2017 IL App (4th) 160251-U

NO. 4-16-0251

FILED
February 2, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Clark County
BRAD K. KELLER,	)	No. 14DT57
Defendant-Appellant.	)	
	)	Honorable
	)	David W. Lewis and
	)	Tracy W. Resch,
	)	Judges Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in denying defendant's motion to suppress evidence.

¶ 2 In August 2014, defendant, Brad K. Keller, received a citation for driving while under the influence of alcohol (DUI). In November 2014, defendant filed a motion to suppress evidence, which the trial court initially granted. In April 2015, the court granted the State's motion to reconsider and denied defendant's motion to suppress. At an October 2015 stipulated bench trial, the court found defendant guilty of DUI and sentenced him to conditional discharge. Thereafter, defendant filed a motion for the entry of a judgment of acquittal, which the court denied in March 2016.

¶ 3 On appeal, defendant argues the trial court erred in denying his motion to suppress evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2014, defendant received a traffic citation for DUI (625 ILCS 5/11-501(a)(2) (West 2014)). In September 2014, defendant pleaded not guilty. In November 2014, defendant filed a motion to suppress evidence. Defendant argued the initial detention, the prolonged detention, and his warrantless arrest violated his right against unreasonable searches and seizures. Defendant argued the arresting officer initiated a traffic stop in the absence of specific, articulable facts justifying a reasonable inference that defendant had committed an offense.

¶ 6 In December 2014, Judge David W. Lewis conducted a hearing on the motion. Clark County sheriff's deputy Michael Duvall testified he was on patrol duty at approximately 11:23 p.m. on August 28, 2014. In the city of Marshall, Second Street intersects with Cherry Street. While he was traveling northbound on Second Street, Duval saw a vehicle on Cherry Street that "appeared parked in the middle of the roadway with a person standing outside of the vehicle on the driver's side." The taillights on the vehicle were illuminated. Duvall stated the person "may have been urinating." Duvall stopped his car, backed up to the intersection, and saw a person "standing outside the vehicle." Duvall proceeded onto Cherry Street and observed the vehicle begin to move. Duvall stated no lane markings or dividers were present on Cherry Street. Duvall radioed to his dispatcher that he was going to execute a traffic stop on this "suspicious vehicle." He eventually made contact with defendant and, after administering field-sobriety tests, arrested him for DUI. Duvall issued tickets for DUI and for improper parking on the roadway (625 ILCS 5/11-1301 (West 2014)).

¶ 7 On cross-examination, Deputy Duvall stated defendant's vehicle "appeared to be in the center" of the roadway. Duvall did not believe it was permissible to park in the center of

the roadway or to urinate in the street. Duvall stated defendant admitted urinating upon questioning. While following defendant, Duvall stated the vehicle entered a cemetery, which is where the stop occurred. Once stopped, Duvall detected an odor of an alcoholic beverage coming from inside the car. Upon questioning, defendant stated he had a couple of beers and later said he had consumed four. Judge Lewis took the motion under advisement.

¶ 8 In January 2015, the trial court issued its ruling, relying on the Second District's opinion in *People v. Dionesotes*, 235 Ill. App. 3d 967, 603 N.E.2d 118 (1992). The court stated the Second District found "driving behavior that is unusual rather than criminal or giving rise to a reasonable inference the defendant is committing, is about to commit or has committed an offense, does not support a reasonable suspicion to justify a stop by an officer." In the case before it, the court found "the arresting officer observed no more than defendant's vehicle parked in the middle of the public road at approximately 11:34 p.m. As defendant drove away, the stop was initiated." The court granted defendant's motion to suppress.

¶ 9 That same month, the State filed a motion to reconsider. The State argued this case was distinguishable from *Dionesotes* because Deputy Duvall testified to witnessing offenses prior to initiating the traffic stop. The State noted Duvall testified he observed defendant's vehicle stopped in the center of a roadway and issued him a ticket for improper parking in violation of section 11-1301(a) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-1301(a) (West 2014)). The State also contended Duvall had reasonable suspicion to initiate the traffic stop based on uncharged offenses, including defendant's failure to stay on the right side of the street (625 ILCS 5/11-701 (West 2014)), his failure to park as close as practicable to the right edge of the right-hand shoulder (625 ILCS 5/11-1304 (West 2014)), and his deposit of unsightly and/or unsanitary material on public property by urinating on the roadway (415 ILCS 105/4

(West 2014)).

¶ 10 In February 2015, defendant filed a response to the State's motion to reconsider. In March 2015, the State filed a reply. In April 2015, the trial court issued a written order on the motion to reconsider. The court articulated its findings of fact as follows:

> "The arresting officer was on routine patrol at approximately 11:34 p.m. His vehicle was northbound on South Second Street in Marshall, Illinois. At the Cherry Street intersection, the officer's attention was attracted to defendant's vehicle. Defendant's vehicle lights were illuminated. It appeared to the deputy, defendant's vehicle was parked near the center of the roadway on Cherry Street. Cherry Street is a two-lane roadway which is not marked to identify lanes of traffic. The moving squad car passed the intersection of Second Street and Cherry Street and the deputy's view was obstructed by buildings. The deputy then stops his squad car, backs up the road on Second Street and again observes the vehicle of defendant and a person standing outside that vehicle. The deputy then turned left onto Cherry Street. Defendant's vehicle travels westbound on Cherry Street and turns left from Cherry Street into a dark cemetery. No turn indicator is used by the defendant prior to or during the left turn from Cherry Street. Inside the cemetery property, a stop of defendant's vehicle is initiated and the driver is determined to be under the influence. The officer issues a citation for driving under the influence and

another citation for violation of [section 11-1301]."

¶ 11 The trial court found Deputy Duvall "would have been objectively reasonable in suspecting the defendant of criminal behavior based upon the above-facts." Citing *People v. Kelly*, 344 Ill. App. 3d 1058, 802 N.E.2d 850 (2003), the court found the Second District's opinion in *Dionesotes* distinguishable, noting Duvall "actually witnessed a traffic offense" based on improper parking. The court also noted the digital recording from Duvall's squad car indicated defendant "committed another traffic offense by not signaling the left turn as required by 625 ILCS 5/11-804." The court concluded Duvall had a reasonable suspicion to believe defendant was engaged in illegal activity and "these facts suffice to form a particularized and objective basis for stopping defendant's vehicle." Thus, the court denied defendant's motion to suppress.

¶ 12 In May 2015, defendant filed a motion to reconsider, arguing Duvall did not articulate specific facts from which he could reasonably infer defendant had committed a parking violation. In June 2015, the State filed a response. In July 2015, the trial court denied defendant's motion to reconsider.

¶ 13 In October 2015, Judge Tracy W. Resch conducted a stipulated bench trial. The State agreed to dismiss the improper-parking charge. Thus, the parties proceeded to trial on the DUI charge with the stipulation that defendant was preserving for review the issues raised in his motion to suppress. Judge Resch found defendant guilty and then sentenced him to conditional discharge for 12 months, along with other conditions.

¶ 14 In November 2015, defendant filed a motion for the entry of a judgment of acquittal. Defendant argued the trial court erred in denying his motion to suppress, claiming Duvall initially detained him in the absence of specific, articulable facts justifying a reasonable

inference that he had committed an offense and thereafter unreasonably prolonged the detention.

¶ 15 In March 2016, the trial court found sufficient evidence to support the finding of guilt. Thus, the court denied defendant's motion for the entry of a judgment of acquittal. This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Defendant argues Deputy Duvall detained him in the absence of specific, articulable facts justifying a reasonable inference that he had committed or was committing an offense. We disagree.

¶ 18 A. Standard of Review

¶ 19 On review of a motion to suppress, this court is presented with mixed questions of law and fact. *People v. McQuown*, 407 Ill. App. 3d 1138, 1143, 943 N.E.2d 1242, 1246 (2011).

> "In reviewing a trial court's ruling on a motion to suppress, the trial court's findings of historical fact are reviewed only for clear error, giving due weight to any inferences drawn from those facts by the fact finder, and reversal is warranted only when those findings are against the manifest weight of the evidence. [Citation.] However, a reviewing court remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted. [Citation.] A trial court's ultimate legal ruling as to whether suppression is warranted is subject to *de novo* review. [Citations.]" *People v. Hackett*, 2012 IL 111781, ¶ 18, 971 N.E.2d 1058.

¶ 20 B. The Fourth Amendment

¶ 21 The fourth amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. Similarly, the Illinois Constitution affords citizens with "the right to be secure in their persons, houses, papers[,] and other possessions against unreasonable searches [and] seizures." Ill. Const. 1970, art. I, § 6. "The touchstone of the fourth amendment is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.' " *People v. Timmsen*, 2016 IL 118181, ¶ 9, 50 N.E.3d 1092 (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)). Our supreme court has interpreted the search-and-seizure clause of the Illinois Constitution in a manner consistent with the United States Supreme Court's fourth-amendment jurisprudence. See *People v. Caballes*, 221 Ill. 2d 282, 335-36, 851 N.E.2d 26, 57 (2006).

¶ 22 "When a police officer observes a driver commit a traffic violation, the officer is justified in briefly detaining the driver to investigate the violation." *People v. Ramsey*, 362 Ill. App. 3d 610, 614, 839 N.E.2d 1093, 1097 (2005). A stop of a vehicle and the detention of its occupants constitutes a "seizure" under the fourth amendment. *Timmsen*, 2016 IL 118181, ¶ 9, 50 N.E.3d 1092. Thus, "vehicle stops are subject to the fourth amendment's reasonableness requirement" and are analyzed under the principles set forth in *Terry*. *People v. Close*, 238 Ill. 2d 497, 505, 939 N.E.2d 463, 467 (2010). "A police officer may conduct a brief, investigatory stop of a person where the officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." *Hackett*, 2012 IL 111781, ¶ 20, 971 N.E.2d 1058. "If reasonable suspicion is lacking, the traffic stop is unconstitutional and evidence obtained as a result of the stop is generally inadmissible." *People v. Gaytan*, 2015 IL 116223, ¶ 20, 32 N.E.3d 641.

¶ 23 To be constitutionally permissible, an "investigatory stop must be justified at its inception." *Close*, 238 Ill. 2d at 505, 939 N.E.2d at 467. " '[T]he police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.' " *Close*, 238 Ill. 2d at 505, 939 N.E.2d at 467 (quoting *Terry*, 392 U.S. at 21). "In judging the police officer's conduct, we apply an objective standard: 'would the facts available to the officer at the moment of the seizure *** "warrant a man of reasonable caution in the belief" that the action was appropriate?' " *Close*, 238 Ill. 2d at 505, 939 N.E.2d at 467 (quoting *Terry*, 392 U.S. at 21-22). When evaluating whether an officer had reasonable suspicion to conduct the investigatory stop, courts consider " 'the totality of the circumstances—the whole picture.' " *Timmsen*, 2016 IL 118181, ¶ 14, 50 N.E.3d 1092.

¶ 24 In the case *sub judice*, Deputy Duvall testified he saw a vehicle that "appeared parked in the middle of the roadway with a person standing outside of the vehicle on the driver's side." Duvall stated it appeared "the person may have been urinating." Duvall stopped his squad car, backed up, and again "saw the person standing outside the vehicle." When the prosecutor asked on cross-examination where defendant's vehicle was located in the roadway, Duvall stated it "appeared to be in the center." He did not believe it was permissible to park in the center of the road. On redirect examination, Duvall stated he could not be positive whether the vehicle was in the middle of the road. However, he believed the position of the vehicle would impede traffic traveling in that direction.

¶ 25 Given the totality of the circumstances, we find Duvall had a reasonable, articulable suspicion of criminal activity to justify the stop in this case. Duvall observed a potential Vehicle Code violation based on improper parking. See 625 ILCS 5/11-1301 (West 2014); see also *Jones v. Watson*, 106 F.3d 774, 779 (7th Cir. 1997) (stating "the act of blocking

the free flow of pedestrian or vehicular traffic on public ways will support a conviction for the offense of disorderly conduct"). Moreover, Duvall stated he observed what he thought was a person urinating in the road. According to Duvall's dashboard-camera video, Duvall mentioned to defendant during the stop he saw him urinating in the street. Defendant, however, stated he was looking for a friend's house. When Duvall again suggested defendant "stopped to take a leak" and noted he had observed "the wet spot in the road where you were parked," defendant appeared to admit he had indeed answered the call of nature. This uncharged conduct also provided a reasonable suspicion that defendant had possibly violated section 26-1 of the Criminal Code of 2012 (720 ILCS 5/26-1 (West 2014) (disorderly conduct)). See *People v. Duncan*, 259 Ill. App. 3d 308, 310-11, 631 N.E.2d 803, 804 (1994) (stating public urination can result in a disorderly conduct conviction); see also *People v. Sorrells*, 209 Ill. App. 3d 1064, 1069, 568 N.E.2d 497, 500 (1991) (noting "[t]he fact that the driver was not charged with a traffic offense has no effect on the trial court's determination that there was probable cause to stop the car"). Thus, Duvall was justified in making the investigatory stop.

¶ 26 In support of his argument, defendant relies on *Dionesotes* and *People v. Gray*, 305 Ill. App. 3d 835, 713 N.E.2d 781 (1999). We find both cases distinguishable. In *Dionesotes*, 235 Ill. App. 3d at 968, 603 N.E.2d at 119, police officers observed a motorist who had been driving 10 miles per hour on a street with a 25-mile-per-hour speed limit and stopped in the middle of the street for 1 1/2 minutes before continuing at a slow rate of speed. The arresting officer stated the actions were not necessarily " 'suspicious' " but amounted to " 'unusual' " behavior. *Dionesotes*, 235 Ill. App. 3d at 969, 603 N.E.2d at 120.

¶ 27 In finding the facts did not support a reasonable inference that the defendant was committing, about to commit, or had committed an offense, the Second District noted "[t]he

officer failed to identify the crime or potential crime that prompted him to stop defendant and, in fact, admitted that he did not observe any traffic violations." *Dionesotes*, 235 Ill. App. 3d at 969-70, 603 N.E.2d at 120. The court found a fourth-amendment violation because the traffic stop was premised on the officer's hunch that criminal activity was afoot. *Dionesotes*, 235 Ill. App. 3d at 970, 603 N.E.2d at 121.

¶ 28 In *Gray*, 305 Ill. App. 3d at 837, 713 N.E.2d at 782, a police officer observed the defendant driver and a passenger drive by before the vehicle pulled off the highway. The defendant then left the driver's seat and switched places with the passenger. *Gray*, 305 Ill. App. 3d at 837, 713 N.E.2d at 782. After the vehicle continued down the road, the officer conducted a traffic stop. *Gray*, 305 Ill. App. 3d at 837, 713 N.E.2d at 782. As the reason for stopping the vehicle, the officer testified the switching of the drivers made him reasonably suspicious the defendant's driver's license had been revoked or suspended or he might have had an outstanding warrant. *Gray*, 305 Ill. App. 3d at 837, 713 N.E.2d at 782.

¶ 29 On appeal, this court found the only fact of consequence was the fact that the defendant and the passenger switched seats. *Gray*, 305 Ill. App. 3d at 839, 713 N.E.2d at 783. This court found the officer's belief that the fact of switching drivers oftentimes indicated a driver with a suspended or revoked license was "nothing but a mere hunch *** and not enough to justify the stop of defendant's vehicle." *Gray*, 305 Ill. App. 3d at 839, 713 N.E.2d at 783.

¶ 30 In contrast to the facts in *Dionesotes* and *Gray*, Deputy Duvall observed a potential traffic violation and was not acting on a mere hunch in this case. He identified the traffic offense that prompted him to stop defendant's vehicle and even issued a citation to defendant for that offense. A second uncharged offense also provided reasonable suspicion. Based on the reasonable suspicion that defendant was violating Illinois law, Duvall could

lawfully stop defendant's vehicle. Accordingly, we find the trial court did not err in denying defendant's motion to suppress.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 33 Affirmed.