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2013 IL App (3d) 120173-U

Order filed March 20, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellant,)	Henry County, Illinois,
)	
v.)	Appeal No. 3-12-0173
)	Circuit No. 10-CF-321
)	
COLLIN M. STEELE,)	Honorable
)	Charles H. Stengel,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Wright and Justice Carter concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in granting defendant's motion to quash arrest and suppress evidence.
- ¶ 2 Defendant, Collin M. Steele, was charged by indictment with cannabis trafficking (720 ILCS 550/5.1 (West 2010)). The State appeals the trial court's order that granted defendant's motion to quash arrest and suppress evidence. On appeal, the State argues that the trial court erred in granting the motion because the evidence in defendant's vehicle would have been

inevitably discovered. We affirm.

¶ 3

FACTS

¶ 4 Defendant was charged by information with cannabis trafficking. Defendant filed a motion to quash arrest and suppress evidence, and the matter proceeded to a hearing.

¶ 5 Illinois State Trooper Andrew Fratzke testified that he stopped defendant on September 20, 2010, for speeding. Fratzke asked defendant for his driver's license and vehicle information, and he asked defendant a few additional questions. Defendant provided a driver's license and rental agreement for the vehicle, and he explained that he was driving from Sacramento to Chicago. Fratzke returned to his car, looked over the rental agreement, and completed a driver's license and license plate check. When Fratzke would run a driver's license through his computer, multiple items would be displayed on the screen, but the driver's license history would not appear. To review a driver's license history, Fratzke would have to click on a separate icon.

¶ 6 After reviewing the rental agreement and completing the driver's license and license plate checks, Fratzke decided to conduct a free-air search by walking his canine around the vehicle. As reasons for the search, Fratzke noted that defendant had provided suspicious details about his business, the rental vehicle was to be returned in Rhode Island instead of Chicago, and defendant appeared nervous. Fratzke reapproached defendant's vehicle and advised defendant that he was going to walk his dog around the car, which would "take about 20 seconds," and then he would issue the written warning. Fratzke then conducted a free-air search, and his dog indicated the presence of drugs with a "passive alert[.]" Fratzke stated that his dog used to alert by scratching, but the dog had suffered spinal nerve damage and at the time of the stop he alerted by going to an

area, staying in that area, and refusing to leave it.

¶ 7 Following the free-air search, Fratzke issued a warning citation to defendant and asked him a few more questions. At that time, Fratzke decided that he was not going to let defendant drive away. Fratzke told defendant to turn the vehicle off, posed a few more questions, and asked for the keys. Fratzke opened the trunk without defendant's consent. Inside the trunk, he found a golf bag. Fratzke "felt packages that were consistent with the packaging of California marijuana, which is packaged in vacuum-sealed bags" inside of the golf bag. Fratzke arrested defendant for suspicion of narcotics trafficking and secured defendant in his car. Fratzke finished the search of the golf bag and discovered vacuum-sealed bags of suspected cannabis.

¶ 8 After defendant was transported to the Geneseo police department, Fratzke learned that defendant did not have a valid driver's license. Defendant's Rhode Island driver's license was suspended, and his Massachusetts driver's license had been revoked.

¶ 9 Fratzke testified that without the dog alert he would have checked the driver's license history more efficiently. However, at the time he ran defendant's information, he did not see any warrants for defendant's arrest and conducted a free-air search, during which his dog alerted to the presence of drugs. Defendant presented a video recording of the traffic stop into evidence.

¶ 10 On cross-examination, Fratzke testified that he would have arrested defendant if he had learned that his license was suspended. Defendant's vehicle then would have been towed, per Illinois State Police policy, because there was not another licensed driver in the vehicle. Before the tow, Fratzke would have made an inventory of the property in the vehicle. A copy of the Illinois State Police towing policy was entered into evidence. Fratzke also noted that he runs the driver's license information of each individual he stops, and he reviews that information before

he lets the driver leave the scene.

¶ 11 The trial court granted defendant's motion to quash arrest and suppress evidence. The court found that the dog did not alert and there was no probable cause to search the car. The court also denied the State's inevitable discovery argument, noting that Fratzke did not know that defendant's driver's license was revoked at the time. The State appeals.

¶ 12 ANALYSIS

¶ 13 On appeal, the State argues that the trial court erred in granting defendant's motion to quash arrest and suppress evidence because the evidence in defendant's vehicle would have been inevitably discovered.

¶ 14 We review the trial court's ruling on a motion to suppress evidence under a two-part standard of review. *People v. Harris*, 228 Ill. 2d 222 (2008). The trial court's factual findings are entitled to deference and will be reversed only if manifestly erroneous. *Id.* The ultimate ruling on whether to grant the motion to suppress is a question of law reviewed *de novo*. *Id.*

¶ 15 The fourth amendment of 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, stopping a vehicle and detaining its occupants constitutes a seizure and is subject to the requirement of reasonableness. *People v. McDonough*, 239 Ill. 2d 260 (2010). A warrantless search of a vehicle may be conducted if the police have probable cause to believe it contains contraband. *People v. Jackson*, 331 Ill. App. 3d 158 (2002). Here, the State does not contest the trial court's finding that there was no probable cause to search the vehicle based on the dog alert, and, for purposes of this appeal, we will assume that finding to be correct.

¶ 16 The State argues that Fratzke would have inevitably discovered the evidence during an inventory search after defendant's arrest for driving on an invalid license. The inevitable discovery doctrine permits evidence "to be admitted where the State can show that such evidence 'would inevitably have been discovered without reference to the police error or misconduct.' " *People v. Sutherland*, 223 Ill. 2d 187, 228 (2006) (quoting *Nix v. Williams*, 467 U.S. 431, 448 (1984)). Evidence inevitably would have been discovered where: "(1) the condition of the evidence when actually found by lawful means would have been the same as that when improperly obtained; (2) the evidence would have been discovered through an independent line of investigation untainted by the illegal conduct; and (3) the independent investigation was already in progress at the time the evidence was unconstitutionally obtained." *People v. Perez*, 258 Ill. App. 3d 133, 138 (1994).

¶ 17 Here, it is unlikely that any independent investigation, untainted by illegal conduct, would have uncovered the evidence in defendant's trunk. Fratzke began processing defendant's information to issue a written warning. However, he redirected his attention to conducting a free-air search without checking defendant's driver's license history. After the free-air search, Fratzke issued the written warning without taking the additional step of checking the full driver's license history. Fratzke testified that he did not intend to let defendant leave after he issued the warning, and that he would have run a full driver's license history if the dog had not alerted. His actions, however, are inconsistent with an intent to run a driver's license history search. While running defendant's driver's license information through his computer, Fratzke did not take the additional step of clicking on the icon to check defendant's driver's license history. This is a simple act that takes little time to complete, and it is likely Fratzke would have run this check

before issuing a warning citation to defendant, had he intended to further investigate defendant's license history. Once Fratzke pursued the free-air search, he did not return to the driver's license information, which would have revealed that defendant's license was suspended. Thus, the trial court did not err when it rejected the State's inevitable discovery argument and granted defendant's motion to suppress evidence and quash arrest.

¶ 18

CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court of Henry County is affirmed.

¶ 20 Affirmed.