2016 IL App (2d) 151260-U
No. 2-15-1260
Order filed November 17, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. SARAH CARLSON, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of De Kalb County. No. 15-DT-360 Honorable Robert P. Pilmer, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in granting defendant's petition to rescind her summary suspension: defendant did not submit any evidence that her encounter with the police had constituted a seizure, thus she did not make a *prima facie* case that she had been seized unconstitutionally.

¶ 2 The State appeals a judgment granting the petition of defendant, Sarah Carlson, to rescind the statutory summary suspension of her driving privileges (see 625 ILCS 5/2-118.1 (West 2014)). We reverse.

¶ 3 Defendant was charged with driving under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2014)) and driving with a blood- or breath-alcohol concentration of 0.08 or

more (625 ILCS 5/11-501(a)(1) (West 2014)). Her driving privileges were summarily suspended (see 625 ILCS 5/2-118 (West 2014)). Her petition alleged several grounds for rescission, but, at the outset of the hearing on the petition, she told the court, "[the] grounds would be [the lack of] reasonable grounds for the [initial traffic] stop."

¶ 4 Defendant then testified on direct examination as follows. On August 22, 2015, she participated in a softball tournament in Sycamore. Afterward, between 5 p.m. and 6:30 p.m., she consumed two beers and two shots. Defendant then drove home to De Kalb, where she showered and changed. About 45 minutes later, she drove by herself to a friend's house about seven miles away. She had no trouble navigating the roadway or controlling her vehicle and did not feel affected by the alcohol she had consumed.

¶ 5 Defendant testified that she initially drove past the house, which was on Prosser, and turned right onto a side street. She stopped in a driveway, called her friend, and got directions. Defendant backed out of the driveway; a red car was on "what would have been the other side of the street facing the direction [that she] was backing up into." As she backed out, she did not come into contact with any other vehicle. Asked, "At some point thereafter you [came] into contact with deputies from the sheriff's office; correct?," defendant responded, "Yes."

¶ 6 Defendant then testified on cross-examination as follows. After driving past the house on Prosser, she took a right onto Thomas Drive, then turned left into the driveway across from the red car. She called her friend and then backed out. The State asked defendant about what she had said to the sheriff's deputies; defendant objected to the questioning, and the trial court sustained the objection. Defendant then testified that, after she had parked at her friend's house, people came over and accused her of hitting their car. She saw no new damage to her vehicle.

¶ 7 Defendant rested. The State called Ryan Loyd, a De Kalb County sheriff's deputy, who testified on direct examination as follows. On August 22, 2015, at about 8 p.m., he received a report of a hit-and-run accident in which the complaining party's red Saturn had been parked on Thomas Drive and another car had allegedly backed into it and then parked at a neighbor's house. At the scene, Loyd spoke with two people. One told him that, while standing in their driveway on Thomas, they saw a black vehicle drive past them toward a stop sign, then go back down the street and into the front of their parked car. Loyd saw that the Saturn was still parked in the street. Loyd noticed scuff marks and scratches on the Saturn's front bumper and cracks to the plastic license-plate holder. The owner told him that the damage was new.

¶ 8 Loyd testified that both witnesses told him that they could identify the offending car, as they had seen it turn and pull into a driveway on Prosser. They added that they had approached the driver to get her contact information but could not because she was emotionally upset. Loyd learned later that the other vehicle was registered to "Sarah Carlson" and he observed scratches in the area of the rear bumper.

¶ 9 In the remainder of his testimony, Loyd stated as follows. He was driving a marked squad car on the evening of August 22, 2015. He noticed color transfer in one area of the red Saturn but no color transfer on the front bumper or license-plate holder. He added that, after speaking with the complaining witnesses, he spoke to defendant in the presence of another deputy, who had arrived after defendant had been identified as the driver of the second vehicle. His observations about the back bumper of her car came after she had been arrested.

¶ 10 The prosecutor told the court that the State would call no other witnesses, "given [that] the scope of the hearing was just the basis for the stop." Defendant did not disagree with this characterization. The prosecutor then argued that the people who spoke to Loyd had been

credible eyewitnesses and that Loyd's personal observations of the damage to both cars had corroborated their statements to him. Defendant contended that their account of defendant's driving contradicted her testimony, which negated any inference that she had backed into the red vehicle. Further, she maintained, the lack of color transfer at the point of the alleged damage negated any conclusion that her driving had caused it.

¶ 11 The trial court stated as follows. Both defendant and Loyd had been "credible" and "forthright" witnesses. However, "with respect to the issue of whether or not there were reasonable grounds present on that evening," defendant had met her burden. The prosecutor asked the court to elaborate; the court explained that there had been no evidence of "any color transfer to the damage to the Saturn vehicle."

¶ 12 The State moved to reconsider, arguing that there had been no evidence that defendant had been "seized" within the meaning of the fourth amendment, and thus she had failed to make a *prima facie* case that any initial stop had been unconstitutional. The State also argued that the evidence proved that, had there been a traffic stop, it had been supported by the needed reasonable suspicion. The trial court denied the motion. The State timely appealed.

¶ 13 On appeal, the State contends that the trial court erred in granting defendant's petition, because she never established a *prima facie* case on the sole ground for the petition—that the initial stop of her vehicle was unconstitutional. For the following reasons, we agree.

¶ 14 We defer to the trial court's factual findings unless they are against the manifest weight of the evidence, but we review *de novo* the ultimate issue of whether the revocation of the summary suspension was proper. See *People v. Wear*, 229 Ill. 2d 545, 561-62 (2009). In a summary-suspension proceeding, the defendant has the burden to establish a *prima facie* case for rescission. *People v. Dittmar*, 2011 IL App (2d) 091112, ¶ 41. If she does so, the burden shifts

to the State to present evidence to justify the suspension. *Id.* A summary suspension may be rescinded on the ground that the defendant's arrest was the product of an unconstitutional traffic stop. *People v. Hacker*, 388 Ill. App. 3d 346, 350 (2009).

¶ 15 We agree with the State that defendant did not prove that her arrest resulted from an unconstitutional traffic stop. This is because she never established that her vehicle was "stopped" at all. Unless she proved that the initial encounter *triggered* the fourth amendment, defendant could not prove that it *violated* the fourth amendment.

¶ 16 Not every encounter between a private citizen and a police officer results in a seizure. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006). Although an investigative detention must be supported by a reasonable, articulable suspicion of criminal activity, an encounter that involves no coercion or detention does not implicate the fourth amendment. *Id.*; see *People v. Clements*, 2012 IL App (3d) 110213, ¶ 21 (as defendant did not prove that the encounter that led to his arrest was a stop or other seizure, the rescission of his summary suspension could not stand).

¶ 17 Thus, defendant had the burden to prove that she was subjected to the former, not merely the latter. To do this, obviously, defendant had to adduce evidence about her encounter with the police. For whatever reason, however, she produced essentially no such evidence. Defendant testified only that, at some point after she parked at her friend's house, she came into contact with one or more sheriff's deputies. But mere contact does not equal a seizure, and nothing in the State's case filled the gap. Thus, defendant's sole ground for rescission failed.

¶ 18 We note that the State appears to be correct that, even assuming that defendant was subjected to a seizure, Loyd had the reasonable suspicion needed to justify the intrusion. The trial court credited Loyd's testimony that two people told him that they had seen a vehicle that matched defendant's collide with their car in the driveway on Thomas and that the offending

vehicle had then parked on Prosser. Also, there was damage to both vehicles, and the damage to the red Saturn was consistent with what the witnesses had told Loyd. There was no evidence that any other cars had been driven in the vicinity at the time. This would seem to be more than sufficient to establish reasonable suspicion, a lesser standard than probable cause or reasonable grounds (see *Luedemann*, 222 Ill. 2d at 544). However, given that defendant failed to establish that there was any seizure at all, we need not decide whether such a seizure would have been proper.

¶ 19 The judgment of the circuit court of De Kalb County is reversed.

¶ 20 Reversed.