

2014 IL App (2d) 131341-U
No. 2-13-1341
Order filed September 30, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 12-DT-200
)	
ERIK PRUNEDA,)	Honorable
)	Thomas J. Stanfa,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Burke and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in holding that a police officer lacked probable cause to stop defendant when defendant was observed speeding and also failed to curb vehicle after officer, who was driving behind defendant, activated his emergency lights.

¶ 2 The State appeals an order of the circuit court of Kane County quashing defendant's arrest and suppressing certain evidence flowing therefrom. Defendant, Erik Pruneda, has not filed a brief in this appeal; however, as the issues are relatively straight-forward, we will conduct plenary review. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 68 Ill. 2d 128, 133 (1976). For the reasons that follow, we reverse and remand for further proceedings.

¶ 3 On February 19, 2012, at about 4 a.m., defendant was arrested and charged with driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2012)). He filed a motion to quash his arrest and suppress evidence. Defendant and the arresting officer, Nathan Schramka, testified at the hearing on defendant's motion. A recording taken by the dashboard camera of Schramka's unmarked squad car was also admitted into evidence.

¶ 4 Defendant testified that after he made a left turn at an intersection that was controlled by a traffic light, he noted lights behind him, "but small lights, like it was an undercover—like it was a Crown Vic, and the lights weren't that bright." Defendant continued driving and then made another turn. Defendant testified that he did not believe the lights were coming from a squad car, as he had not committed any traffic offenses. He also stated he did not stop because he had heard of people being robbed by someone impersonating a police officer. After making the second turn, he stopped. Defendant testified that he covered four blocks from the time he made the first turn until the point at which he stopped. The police officer then pulled around him, got out of his car, drew his gun, and told defendant to put his hands up. During cross-examination, defendant acknowledged hearing Schramka's siren, though he stated it was not that loud and he could barely hear it over the music he was playing. He also admitted seeing the squad car's lights and stated he drove for two blocks after seeing them.

¶ 5 Schramka testified that he was on patrol on February 19, 2012 at about 3:57 a.m. A vehicle passed him at a high rate of speed. The trial court sustained foundational objections when Schramka testified that he paced the vehicle. Schramka believed the vehicle was exceeding the speed limit, and he followed it. The vehicle stopped at a red light. When the light turned green, the vehicle made a left turn, and Schramka activated his emergency lights. According to Schramka, the lights on his squad car were "very bright" and his siren was "loud."

Aside from Schramka and defendant, there was only one other car on the road. Defendant's vehicle made a right turn, and Schramka pulled around it to block the road. Schramka got out of the squad car, drew his gun, and approached defendant. Schramka noted a strong odor of alcohol coming from defendant. Schramka also testified that defendant's eyes were bloodshot. Defendant admitted having consumed alcohol, but stated that it was several hours earlier. During cross-examination, Schramka acknowledged that when he asked defendant why he did not stop immediately, defendant stated he was looking for an appropriate place to stop. Defendant also stated that the street on which Schramka activated his emergency lights was a busy street, while the street defendant stopped on was not.

¶ 6 The video recording shows defendant passing Schramka on a two-lane road. Schramka activates his emergency lights as defendant makes his first turn. Flashes from the lights are clearly visible, and the siren can also be heard. Defendant appears to slow down and pull toward the right side of the road after Schramka activates his siren, but then he continues on. Traffic is light, and only two other cars are seen (one in the distance) from the time when Schramka first activates his emergency lights until the time defendant stops his vehicle.

¶ 7 The trial court granted defendant's motion. The court first noted that the emergency lights on Schramka's squad care were "very bright" and defendant "should have seen the lights." The court continued, "[T]here's also no doubt, from my mind, that [defendant] was probably speeding." The court then observed that defendant was slowing down at the time Schramka pulled in front of him. The siren was also very loud. After defendant stopped, Schramka was "screaming" at him. Schramka had his weapon drawn. The court then stated that defendant was seized at the time Schramka pulled out his weapon. Therefore, it granted defendant's motion.

¶ 8 The State moved the trial court to reconsider its ruling. The trial court declined to do so. It first agreed with the State that an officer could stop someone for speeding and then develop probable cause to arrest the person for DUI. However, the court stated that Schramka had not stopped defendant for speeding. It observed that Schramka was screaming at defendant. It then stated, “I cannot imagine that this officer draws his weapon and bears down on every single person that he stops for a traffic violation.” Further, the court observed, defendant did not “go that far” after Schramka attempted to initiate a stop and defendant was slowing down. It then explained that the relevant question was whether defendant felt free to leave under the circumstances. Given that Schramka had drawn his weapon and was screaming at defendant, the court found that a reasonable person in defendant’s position would not feel free to leave. Therefore, the court declined to reconsider its ruling. It then reiterated that Schramka was on “DUI duty” and never said anything about speeding. As such, Schramka had arrested defendant for a DUI the moment he saw him. The court explained, “There’s no doubt in my mind that this officer was arresting [defendant] for something that he didn’t have probable cause to do when he arrested him.” Finally, the court stated: “I find that he was seized, and I find that he was seized for—not just for speeding. Because if this officer pulls people over that are just speeding, with their [*sic*] weapons drawn, he needs to—someone needs to speak to him.”

¶ 9 The State now appeals, arguing that Schramka had probable cause to seize defendant. We agree. When reviewing a trial court’s ruling on a motion to suppress, we owe deference to the trial court’s findings of historical fact, but we conduct *de novo* review of the ultimate issue of the reasonableness of the seizure. *People v. Morquecho*, 347 Ill. App. 3d 382, 386 (2004). The State agrees that a seizure occurred at the time Schramka confronted defendant with his weapon

drawn; hence, the sole question before us is whether Schramka's seizure of defendant was constitutionally justified.

¶ 10 Probable cause exists when a reasonable person would believe that a defendant has committed a crime. *People v. Martinez*, 242 Ill. App. 3d 915, 929 (1992). In its initial ruling, the trial court stated that “there's also no doubt, from my mind, that [defendant] was probably speeding.” In its ruling on the State's motion to reconsider, it found that defendant was seized “not just for speeding.” In light of our review of the video recording taken from Schramka's squad car, we agree with the trial court. A reasonable person would believe defendant was speeding. Moreover, a reasonable person in Schramka's position would conclude that defendant was also committing the offense of fleeing or attempting to elude a peace officer (625 ILCS 5/11-204 (West 2012)), which makes it an offense for any driver, “having been given a visual or audible signal by a peace officer directing such driver or operator to bring his vehicle to a stop, [to] wilfully fail[] or refuse[] to obey such direction.” Schramka activated his lights and siren, yet defendant did not stop. The trial court's findings of fact include that Schramka's lights were bright and his siren was loud (the video recording—which also includes audio—confirms both findings). A reasonable person in Schramka's position would believe that defendant had seen and heard these signals, but nevertheless refused to stop. As such, Schramka also had probable cause to seize defendant for this offense as well.

¶ 11 The trial court's finding that Schramka immediately arrested defendant for DUI at the time he confronted defendant with his gun drawn is of no moment. Pretextual traffic stops are not constitutionally impermissible. *People v. Juarbe*, 318 Ill. App. 3d 1040, 1051 (2001). The United States Supreme Court has held that the ulterior motives of an arresting officer are irrelevant to assessing the constitutionality of a seizure. *Whren v. United States*, 517 U.S. 806,

812-13 (1996); *c.f.*, *People v. Harris*, 228 Ill. 2d 222, 244 (2008) (holding that reasonableness of a *Terry* stop is judged solely by its duration and not whether an officer has altered the nature of the stop relative to the circumstances that justified the initial intrusion). Similarly, in *Scott v. United States*, 436 U.S. 128, 138 (1978) (citing *United States v. Robinson*, 414 U.S. 218 (1973)), the Supreme Court explained, “the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer’s action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.”

¶ 12 In sum, Schramka’s subjective intentions are not relevant here. The seizure of defendant was justified because a reasonable person in Schramka’s position would have believed defendant had committed two traffic offenses. See *People v. Brannon*, 2013 IL App (2d) 111084, ¶ 20 (holding arrest for traffic violation or petty offense allows police to conduct a custodial search incident to the arrest). As such, the trial court erred in granting defendant’s motion. We therefore reverse and remand for further proceedings.

¶ 13 Reversed and remanded.