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2018 IL App (3d) 160608-U

Order filed May 11, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 9th Judicial Circuit, Knox County, Illinois.
Plaintiff-Appellant,	)	
v.	)	Appeal No. 3-16-0608
NICHOLAS J. HENNENFENT,	)	Circuit No. 16-CF-56
Defendant-Appellee.	)	Honorable Scott Shipplett Judge, Presiding

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Carter and Justice Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Trial court did not err when it granted defendant's motion to quash and suppress evidence where the police lacked probable cause for the traffic stop.

¶ 2 Defendant Nicholas Hennenfent was arrested and charged with five drug-related offenses following a traffic stop. He moved to quash his arrest and suppress the evidence. The trial court granted his motion. The State appealed. We affirm.

¶ 3 **FACTS**

¶ 4 Defendant Nicholas Hennenfent filed a motion to quash his arrest and suppress any evidence from a January 30, 2016, traffic stop, which resulted in Hennenfent being charged with various drug offenses. A hearing took place where the following evidence was presented. Galesburg police officer Jared Tapscott was on patrol on January 30, 2016, at approximately 1 a.m. when he stopped Hennenfent. Tapscott told Hennenfent that he stopped him because Hennenfent pulled into the intersection before turning. Tapscott testified he observed Hennenfent enter the intersection prior to his turn. He admitted the video showed Hennenfent “proceeded a little bit into the intersection and then proceeded to make his left-hand turn.” Tapscott could not recall why he did not inform Hennenfent that he was stopped for a failure to signal. He did not ticket Hennenfent for either violation but wrote Hennenfent a warning ticket that Tapscott assumed was for failure to signal. Tapscott also pointed to Hennenfent’s failure to signal his turn within 100 feet of the next intersection, where Hennenfent also turned left. During that turn, Tapscott activated his lights and effectuated the traffic stop. Tapscott explained he did not initially call in the first traffic violation and he did not want to pull Hennenfent over until that contact was made so he waited until Hennenfent went through the next intersection.

¶ 5 The dash cam video from the stop was played for the trial court. The State moved for a directed verdict, which the trial court denied. The court issued a written order granting Hennenfent’s motion to suppress. In its order, the trial court discussed the video and corroborated it with Google map images of the intersection in question that the court researched on its own. The court found the video did not mesh with Tapscott’s testimony that Hennenfent entered the intersection prior to initiating his turn, stating “the video clearly shows no such thing.” Rather, the trial court found Hennenfent signaled “well before the tracks, stopped, and then went forward before turning” because of the road configuration. The court also expressly

stated that, although no measurements were made to support the State’s case that Hennenfent did not signal 100’ prior to making his turn, “the Court’s best estimate based on the observation of the video, and compared with Google’s estimate of 50’ (in the lower right corner of the photograph)”, confirmed that Hennenfent did signal appropriately before his first turn. As to the second alleged violation for failing to signal at the next intersection, the court found that there were no measurements submitted, it was dark on the video, and Tapscott failed to inform Hennenfent of his lack of turn signal, instead indicating Hennenfent’s failure to sufficiently stop at the first intersection was the reason for the traffic stop. The court found it would “assume” Tapscott did not mention the failure to signal because Hennenfent had in fact signaled prior to his turn. The court found the video visually supported that Hennenfent signaled within an appropriate distance. The trial court determined there was no probable cause to stop Hennenfent and granted Hennenfent’s motion to suppress. The State appealed and filed a certificate of impairment.

¶ 6

#### ANALYSIS

¶ 7

On appeal, the State argues that the trial court erred when it conducted an independent investigation and used Google maps to determine whether Hennenfent signaled prior to 100’ feet of making his turns. The State further submits the trial court’s factual findings are not supported by the evidence. The State asks this court to reverse the trial court’s grant of Hennenfent’s motion to quash and suppress.

¶ 8

On a motion to suppress, it is the defendant’s burden to establish the State’s conduct was unlawful. *People v. Mott*, 389 Ill. App. 3d 539, 542 (2009). If the defendant presents a *prima facie* case, the burden shifts to the State to establish evidence justifying its conduct. *Id.* A trial court’s factual findings on a motion to suppress are reviewed to determine if they are against the

manifest weight of the evidence. *People v. Absher*, 242 Ill. 2d 77, 82 (2011). The court’s ultimate ruling on the motion to suppress is reviewed *de novo*. *Id.*

¶ 9 A trial court judge may not conduct private investigations producing evidence that was not presented at the trial. *People v. Cunningham*, 2012 IL App (3d) 100013, ¶14. When a trial court bases its ruling on its private investigation or knowledge, the defendant is denied due process as he lacks the ability to test the evidence through cross-examination or compliance with evidentiary rules. *Id.* When reviewing a bench trial, the court presumes the trial court used only competent evidence in making its ruling. *Id.*

¶ 10 “An appellate court may take judicial notice of matters not previously presented to the trial court when the matters are capable of instant and unquestionable demonstration.” *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177 (2003) (quoting *Boston v. Rockford Memorial Hospital*, 140 Ill. App. 3d 969, 972 (1986)). Common information of which reviewing courts take judicial notice include the distance between locations, the time to travel between them, and the usual routes to do so. *Dawdy*, 207 Ill. 2d at 177 (quoting 1 C. Fishman, *Jones on Evidence*, §2:56, at 120 (7th ed. 1992)). Courts routinely use Google Maps or MapQuest to find common information. In *Hoskin v. Union Pacific R.R. Co.*, 365 Ill. App. 3d 1021, 1024-25 (2006), the court performed a MapQuest search to determine the distances witnesses would travel to various courthouses in a *forum non conveniens* case). The reviewing court in *People v. Stiff*, 391 Ill. App. 3d 494, 504 (2009), used Google maps to determine the distance between two houses). In *People v. Clark*, 406 Ill. App. 3d 622, 634 (2010), Google maps submitted on appeal by State were found admissible to show the location of a park at issue).

¶ 11 We disagree with the State’s argument that the trial court based its decision on matters not in the record. At issue is the trial court’s use of Google Map images in its order granting

Hennenfent's motion to quash and suppress. In its ruling, the trial court expressly stated that it based its measurement finding on its own estimate from viewing the video. With the second intersection, the trial court also expressly based its measurement finding on the video. The court used the Google map as a comparison with its own estimate. The trial court used Google maps in its order to illustrate its ruling. It did not base its decision on what it learned from Google maps, as the State argues. The trial court's use of Google maps was not improper, as the maps provided "instant and unquestionable demonstration" informing the court's own distance estimates based on the videotape. We find there was no error in the trial court's use of Google maps to illustrate its decision.

¶ 12 The trial court's factual findings were also not in error. Tapscott testified he did not write Hennenfent a ticket for any traffic violation. He admitted Hennenfent stopped at the stop sign but explained Hennenfent then proceeded a little more into the intersection before turning. He also admitted he did not measure 100 feet from the point where Hennenfent signaled to where he turned. The only evidence offered by the State regarding the distance between when Hennenfent signaled and when he turned was the testimony of Tapscott and the video.

¶ 13 The trial court questioned Tapscott's credibility, based on the discrepancies between his statements on the videotape and in court, and his failure to inform Hennenfent that the reason for the stop was Hennenfent's failure to signal 100 feet before he turned. The trial court factored Tapscott's questionable version of events at the first intersection into its factual findings regarding the second turn. The video shows that Hennenfent used his signal at some point prior to reaching the intersections and making both turns. The audio reveals that Tapscott told his partner that the basis of calling in Hennenfent's plates was that Hennenfent pulled into the

intersection beyond the stop sign before stopping and turning. The trial court concluded the video “clearly” did not show Hennenfent stopping in the middle of the intersection.

¶ 14           The video supports the trial court’s conclusions that Hennenfent did not stop in the middle of the first intersection and properly signaled before turning, and signaled “within an appropriate distance” before turning at the second intersection. The trial court was in the best position to assess Tapscott’s credibility and found it suspect. Based on the court’s credibility assessment, its findings were not against the manifest weight of the evidence. We find the trial court did not err in granting Hennenfent’s motion to suppress. Its decision is supported by the video and testimony at the suppression hearing.

¶ 15           For the foregoing reasons, the judgment of the circuit court of Knox County is affirmed.

¶ 16           Affirmed.