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2017 IL App (3d) 160222-U

Order filed November 15, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellant,)	
v.)	Appeal No. 3-16-0222
CARRIE L. ALCORN,)	Circuit No. 13-DT-255
Defendant-Appellee.)	Honorable Lisa Y. Wilson, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Holdridge and Justice Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's ruling which suppressed evidence of the pill bottles and their contents was proper because no exceptions to the warrant rule applied to authorize the officer's search and seizure.
- ¶ 2 Following her arrest for driving under the influence, *inter alia*, defendant moved to suppress the results of a DUI blood draw along with evidence of a prescription pill bottle and its contents. The trial court granted defendant's motion to suppress. On appeal, the State challenges the trial court's ruling to suppress the pill bottle and its contents.

FACTS

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¶ 4

Carrie L. Alcorn (defendant) was arrested on April 11, 2013, and charged with driving under the influence, no valid driver’s license, and driving on the sidewalk in violation of sections 5/11-501(a)(4), 5/6-101, and 5/11-1412.1 of the Illinois Vehicle Code. (625 ILCS, 5/11-501(a)(4), 625 ILCS 5/6-101, and 625 ILCS 5/11-1412.1 (West 2012)). On September 28, 2015, defendant filed a motion to suppress the results of two blood tests performed by the hospital. Defendant’s motion to suppress did not request the court to enter an order suppressing any other physical evidence collected by law enforcement.

¶ 5

The trial court conducted a hearing on defendant’s motion to suppress on December 15, 2015. Officer Brian Groeper of the Peoria County Sheriff’s Department testified that on April 12, 2013,¹ dispatch received a 911 call from defendant’s ex-boyfriend, Scot Frazzelle, who informed law enforcement that defendant was possibly driving under the influence. Frazelle provided the dispatcher with a description of defendant’s vehicle.

¶ 6

Shortly thereafter, Officer Groeper responded to a call from a local pharmacy seeking assistance for a possible medical emergency. When Groeper arrived, he first observed a vehicle with the front right wheel on the sidewalk outside the pharmacy. Groeper then observed defendant receiving medical attention in the back of a “BYE” ambulance. Following these observations, Groeper spoke with the pharmacy employees and learned that the employees heard a vehicle pull up on the edge of the sidewalk, looked outside, and witnessed defendant stumbling near the pharmacy entrance. The emergency responders Groeper interviewed advised Groeper that defendant told them that she had taken some medicine.

¹The officer’s testimony reveals that the arrest took place on April 12, 2013, but the complaints indicate that the arrest took place on April 11, 2013.

¶ 7 When Groeper approached defendant he observed she was lethargic. Groeper did not detect an odor of alcohol about defendant's person. Groeper testified that defendant was not placed under arrest before the emergency workers transported defendant by ambulance to the hospital.

¶ 8 At the hospital, defendant's blood was tested by the hospital emergency staff during the course of treatment. At some point in time, the hospital staff informed Groeper that defendant's blood test results were positive for the presence of opiates. Based on this information, Groeper requested the hospital staff to take a DUI blood draw while defendant remained unconscious. When defendant awakened, Groeper told defendant that she was under arrest.

¶ 9 Groeper testified that he had some pill bottles in his possession at the hospital.² When asked how he came into possession of the pill bottles, Groeper stated: "I don't recall, actually. It was either at the -- in the back of the BYE ambulance, either there or at the hospital. I remember, basically someone drew it to my attention. These were in her purse, or these were in her possession." Groeper seized the opaque pill bottles, removed the contents, and counted the pills without first obtaining a search warrant.

¶ 10 Groeper testified that the bottles contained Oxycodone and Carisoprodol. The Oxycodone prescription had been filled with 120 or 150 pills three days before the date in question. Groeper counted 51 pills in the bottle at the hospital while defendant was under arrest. Groeper believed he could open the pill bottles and count the pills without a warrant as part of inventory.

¶ 11 During argument, defense counsel argued for the first time that Groeper's search of the pill bottles was improper. Following argument, the trial court took the decision under advisement. On January 8, 2016, the trial judge granted defendant's motion to suppress

²The record reveals that the pill bottles were opaque in nature.

concerning the DUI blood draw, but denied the motion to suppress as it related to the pill bottles because defendant failed to contest evidence of the pill bottles in her motion to suppress.

¶ 12 On January 29, 2016, defendant filed a motion to reconsider which, for the first time in a written motion, contested Groeper's search of the pill bottles. On February 8, 2016, the trial court held a hearing on defendant's motion to reconsider. On February 23, 2016, the trial court ruled that it was not clear from the testimony whether or not Officer Groeper actually looked into defendant's purse and took out the pill bottles. Groeper never attempted to obtain a warrant to open the bottles and no exigent circumstances existed. The court found that defendant had a reasonable expectation of privacy in the pill bottles and the contents therein. Accordingly, the trial court suppressed the evidence obtained when the officer opened the pill bottles and counted the pills.

¶ 13 On February 24, 2016, the State filed a motion to reconsider the trial court's suppression ruling. On April 19, 2016, during the hearing on the State's motion to reconsider, the State argued that they were not prepared to question Groeper regarding the pill bottles because the pill bottles were not contested in defendant's motion to suppress. The trial court denied the State's motion to reconsider. After the court's ruling, the State requested to reopen the evidence and allow the State to bring Groeper back to testify before the court regarding the department's inventory procedures. The court denied the State's request to reopen the evidentiary phase of the motion hearing.

¶ 14 The State filed a certificate of substantial impairment and a timely notice of appeal on April 25, 2016.

ANALYSIS

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On appeal, the State does not challenge the trial court’s ruling suppressing the blood test results from tests performed at the hospital at the officer’s request. Similarly, the State does not challenge the trial court’s decision to deny the State’s request to reopen the evidentiary phase of the motion hearing to allow the State to elicit further testimony regarding the search of defendant’s pill bottles. Instead, the State elects to attack the propriety of the trial court’s ruling suppressing the evidence related to the contents of the prescription pill bottles on the merits.

¶ 17

In this appeal, the State asserts that the trial court’s ruling should be reversed because the warrantless search of the pill bottles did not violate defendant’s fourth amendment rights. The State does not argue that citizens do not have a reasonable expectation of privacy in opaque prescription pill bottles, but does argue that defendant did not have a reasonable expectation of privacy in this situation because she abandoned the pill bottles. The State also argues the following exceptions to the warrant rule apply: search incident to a legal arrest, exigent circumstances, and inevitable discovery doctrine. In response, defendant argues that the State forfeited the arguments pertaining to abandonment, search incident to arrest, and exigent circumstances by failing to raise such arguments in the trial court.

¶ 18

We agree that the State did not advance some of these arguments in the trial court. However, while waiver and forfeiture are binding on the parties, they do not serve to limit the court’s jurisdiction. *Maniez v. Citibank, F.S.B.*, 404 Ill. App. 3d 941, 948 (2010). The goal of obtaining a proper result and maintaining a sound body of precedent may sometimes outweigh considerations of waiver. *People v. Hicks*, 181 Ill. 2d 541, 545 (1998). In this case, the record reveals that the parties and the court exhibited significant confusion at multiple pretrial junctures regarding the scope of defendant’s suppression requests. We believe the confusing procedural

history present in this record hindered the State's ability to prepare proper legal responses to the requests to suppress the pill bottles. Therefore, we address the State's contentions raised for the first time on appeal before concluding the outcome of the case remains the same.

¶ 19 With regard to abandonment, the case law provides that "Abandoned property may be seized without probable cause." *People v. Hoskins*, 101 Ill. 2d 209, 220 (1984). To demonstrate abandonment, the State must establish by a preponderance of the evidence that the defendant's voluntary words or conduct would lead a reasonable person in an officer's position to believe that the defendant relinquished their interest in the property. *People v. Pitman*, 211 Ill. 2d 502, 520 (2004). Nothing in this record conclusively establishes that defendant voluntarily abandoned her purse or the pill bottles at or near the pharmacy. Therefore, we reject the State's abandonment contention.

¶ 20 Next, the State argues the officer properly inspected the contents of the pill bottles as part of a search incident to defendant's arrest. "It is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment." *United States v. Robinson*, 414 U.S. 218, 224 (1973). Searches of the arrestee's person and of the area within the control of the arrestee are permitted under this exception. *Id.* In this case, the record does not establish that at the time the officer came into possession of the pill bottles at issue, the items were located on defendant's person or in the area within defendant's immediate control. Again, the State's search incident to arrest contention is not supported by the facts of record.

¶ 21 The State also argues that the warrantless search of the pill bottles falls within the inevitable discovery exception to the warrant requirement. The doctrine of inevitable discovery is an exception to the exclusionary rule. See *Nix v. Williams*, 467 U.S. 431 (1984). Under the inevitable discovery doctrine, the State is charged with establishing that the information

ultimately or inevitably would have been discovered by lawful means by a preponderance of the evidence. *Id.* at 444. In this case, the State contends the pill bottle would have been subject to an inventory search. “To be valid, an inventory search must be conducted in good faith pursuant to reasonable standardized police procedures.” *People v. Young*, 363 Ill. App. 3d 268, 270 (2006).

¶ 22 In this case, the State elicited no testimony concerning the sheriff’s department’s inventory procedures or policies, whether these procedures were reasonable and administered in good faith, or whether the department listed the pill bottles as part of the inventory of the contents of defendant’s purse. The State failed to establish that a valid inventory search occurred by a preponderance of the evidence. Accordingly, we disagree with the State’s argument that inevitable discovery would have occurred in this case as part of the sheriff’s department’s inventory process.

¶ 23 Lastly, the State argues that exigent circumstances existed to justify Groeper’s search of the pill bottles. Exigent circumstances are an exception to the warrant rule when an emergency leaves police with insufficient time to seek a warrant. *Michigan v. Tyler*, 436 U.S. 499, 509 (1978). When Groeper searched the pill bottles, defendant was in stable condition after receiving emergency care. With candor, the officer admitted there was not an emergency brewing that would have prevented him from seeking a search warrant when he searched the bottles. Further, no imminent threat of destruction of evidence was present in this case. *People v. Pierini*, 278 Ill. App. 3d 974, 979 (1996). For these reasons, we conclude the exceptions to the warrant rule addressed by the State as a basis to set aside the trial court’s ruling are without merit.

¶ 24 CONCLUSION

¶ 25 The judgment of the circuit court of Peoria County is affirmed.

¶ 26 Affirmed.