2016 IL App (4th) 140467-U

NO. 4-14-0467

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 15, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
JIMMY L. WILDER,	)	No. 12CF472
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith, Jr.,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in admitting evidence of a search of defendant's person or motel room.

¶ 2 In April 2012, the State charged defendant, Jimmy L. Wilder, with unlawful possession of a controlled substance with intent to deliver with a prior conviction for unlawful possession of a controlled substance (count I) (720 ILCS 570/401(c)(2) (West 2010); 730 ILCS 5/5-5-3(c)(2)(D) (West 2010)); unlawful possession of a controlled substance with a prior conviction for unlawful possession of a controlled substance (count II) (720 ILCS 570/402(c) (West 2010)); unlawful possession of cannabis with intent to deliver (count III) (720 ILCS 550/5(c) (West 2010)); and unlawful possession of cannabis with a prior unlawful possession of a controlled substance conviction (count IV) (720 ILCS 550/4(c) (West 2010)). The charges were based on an April 20, 2010, search of defendant's motel room, which revealed cannabis

and cocaine.

¶ 3 Defendant filed a motion to suppress, which was denied. A bench trial was held and defendant was found guilty of counts I and II. Defendant filed a motion for a new trial, which was denied. The trial court sentenced him to 7 1/2 years in prison. This appeal followed.

¶ 4 I. BACKGROUND

¶ 5 On April 4, 2012, the State charged defendant by information with unlawful possession of a controlled substance (cocaine) with intent to deliver with a prior conviction for unlawful possession of a controlled substance (count I) (720 ILCS 570/401(c)(2) (West 2010); 730 ILCS 5/5-5-3(c)(2)(D) (West 2010)); unlawful possession of a controlled substance (cocaine) with a prior conviction for unlawful possession of a controlled substance (count II) (720 ILCS 570/402(c) (West 2010)); unlawful possession of cannabis with intent to deliver (count III) (720 ILCS 550/5(c) (West 2010)); and unlawful possession of cannabis with a prior unlawful possession of a controlled substance conviction (count IV) (720 ILCS 550/4(c) (West 2010)). The charges were based on a traffic stop and search of defendant's motel room, which revealed cannabis and cocaine. The State dismissed counts III and IV prior to trial. A bench trial was held on April 14, 2014.

¶ 6 Prior to trial, defendant filed a motion to suppress statements. The motion alleged "no valid reason for the traffic stop" and requested any evidence obtained after the stop be suppressed. Defendant did not challenge any search or his consent to any search in the motion. A hearing was held on the motion. At the hearing, Detective Chad Larner, Detective Jason Hesse, Officer Justin Closen, and defendant testified.

¶ 7 Detectives Hesse and Larner testified to the same series of events. They

routinely conducted surveillance in the parking lots of motels around Decatur for criminal activity. On April 20, 2010, the detectives observed defendant's car leaving Best Value Inn and Suites. Suspecting narcotics activity, they followed defendant. At the time, the detectives were in plain clothes and driving an unmarked police car with no siren or emergency lights. While following defendant, the detectives observed his car cross the road's center yellow line and drive onto a raised median, which is a traffic violation. Based on this observation, Hesse called Officer Closen, who was driving a marked police car, to pull defendant over.

¶ 8 Hesse and Larner parked away from the traffic stop to avoid revealing the make and model of their unmarked police car. When they arrived at the scene of the traffic stop, Closen informed them defendant was on parole and he discovered a motel room key on defendant. The detectives took over the traffic stop from there. Hesse spoke to defendant about the motel key at the scene without ever addressing the actual traffic stop. Hesse asked for defendant's consent to search the motel room, but it is unclear when. Hesse testified defendant signed a consent form to search his motel room.

¶ 9 Officer Closen testified about defendant's traffic stop. Detective Hesse directed Closen, over the radio, to stop defendant's car. No reason was provided, but Hesse informed Closen they had probable cause for a stop. After stopping defendant, Hesse informed Closen of defendant crossing the center yellow line. Closen spoke with defendant and retrieved his license and registration. Closen checked defendant's information through dispatch and discovered he was on parole. After learning defendant was on parole, Closen had defendant exit the car and searched him. He found $252 and a motel room key. Closen gave these items to Hesse and Larner when they arrived. Hesse and Larner took over the stop from there. Closen gave defendant a written warning for

improper lane usage.

¶ 10 Defendant denied crossing the center yellow line or committing any driving infraction. He testified Hesse searched him and found the motel room key, not Closen. According to defendant, he never told the officers he was on parole.

¶ 11 The trial court held the officers had a legitimate basis to conduct a traffic stop, which it concluded was the only issue. It chose to believe the police officers' testimony and find the initial stop was legitimately made. Since the basis for the initial stop was found to be legitimate, the court denied the motion to suppress.

¶ 12 At trial, the same individuals testified greater detail. Detective Hesse recounted defendant's traffic stop and testified to events after the stop. During the traffic stop, defendant told Hesse he was staying at Best Value Inn and Suites. According to Hesse, defendant gave verbal consent to search his motel room at the scene of the traffic stop. He agreed to travel with Hesse to the motel and signed a written consent to search at the motel. On cross-examination, defense counsel noted a discrepancy in the written consent. The time on the written consent form was "2300," or 11 p.m., and the stop reportedly occurred at "2338" or 11:38 p.m. Hesse testified the discrepancy was a scrivener's error.

¶ 13 Detective Larner testified defendant was cooperative during the stop and later search. He explained defendant's rights to him and defendant reviewed the written consent form before signing it.

¶ 14 Officer Closen's testimony was similar to his testimony at the hearing on the motion to suppress. At trial, he added he searched defendant at the scene of the traffic stop because he was a parolee. He turned over the motel key and money to Hesse at the scene of the stop upon discovering them.

¶ 15 Defendant objected to the admission of the motel room key based on a discrepancy in when the key was tendered to Detective Hesse. He also objected to the admission of the written consent form based on the discrepancy in times between the form being signed and defendant's traffic stop. The trial court stated both objections tended toward the weight of the evidence, not the admissibility.

¶ 16 Contina Currie testified for defendant. She was the passenger in his car at the time of the traffic stop. She claimed nothing was suspicious about defendant's motel room. During the traffic stop, she was instructed to exit the car. She was searched. After about 40 minutes, her mother picked her up and she left the scene. She testified defendant was still being questioned when she left.

¶ 17 The officers searched defendant's motel room and recovered a black gym bag containing cocaine, a digital scale, and plastic bags. After the search, defendant was transported to the police station. He was read his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)). Defendant waived his rights and spoke to detective Hesse. During the interview, defendant admitted he owned the gym bag, the scale, and the plastic bags. A search of defendant's person at the police station revealed an additional bag of cocaine.

¶ 18 Defendant testified consistently with his testimony at the motion to suppress hearing. He never crossed the center yellow line. He was pulled over and provided his license and proof of insurance to the police officer. According to defendant, Hesse and Larner then approached his car, had him step out, and searched him. The officers asked defendant where he came from. He asked why it mattered, and they told him to stop resisting. Defendant believed the entire stop lasted 15 or 20 minutes.

¶ 19 Defendant testified one of the detectives reached into his pocket and removed the motel key and asked what room he was staying in. One of the detectives

told defendant they could search his motel room because he was on parole. They put defendant in a police car and drove him to the motel. They informed defendant it was his "last chance to help [himself]." Defendant then agreed to sign the consent form. Defendant believed the detectives could search his room because he was on parole. Defendant was ordered to empty his pockets at the police station, which revealed $252 in cash and a small bag of cocaine. On cross-examination, defendant admitted the drugs in his motel were his and he intended to sell them.

¶ 20 The trial court found defendant guilty of counts I and II. It specifically found defendant's admission to possession and intent to sell in open court and on video credible. It also found the State's exhibits were sufficient to prove defendant guilty beyond a reasonable doubt. Defendant filed a motion for a new trial. The motion challenged the (1) court's ruling on his initial motion to suppress and (2) sufficiency of the evidence. The trial court denied this motion. The court sentenced defendant as stated. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendant argues (1) the trial court should have granted his motion to suppress statements, (2) it was plain error to allow evidence stemming from the search of defendant and his motel room, and (3) trial counsel was ineffective for failing to suppress evidence from the search. The State argues defendant has forfeited any dispute regarding consent and any delay in his traffic stop on appeal. Alternatively, the State argues the traffic stop was reasonable. We affirm.

¶ 23 A. Forfeiture

¶ 24 The State argues any issues related to the search are forfeited on appeal. We agree. To properly preserve an argument for appeal, a party must object at trial and

file a posttrial motion challenging the issue. *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988). In defendant's posttrial motion, he argued the trial court erred in denying his motion to suppress evidence. The motion to suppress only challenged the validity of the initial traffic stop. It made no mention of the officers' search of defendant, the search of his motel room, or his consent. Each of these issues is forfeited on appeal. Defendant's challenge to the legitimacy of the initial traffic stop was properly preserved but not challenged on appeal.

¶ 25 B. Plain Error

¶ 26 Despite defendant's forfeiture, he asks this court to review these issues as plain error. Defendant specifically argues (1) he was unreasonably seized because his traffic stop was prolonged, (2) he was coerced into signing a search consent form, and (3) the search of his motel room was unreasonable. We disagree.

¶ 27 Defendant failed to argue plain error in his opening brief. However, his reply brief argues plain error, which is sufficient to allow our review of the issue. *People v. Ramsey*, 239 Ill. 2d 342, 412, 942 N.E.2d 1168, 1206 (2010). Plain error is not subject to forfeiture on appeal. Ill. S. Ct. R. 615(a) (eff. Jan 1, 1967); see also *People v. Cregan*, 2014 IL 113600, ¶ 16, 10 N.E.3d 1196. Under plain error analysis, a defendant must prove (1) an error occurred and (2) prejudice resulted. *People v. Herron*, 215 Ill. 2d 167, 187, 830 N.E.2d 467, 479 (2005). Where the evidence is closely balanced, any error, regardless of how serious, is enough for a court to consider the issue on appeal. *Id.* Where the evidence is not closely balanced, only a serious error will enable a court to review the issue on appeal. *Id.*

¶ 28 We consider the relevant law surrounding the fourth amendment to determine if any error occurred. A motion to suppress evidence pursuant to the fourth

amendment is reviewed under a dual standard. The trial court's factual determinations will be disturbed only if they are against the manifest weight of the evidence. *People v. Chambers*, 2016 IL 117911, ¶ 76, 47 N.E.3d 545. The ultimate decision to grant a motion to suppress is reviewed *de novo*. *Id.*

¶ 29 The fourth amendment protects individuals from "unreasonable searches and seizures." U.S. Const., amend. IV. A traffic stop constitutes a seizure under the fourth amendment and is subject to a reasonableness standard. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). A stop is generally reasonable if the officer has probable cause to believe a traffic violation occurred. *Id.* at 810. Analysis of a traffic stop involves a two-part inquiry: (1) whether the initial stop was justified and (2) whether the stop's execution was reasonable in scope. *People v. Brownlee*, 186 Ill. 2d 501, 519, 713 N.E.2d 556, 565 (1999). With this general framework, we analyze each of defendant's claims on appeal.

¶ 30 1. *Length of the Traffic Stop*

¶ 31 Defendant argues the length of the traffic stop was unreasonably long. We disagree. An otherwise reasonable traffic stop can become unreasonable if it is impermissibly prolonged. *People v. Harris*, 228 Ill. 2d 222, 239, 886 N.E.2d 947, 959 (2008). For a minor traffic violation, an officer may detain the driver, ask for his license, and run a background check. *People v. Reatherford*, 345 Ill. App. 3d 327, 336, 802 N.E.2d 340, 348 (2003). An officer may also ask a defendant and passengers to exit a vehicle. *Id.* at 336, 802 N.E.2d at 349. The officer must release the defendant if he does not discover any evidence of suspected criminal activity. *Id.*

¶ 32 At the hearing on the motion to suppress, the trial court ruled in favor of the State. The trial court was in the best position to judge the credibility of the parties at

the hearing. *People v. Brown*, 327 Ill. App. 3d 816, 822, 764 N.E.2d 562, 568 (2002). It chose to believe the police officers and discredit defendant's denial of committing any traffic violation. The range of time for the traffic stop, according to defendant and Currie, ranged from 15 to 40 minutes. During the stop, Closen requested defendant's license and conducted a background check through dispatch. Upon learning defendant was a parolee, Closen had defendant exit the car and conducted a brief search, where he discovered cash and defendant's motel key. See 730 ILCS 5/3-3-7(a)(10) (West 2012); *People v. Coleman*, 2013 IL App (1st) 130030, ¶¶ 20-21, 2 N.E.3d 1221 (condoning a suspicionless search of parolee if the officer knows he is a parolee). After all this, Closen gave defendant a warning ticket. We find the length of the stop, in light of the series of events, was not unreasonably long.

¶ 33 Defendant relies on *Rodriguez v. United States*, ___ U.S. ___, 135 S. Ct. 1609 (2015), to argue the stop was unreasonably prolonged to await Hesse and Larner's arrival. In *Rodriguez*, an officer conducted a traffic stop, wrote a ticket, and further detained the defendant until more officers could arrive with a drug sniffing dog. *Id*. at ____, 135 S. Ct. at 1613. The Supreme Court held this stop was unreasonably prolonged because the initial purpose of the stop was complete. *Id*. at ____, 135 S. Ct. at 1614-15. The Court stated police officers are permitted to conduct unrelated checks during a traffic stop as long as the stop is not prolonged. *Id*. at ____, 135 S. Ct. at 1615.

¶ 34 Unlike *Rodriguez*, Hesse and Larner arrived on the scene in the midst of Closen's traffic stop. Hesse and Larner obtained defendant's verbal consent to search his motel room prior to Closen issuing a warning ticket. See *People v. Cosby*, 231 Ill. 2d 262, 284-85, 898 N.E.2d 603, 617 (2008) (finding voluntary consent even when an officer asked the defendant to search his car immediately after a ticket was issued). By

the time Closen issued a warning ticket, the detectives had consent to conduct the additional search and did not prolong the stop.

¶ 35 At trial, the trial court permitted all the evidence obtained from Hesse and Larner's later investigation. Finding the stop was not unreasonably long, we further find no error in admitting any evidence discovered after the stop.

¶ 36 2. *Coerced Consent*

¶ 37 Defendant argues the consent to search his motel room was coerced. We disagree. The State must prove consent was voluntarily given by a preponderance of the evidence at trial. *People v. Casazza*, 144 Ill. 2d 414, 417, 581 N.E.2d 651, 653 (1991). The determination is based on the totality of the circumstances. *Id.* We will not disturb a trial court's voluntary consent determination unless it is clearly unreasonable. *Id.* at 417-18, 581 N.E.2d at 653.

¶ 38 The trial court found defendant consented to the search of his motel room. Detectives Hesse and Larner testified defendant was cooperative and voluntarily consented to the search. The State also had a signed consent form from defendant. Defendant testified the detectives coerced him into consenting when they claimed the right to search his motel room based on his parolee status. The trial court was in the best position to judge the credibility of the witnesses. It chose to believe the officers. Considering the totality of the circumstances, it was reasonable for the court to conclude defendant's consent was not coerced. Since the court's decision was reasonable, we find no error occurred.

¶ 39 3. *Reasonableness of the Motel Room Search*

¶ 40 Defendant contends the motel room search was unreasonable, even for a parolee. As a parolee, defendant was subject to a reduced expectation of privacy. *People*

v. Wilson, 228 Ill. 2d 35, 41, 885 N.E.2d 1033, 1037 (2008). As part of mandatory supervised release (formerly parole), a parolee is subject to a search of his residence without reasonable suspicion. 730 ILCS 5/3-3-7(a)(10) (West 2012); *Wilson*, 228 Ill. 2d at 52, 885 N.E.2d at 1043. A motel room can be a residence. *People v. Lampitok*, 207 Ill. 2d 231, 242, 798 N.E.2d 91, 99 (2003). As a parolee, defendant had no reasonable expectation of privacy in his motel room. Since he was living in the motel room at the time, the room was subject to search by the police.

¶ 41 Even if he had a protected privacy interest in the room, he also consented to the search at the scene of the traffic stop and in writing. Having already determined defendant voluntarily consented to the police search, we find it was reasonable to admit evidence of the search at trial. No error occurred in permitting the evidence from the motel room search.

¶ 42 C. Ineffective Assistance of Trial Counsel

¶ 43 Defendant alternatively argues trial counsel was ineffective. This argument was first raised in defendant's reply brief. We may consider issues "first raised in a reply brief *** if a just result dictates consideration of all the issues." *People v. Accardo*, 139 Ill. App. 3d 813, 816-17, 487 N.E.2d 664, 666-67 (1985). We decline to consider ineffective assistance on this appeal.

¶ 44 The sixth amendment to the United States Constitution provides defendants the right to counsel, which is interpreted to mean the right to effective assistance of counsel. U.S. Const., amend. VI; *Strickland v. Washington*, 466 U.S. 668, 686 (1984). To establish counsel was ineffective, the defendant must show (1) counsel's performance was not objectively reasonable and (2) "there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." *People v.*

Enis, 194 Ill. 2d 361, 376, 743 N.E.2d 1, 11 (2000) (citing *Strickland*, 466 U.S. at 687, 694). These types of claims often involve considerations of an attorney's trial strategy or potential errors committed by the attorney. *People v. Evans*, 369 Ill. App. 3d 366, 384, 859 N.E.2d 642, 655-56 (2006). Ineffective assistance is ideally determined under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2014)), where a record can be developed and the trial attorney can be examined. *Evans*, 369 Ill. App. 3d at 384, 859 N.E.2d at 655-56.

¶ 45 Here, defendant's argument is based on trial counsel's failure to raise or preserve issues in a motion to suppress. These could be issues defense counsel deemed meritless. The record on appeal is silent as to defense counsel's reason for proceeding as he did. A postconviction proceeding may address the issue of whether counsel's assistance was ineffective. This claim is appropriate for a postconviction petition.

¶ 46 III. CONCLUSION

¶ 47 We find the trial court did not commit error in allowing evidence stemming from a search of defendant's person or his motel room. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 48 Affirmed.