

2018 IL App (1st) 171498-U

No. 1-17-1498

Order filed May 18, 2018

Fifth Division

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 17 CR 1072
	)	
DWUAN REDD,	)	Honorable
	)	James B. Linn,
Defendant-Appellee.	)	Judge, presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err when it determined that the officer lacked reasonable suspicion to conduct a *Terry* stop because the trial court's finding that the officer did not observe a seatbelt violation before stopping the defendant's vehicle was not against the manifest weight of the evidence.

¶ 2 The People of the State of Illinois appeal the circuit court's decision that granted defendant Dwuan Redd's motion to quash arrest and suppress evidence. The State argues that the trial court improperly granted defendant's motion because the police acted reasonably

throughout the traffic stop, discovery of defendant's handgun was inevitable, and suppression of the handgun was unwarranted because the police acted in good faith.

¶ 3 For the reasons that follow, we affirm the trial court's decision.

¶ 4 I. BACKGROUND

¶ 5 Defendant was charged with three counts of aggravated unlawful use of a weapon for knowingly carrying a handgun in a vehicle while not in possession of a valid license to carry a concealed firearm. Defendant moved to quash his arrest and suppress the evidence.

¶ 6 At the April 2017 hearing on defendant's motion, Chicago Police Officer Rodriguez testified that about 7 p.m. on December 26, 2016, he was driving a marked squad car, which had an operational dash cam. He was accompanied by his partner, Officer Yanez. Rodriguez first noticed a Dodge Dart in the vicinity of 63rd Street and Seeley Avenue and followed it for about one block. When he was right behind the Dart, he could see straight through its untinted rear-window. He never had a profile or frontal view of the driver of the Dart. Rodriguez asserted that he noticed the driver of the Dart was not wearing a seatbelt and decided to stop the Dart when it turned onto 63rd Street. Rodriguez activated his lights, and the Dart pulled over immediately.

¶ 7 Officers Rodriguez and Yanez exited their squad car and walked toward the Dart. Rodriguez approached on the driver's side of the Dart, and Yanez approached on the passenger's side. They both shined their flashlights into the Dart. Defendant was the driver, and two people were in the rear seat of the Dart. Rodriguez said, "The reason I stopped you is none of you guys seem to have seat belts on here." Defendant responded that he took his seatbelt off right after he stopped his car. Defendant claimed to be an Uber driver. He was not able to produce a driver's license but did produce a firearm owner's identification card. Officers Rodriguez and Yanez

learned that defendant's driver's license was suspended. Defendant was arrested for driving on a suspended license. Neither one of the backseat passengers had a valid driver's license, and defendant said that his wife was the registered owner of the Dart and she would be at work until 11 p.m. The officers decided that Yanez would drive the Dart back to the police station and attempt to call defendant's wife to pick up her vehicle. When Yanez moved the driver's seat of the Dart back so that he could fit, he observed a .22-caliber Magnum pistol.

¶ 8 The defense entered the dash cam video into evidence, and the trial court viewed it and replayed it. After closing argument, the trial court granted defendant's motion to quash. The trial court stated that the officer's view of defendant was from behind and the court "was not exactly sure how well you can see whether people are wearing seatbelts when you are behind them some car lengths." The trial court also questioned whether it was necessary to take the Dart to the police station. The trial court stated that the "investigation was one of a seatbelt violation and a suspended license, nothing else, going in the car beyond that. So with all the totality, I give the [defendant] the benefit of the doubt and allow the motion [to quash and suppress evidence]."

¶ 9 Thereafter, the trial court denied the State's motion to reconsider, and the State timely appealed.

¶ 10

## II. ANALYSIS

¶ 11 The State argues that the trial court improperly granted defendant's motion to quash arrest and suppress evidence because no unreasonable search or seizure occurred here where Officer Rodriguez had a reasonable, articulable suspicion to believe that defendant was not wearing his seatbelt, and then the officers conducted a brief investigatory stop to determine if defendant was wearing a seatbelt, determined that he was driving on a suspended license,

decided that the Dart should be moved to the police station, and discovered—after adjusting the driver’s seat—the handgun in plain sight. The State contends that the police acted reasonably throughout the traffic stop, the discovery of defendant’s handgun was inevitable because the Dart had to be moved out of the way of traffic, and suppression was unwarranted in this case because the police acted professionally and exclusion would not deter police misconduct.

¶ 12 When reviewing a trial court’s ruling on a motion to quash arrest and suppress evidence, this court applies a two-part standard of review. *People v. Almond*, 2015 IL 112817, ¶ 55. First, we review the trial court’s findings of historical fact for clear error and defer to any inferences the circuit court drew from those facts. *Id.* We will not disturb the trial court’s factual findings unless they are against the manifest weight of the evidence. *Id.* A trial court’s finding of fact is against the manifest weight of the evidence when an opposite conclusion is apparent or the trial court’s “findings appear to be unreasonable, arbitrary, or not based on evidence.” *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995). Second, we review *de novo* the trial court’s ultimate legal ruling as to whether the evidence should be suppressed. *Almond*, 2015 IL 112817, ¶ 55.

¶ 13 The fourth amendment to the United States Constitution and article I, section 6, of the Illinois Constitution guarantee the right of the people to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. The United States Supreme Court has characterized the detention by police of individuals during a traffic stop as a “seizure” of “persons” within the meaning of the fourth amendment. *Berkemer v. McCarty*, 468 U.S. 420, 436-37 (1984); see also *United States v. Mendenhall*, 446 U.S. 544, 553 (1980) (a person is seized when, by means of physical force or a show of authority, the person’s freedom of movement is restrained).

¶ 14 Courts have divided police-citizen encounters into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or “*Terry* stops,” which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) encounters that involve no coercion or detention and thus do not implicate fourth amendment interests. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Most traffic stops resemble, in duration and atmosphere, the kind of brief detention authorized in *Terry v. Ohio*, 392 U.S. 1 (1968). *People v. Cosby*, 231 Ill. 2d 262, 273-74 (2008). Here, a seizure implicating fourth amendment interests occurred in response to the police officers’ show of authority when they activated the lights of their squad car and curbed defendant’s vehicle; in view of all the circumstances surrounding this incident, a reasonable person would have believed that he was not free to leave. See *id.*

¶ 15 Vehicle stops are subject to the fourth amendment’s requirement of reasonableness, which is analyzed under *Terry* principles. *People v. Bunch*, 207 Ill. 2d 7, 13-14 (2003). This dual inquiry asks “whether the officer’s action was justified at its inception,” and “whether it was reasonably related in scope to the circumstances which justified the interference in the first place.” *Terry*, 392 U.S. at 19-20. The dispositive issue in this appeal is the lawfulness of the officers’ initial stop of the vehicle—the first part of the *Terry* inquiry.

¶ 16 Under the *Terry* exception, the police may conduct a brief investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). The reasonable suspicion standard is less demanding than probable cause and requires a showing considerably less than preponderance of the evidence. *Id.* at 123-24. Reasonable suspicion requires at least a minimal level of objective justification for making the stop; the officer must be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity. *Id.* The underlying facts are viewed from the perspective

of a reasonable officer at the time that the situation confronted the officer. *People v. Thomas*, 198 Ill. 2d 103, 110 (2001). By allowing police officers to detain individuals to resolve whether ambiguous conduct was indicative of ongoing criminal activity, “*Terry* accepts the risk that officers may stop innocent people.” *Wardlow*, 528 U.S. at 126. However, a routine traffic stop may not be used as a subterfuge to obtain other evidence based upon a police officer’s suspicion. *People v. Ruffin*, 315 Ill. App. 3d 744, 749 (2000).

¶ 17 The State argues that Officer Rodriguez conducted a lawful traffic stop because he had a reasonable, articulable suspicion that he observed a traffic violation, *i.e.*, that defendant was driving the Dart without wearing a seatbelt. The State contends that Officer Rodriguez testified he was right behind the Dart when he observed that defendant was not wearing a seatbelt. The State asserts that the dash cam shows Rodriguez had been following the Dart for about 38 seconds on a well-lit road and the squad car was stopped right behind the Dart for several seconds near a well-lit intersection just before the Dart turned onto 63rd street and Rodriguez activated his emergency lights. According to the State, any finding that Rodriguez did not testify credibly about observing defendant’s seatbelt violation before stopping defendant’s vehicle was manifestly erroneous and contradicted by the clear video evidence. The State asserts that Rodriguez was allowed to stop the Dart to investigate a possible violation even if just to determine that his suspicion that defendant and the two passengers were not wearing seatbelts was incorrect.

¶ 18 Here, the trial court’s determination that the initial traffic stop was unjustified was based on the trial court’s finding, after weighing the dash cam video and the credibility of Rodriguez’s testimony, that Rodriguez was not able to have seen whether defendant was wearing a seatbelt

before Rodriguez decided to curb defendant's vehicle. After reviewing the record, we cannot say that the trial court's fact findings were against the manifest weight of the evidence. The trial court was in a superior position to weigh and determine Rodriguez's credibility based on the court's observation of his demeanor. See *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). The trial court weighed Rodriguez's testimony about observing a seatbelt violation before initiating the traffic stop. The trial court also considered the police dash cam video, noting that it was extremely difficult to determine whether or not the occupants of defendant's vehicle were wearing seatbelts. We also viewed that video and disagree with the State's assertion that the video corroborated Rodriguez's testimony and clearly showed the seatbelt violation that prompted the traffic stop.

¶ 19 The trial court was in a better position than this court to evaluate Rodriguez's testimony, and the video does not show that the trial court's decision was against the manifest weight of the evidence. Therefore, we defer to the trial court's determination that rejected Rodriguez's assertions that he observed a seat belt violation and it prompted his *Terry* stop of defendant's vehicle. Because we have determined that the trial court did not err in deciding that the initial traffic stop was not justified, we do not address the State's arguments about the inevitable discovery of the handgun or the good faith actions of the police officers.

¶ 20

### III. CONCLUSION

¶ 21 For the foregoing reasons, we find that the trial court's fact findings concerning the traffic stop were not against the manifest weight of the evidence. Therefore, the trial court did not err when it determined that the initial traffic stop was unjustified and granted defendant's motion to quash arrest and suppress evidence. The judgment of the trial court is affirmed.

No. 1-17-1498

¶ 22 Affirmed.