and accurately represented the events surrounding the stop. The trial court viewed the video several times. The court remarked, "I didn't see her cross the centerline. *** I did not see her look like she changed lanes—go over the centerline on the film. Am I wrong?" Officer Brooks testified the clarity of the film was poor and it was hard to tell from the video defendant crossed the centerline, but he maintained he

witnessed defendant cross the centerline several times.

¶ 8 Officer Brooks also testified the video showed defendant disobeying at least one stop sign during the video and possibly a second. The trial court stated it observed "a clear blowing of the stop sign." At the conclusion of the hearing, the court expressed concern as to whether defendant's failure to obey the stop signs was a sufficient basis for the stop when the court did not believe the video showed defendant crossing the centerline as Officer Brooks alleged.

¶ 9 The trial court granted defendant's motion, finding "the film contradicts the basis of the arrest." The court found "the State attempts to bootstrap [*sic*] its argument by saying the defendant made a rolling stop at one or two stop signs," while Officer Brooks "testified that the stop sign was not the reason for his stop."

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, the State argues the trial court erred in granting defendant's motion to quash arrest and suppress evidence. The State argues Officer Brooks legally stopped defendant, having reasonable suspicion defendant committed a traffic violation and was driving under the influence of alcohol. Defendant argues the trial court properly granted her motion to quash arrest and suppress evidence. We agree with the State.

¶ 13 When reviewing a motion to suppress, we defer to the trial court's factual findings and will not reverse the court's decision unless it is manifestly erroneous. *People v. Chapman*, 379 Ill. App. 3d 317, 324-25, 883 N.E.2d 510, 516 (2007). A decision is manifestly erroneous "where an opposite conclusion is clearly evident from the record." *People v. Rozela*, 345 Ill.

App. 3d 217, 222, 802 N.E.2d 372, 376 (2003). Ultimately, we review *de novo* the question of whether the evidence should be suppressed. *Chapman*, 379 Ill. App. 3d at 325, 883 N.E.2d at 516.

¶ 14 The temporary detention that occurs when a vehicle is stopped by police constitutes a seizure of persons within the meaning of the fourth amendment. *Whren v. U.S.*, 517 U.S. 806, 809-10 (1996). A vehicle stop is subject to the fourth amendment's requirement of reasonableness. *Whren*, 517 U.S. at 810. The United States Supreme Court has concluded a traffic stop is analogous to a *Terry* stop and is analyzed under *Terry* principles. *Berkemer v. McCarthy*, 468 U.S. 420, 439 (1984). "In a '*Terry* Stop', an officer may conduct a brief, investigatory stop of a citizen when the officer has a reasonable, articulable suspicion of criminal activity." *People v. McDonough*, 239 Ill. 2d 260, 268, 940 N.E.2d 1100, 1106-07 (2010) (citing *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). The test then is "whether, viewed objectively, the 'totality of the facts and circumstances known to the officer at the time of the stop would warrant a reasonable and prudent person to believe' " defendant committed a traffic violation. *People v. Adams*, 225 Ill. App. 3d 815, 818, 587 N.E.2d 592, 595 (1992) (citing *People v. Assenato*, 186 Ill. App. 3d 331, 337, 542 N.E.2d 457, 460 (1989)).

¶ 15 Defendant argues Officer Brooks did not have a reasonable articulable suspicion for stopping defendant's vehicle because the video recording of the stop does not show defendant crossed the centerline as Officer Brooks alleged. We have reviewed the video recording and find the video shows defendant's vehicle moves or sways within its lane several times and may have crossed the centerline. Officer Brooks testified the defendant crossed the centerline several times. Officer Brooks had reasonable suspicion to stop defendant's vehicle. See *Village of*

Lincolnshire v. DiSpirito, 195 Ill. App. 3d 859, 864, 552 N.E.2d 1238, 1241 (1990) (concluding it "is not necessary for an officer making an investigatory stop of a vehicle to have in hand sufficient evidence to convict the driver").

¶ 16 The State argues, and we agree, the traffic stop was legal, even if defendant did not cross the centerline because Officer Brooks had been immediately behind defendant when she disobeyed a stop sign. The video reflects defendant disobeyed at least one stop sign. Based upon the totality of the facts and circumstances known to Officer Brooks at the time of the stop, specifically, that defendant may have crossed the centerline and did disobey one or more stop signs, a reasonable prudent person would believe defendant committed a traffic violation.

¶ 17 In the trial court's order, it found Officer Brooks "testified that the stop sign was not the reason for his stop," and therefore the State could not "bootstrap" these traffic violations to its argument Officer Brooks had reasonable suspicion to stop defendant, where the tape did not show defendant crossed the centerline. Our review of the record reflects Officer Brooks never affirmatively testified "the stop sign was not the reason for his stop." Rather, after the State asked him if he saw any other infractions, he testified he witnessed a rolling stop "at Cantrell and Jasper."

¶ 18 Defendant argues Officer Brooks lacked reasonable suspicion to stop her vehicle because his police report solely indicated defendant crossed the centerline and did not include references to disobeying stop signs. Defendant further argues she was not cited for disobeying stop signs but was cited for improper lane usage. Therefore, her failure to stop at the stop signs could not be the basis for Officer Brooks' traffic stop, as they were not mentioned until the suppression hearing. We disagree. The issue is not whether Officer Brooks later charged

defendant with improper lane usage or failure to stop at a stop sign, but whether a reasonable and prudent person would believe a traffic violation had been committed to warrant a stop. See *People v. Gerwick*, 235 Ill. App. 3d 691, 696, 602 N.E.2d 93, 97 (1992) ("That the officer may have initially mischarged the defendant is not the test."). Based upon the totality of the facts and circumstances known to Officer Brooks at the time of the stop, a reasonable and prudent person following defendant at the time of the stop would have seen defendant move within her lane, possibly cross the centerline, and disobey two stop signs. This was at 2 a.m. after defendant's vehicle left a tavern. This was more than sufficient for a reasonable and prudent person to believe defendant committed a traffic violation. This conclusion is independent of Officer Brooks' traffic report and the violations for which he cited defendant.

¶ 19 We conclude Officer Brooks' testimony, along with the video evidence, establishes a sufficient basis for the stop. The trial court erred in granting defendant's motion to suppress. We reverse the trial court's judgment and remand for further proceedings.

¶ 20 In closing, we note defendant's motion to suppress also requested the trial court to "quash" her arrest. When the court granted defendant's motion to suppress, it also found "the illegal arrest [wa]s quashed." Both defendant's request and the court's finding were in error. The only relief a defendant is entitled to under section 114-12 of the Criminal Code of Procedure of 1963 (725 ILCS 5/114-12 (West 2010)) is the suppression of evidence where it is shown the evidence was the result of an improper stop. See *People v. Hansen*, IL App. (4th) 110603, ¶ 62, 2012 WL 1098414, at *9.

¶ 21 III. CONCLUSION

¶ 22 We reverse the trial court's judgment and remand for further proceedings.

¶ 23 Reversed and remanded.

¶ 24 JUSTICE POPE, specially concurring:

¶ 25 Four stop signs are depicted in the videotape of defendant's stop. Officer Brooks "blows" through the first two in pursuit of the defendant. Defendant's brake lights come on at the next two stop signs, but arguably she fails to make a complete stop in advance of the white-crossing stripe. In addition, at approximately 1:58:55 to 1:58:59 of the video, the driver's side of defendant's car appears to cross the centerline. Thus, I agree Officer Brooks had reasonable suspicion to stop defendant's vehicle.

¶ 26 Neither party has raised any issue about the propriety of the filing of a motion to quash the arrest, nor is the discussion thereof at ¶ 20 *supra* necessary to our holding in this case. Because I decline to join in the holding in ¶ 20 *supra*, I specially concur.