

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2018 IL App (4th) 160871-U

NO. 4-16-0871

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

January 11, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	McLean County
BRYAN FOWLER,	)	No. 16CF229
Defendant-Appellee.	)	
	)	Honorable
	)	John Casey Costigan,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The trial court did not err in granting defendant's motion to suppress evidence.

¶ 2 Defendant, Bryan Fowler, was charged with aggravated driving under the influence (DUI) (625 ILCS 11-501(a) (West 2014)). He filed a motion to quash arrest and suppress evidence, arguing the charge against him was the result of an improper traffic stop. The trial court granted defendant's motion and the State appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 2016, a grand jury returned an indictment, charging defendant with aggravated DUI (625 ILCS 5/11-501(a) (West 2014)) based on allegations that he drove a vehicle while under the influence of alcohol and had previously committed the same or similar offenses in 1985, 1996, and 1997. In August 2016, defendant filed a motion to quash arrest and

suppress evidence. (We note the proper title for defendant's motion is solely as a motion to suppress evidence and, hereinafter, refer to it only by that title. See *People v. Hansen*, 2012 IL App (4th) 110603, ¶ 63, 968 N.E.2d 164). He alleged his DUI charge stemmed from an improper traffic stop and evidence gathered by the police following that improper stop should be suppressed. Specifically, defendant asserted, on January 19, 2016, Bloomington police officer Jesse Lanphear stopped his vehicle after Lanphear reportedly noticed "a loud exhaust." Defendant maintained, however, that he did not commit a traffic violation and Lanphear lacked both probable cause and a reasonable suspicion to execute a traffic stop of his vehicle.

¶ 5 In September 2016, the trial court conducted a hearing on defendant's motion to suppress evidence. Defendant first presented the testimony of Fred Groves, the owner of a vehicle servicing center. Groves stated he had worked on exhaust systems for 50 years. He looked and listened to defendant's vehicle and characterized the sound of its exhaust system as "[v]ery minimal." When compared to other vehicles on the road, Groves rated defendant's vehicle a 2 1/2 on a 10-point scale, with 10 representing a vehicle with a broken exhaust system and no engine quieting. Groves also testified defendant's exhaust "was just barely audible" in comparison to the sound of motorcycle, which he stated would "rattle the windows."

¶ 6 Groves testified he listened to defendant's vehicle for approximately eight minutes. He did not drive the vehicle around but, instead, listened to it in front of his shop as defendant "accelerated it." Although Groves stated he did not perform any work on defendant's vehicle, he acknowledged that he found "a small leak" in defendant's exhaust system. He asserted the leak produced only "minimal noise." Groves further identified a document from his shop, containing information about his inspection of defendant's vehicle. The document, dated

January 27, 2016, states as follows: “Inspect[ed] exhaust system[,] has slight leak in pipe to manifold[.] Hardly audible.”

¶ 7 Groves testified that the purpose of a muffler on a vehicle was to quiet engine noise. He agreed that any hole or leak would make more noise than a perfectly sealed muffler. Additionally, Groves agreed that defendant’s vehicle, which had a “slight leak,” would be louder than a vehicle with an average muffler with no leak. However, he testified defendant’s car was only “slightly” louder than an average car. Additionally, Groves denied that defendant’s vehicle would have been louder while in motion than it was while stationary during his inspection.

¶ 8 Lanphear testified, on January 19, 2016, he was on routine patrol when he observed defendant leave Winner’s Lounge, enter his vehicle, and drive off. As defendant passed through the intersection near where Lanphear was positioned, Lanphear noticed defendant’s “exhaust was loud.” He stated he was on the opposite side of the street from defendant and two to three car lengths away from the intersection. Lanphear characterized defendant’s exhaust as “louder than normal,” stating that if he “had to put a number on it, [he] would say [defendant’s vehicle was] maybe two times louder than what a normal car sounds like.” He testified nothing obstructed his hearing and both of his vehicle’s windows were down.

¶ 9 Lanphear initiated a traffic stop of defendant’s vehicle. He stated the traffic stop was recorded on video captured from his patrol car. According to Lanphear, audio for the video was captured by a microphone he wore on his belt and a secondary microphone inside his car “to record people that we have inside of our vehicles.” Defendant submitted the recording into evidence and it was played at the hearing. While the video played, the following colloquy occurred between defendant’s counsel and Lanphear:

“Q. And how would you characterize the sound just there on the video?

A. It sounded like a car exhaust.

Q. Did it sound like an exhaust that was two times louder than other cars?

A. I know what I heard when I was there with my windows down and he pulled away. The exhaust right there, it sounds like a car exhaust to me. I can't tell you if that was the same sound. His vehicle right now [on the video] is in park. Could have sounded different when he was accelerating while it was in drive. I just can't tell.

Q. But is that sound a good characterization of what you heard, or are you saying that here—

A. What I heard was louder than that.”

¶ 10 Lanphear further recalled that after he pulled defendant over, defendant commented something to the effect of “ ‘I knew I would get stopped for that some day.’ ” He acknowledged that in the report he prepared regarding the incident he documented that defendant made the comment after being informed he had been stopped for a loud exhaust. However, Lanphear agreed that defendant's comment was made about four minutes after the stop was initiated. Further, he agreed that the video and audio recording did not show that the comment was made directly after he informed defendant that his exhaust was loud. Lanphear also acknowledged that after he explained the reason for the stop to defendant, defendant pressed on the accelerator of the vehicle to demonstrate how loud his exhaust was. Lanphear testified the exhaust was not as loud at that point in time as it had been earlier; however, he denied that he had been mistaken about the sound of the exhaust.

¶ 11 On examination by the State, Lanphear testified he had been working patrol duties for almost five years, working eight hours per day and five days per week. He estimated that he came into contact with 50 vehicles in an average work day. Based on that experience, Lanphear believed he had “a good reference for what an average functioning muffler should sound like” and defendant’s muffler was louder. Lanphear further agreed that he heard defendant’s muffler while his vehicle was in motion, which was not captured by the recording. He noted that, on in-car videos, the audio did not start until the patrol car’s emergency lights were activated. Lanphear testified the extent of the audio that was captured in his patrol car’s recording was “just when [defendant’s] vehicle was pulled over” and idling. He stated vehicles were typically louder when they accelerated.

¶ 12 Additionally, Lanphear testified that, after he pulled defendant over, he explained that his sole purpose for the stop was defendant’s loud exhaust. He interpreted defendant’s statement that he “ ‘knew [he] would get pulled over for that some day’ ” as referring to only the muffler and nothing else. Lanphear, however, acknowledged that defendant made the statement when they were discussing insurance and while defendant was looking for his proof of insurance.

¶ 13 Finally, defendant testified on his own behalf. He asserted that when stopped by Lanphear on January 19, 2016, Lanphear asked defendant if his “exhaust was stock or modified.” Defendant stated he then questioned Lanphear about getting pulled over for his exhaust and “revved the motor” to demonstrate that there was no problem with the exhaust. He testified he revved the motor to approximately “4 or 5 RPM, 4,000 RPM,” which he asserted was the equivalent of driving 60 to 70 miles per hour. Defendant testified that when he pressed on the accelerator, his “car was quiet as a church mouse.”

¶ 14 Defendant acknowledged stating to Lanphear that he thought he would “get pulled over for this some day,” but asserted he was talking about the trouble he had in locating his insurance card. He denied making the statement in reference to his exhaust.

¶ 15 At the conclusion of the hearing, the trial court took the matter under advisement. On November 1, 2016, the court entered a written order, granting defendant’s motion. In reaching its decision, the court stated it found that all of the witnesses were “credible” but, based on witness testimony and the recording, “it was speculation that [d]efendant’s vehicle was making excessive noise from the exhaust.” The court stated as follows:

“The video does reveal the level of noise the exhaust is making while the vehicle is stopped. Defendant did push on the accelerator while the vehicle was stopped and there was not a significant increase in the amount of noise. While the officer was talking to [d]efendant the vehicle was not making excessive noise. The Court understands that a vehicle may make more noise while in motion and the State does not need to prove its case beyond a reasonable doubt but there must be more than mere surmise or speculation. In this case[,] the officer was about a half block from [d]efendant’s vehicle when he observed it leaving the bar’s parking lot. The video does not begin its audio recording until [d]efendant’s vehicle is about to be pulled over. At that time and thereafter[,] the Court is surmising or speculating as to whether [d]efendant’s vehicle is making any excessive noise at all.”

¶ 16 This appeal followed.

¶ 17 **II. ANALYSIS**

¶ 18 On appeal, the State argues the trial court erred in granting defendant’s motion to

suppress evidence. It contends “Lanphear had an objectively reasonable suspicion based upon specific and articulable facts that defendant’s vehicle’s exhaust violated the traffic code.” To support its argument, the State relies on Lanphear’s testimony and evidence of a leak in the exhaust system of defendant’s vehicle.

¶ 19 Initially, we note that a two-part standard of review applies when considering a trial court’s ruling on a motion to suppress evidence. *People v. Timmsen*, 2016 IL 118181, ¶ 11, 50 N.E.3d 1092. First, the court’s factual findings will be upheld unless they are against the manifest weight of the evidence. *Id.* A finding of fact is against the manifest weight of the evidence where an opposite conclusion is clearly evident. *People v. Miles*, 343 Ill. App. 3d 1026, 1030, 798 N.E.2d 1279, 1283 (2003). Second, the court’s ultimate legal conclusion regarding whether suppression is warranted is reviewed *de novo*. *Timmsen*, 2016 IL 118181, ¶ 11.

¶ 20 Both the fourth amendment to the United States Constitution and article I, section 6, of the Illinois Constitution protect citizens against unreasonable searches and seizures. *Id.* ¶ 9 (citing U.S. Const. amend. IV; 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.’ ” *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)). The search-and-seizure provision of the Illinois Constitution is interpreted in the same manner as the fourth amendment. *People v. Caballes*, 221 Ill. 2d 282, 335, 851 N.E.2d 26, 57, (2006) (reaffirming adherence to the limited lockstep approach to the interpretation of the fourth amendment and article I, section 6, of the Illinois Constitution).

¶ 21 A traffic stop “constitutes a ‘seizure’ \*\*\* within the meaning of the fourth amendment” and is “subject to the fourth amendment’s reasonableness requirement.” *People v.*

*Close*, 238 Ill. 2d 497, 504-05, 939 N.E.2d 463, 467 (2010). Further, vehicle stops are analyzed under the principles set forth in *Terry*, 392 U.S. 1. *Id.* at 505. “Pursuant to *Terry*, a police officer may conduct a brief, investigatory stop of a person where the officer reasonably believes that the person has committed, or is about to, commit a crime.” *Timmsen*, 2016 IL 118181, ¶ 9. “The officer must have a ‘reasonable, articulable suspicion’ that criminal activity is afoot.” *Id.* (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)).

¶ 22 Additionally, “[t]he investigatory stop must be justified at its inception.” *Close*, 238 Ill. 2d at 505. “The officer’s suspicion must amount to more than an inarticulate hunch [citations], but need not rise to the level of suspicion required for probable cause.” *Id.* We use an objective standard to evaluate a police officer’s conduct and consider “whether the facts available to the officer warrant a person of reasonable caution to believe that the action which the officer took was appropriate.” *People v. Houlihan*, 167 Ill. App. 3d 638, 642, 521 N.E.2d 277, 280 (1988). “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 An officer may justifiably stop a vehicle based on his observation of a traffic violation. *People v. Sorenson*, 196 Ill. 2d 425, 433, 752 N.E.2d 1078, 1084 (2001). Further, “[t]he violation may relate to the condition of the vehicle itself” or, more specifically, be “for an equipment violation.” *Houlihan*, 167 Ill. App. 3d at 643.

¶ 24 In this instance, the State contends Lanphear’s stop of defendant’s vehicle was justified under section 12-602 of the Illinois Vehicle Code (Code) (625 ILCS 5/12-602 (West 2014)), which provides that “[e]very motor vehicle driven or operated upon the highways of this



State shall at all times be equipped with an adequate muffler or exhaust system in constant operation and properly maintained to prevent any *excessive or unusual noise.*” (Emphasis added.) We agree that a valid and justifiable traffic stop occurs when a police officer has an objectively reasonable suspicion based on articulable facts that a vehicle’s exhaust system violates section 12-602 of the Code. However, in this instance, the trial court’s comments indicate it found the lack of an objectively reasonable suspicion for the stop. After reviewing the record, we find no error and agree with the court’s ruling.

¶ 25 Initially, the trial court found that the recording of the traffic stop demonstrated the level of noise defendant’s exhaust was making while his vehicle was stopped. It found that, while Lanphear and defendant were talking, “the vehicle was not making excessive noise.” Also, it noted that defendant pushed on his vehicle’s accelerator while stopped “and there was not a significant increase in the amount of noise.” After reviewing the recording, we agree with the trial court’s characterizations. In particular, the recording fails to reflect that defendant’s vehicle was making either excessive or unusual noise at the time of the traffic stop. An opposite conclusion from that reached by the court is not clearly evident.

¶ 26 The testimony of the witnesses at the hearing further supports a finding that defendant’s exhaust system was not making excessive or unusual noise. Groves testified he inspected defendant’s vehicle and, although its exhaust system had a small or slight leak, it produced only “minimal noise” and was “[h]ardly audible.” He opined that, even with the leak, defendant’s vehicle was only “slightly” louder than an average car. Even Lanphear agreed that, as captured by the video and audio recording, the noise emanating from defendant’s vehicle “sounded like a car exhaust” and was not as loud as what he believed he previously heard.

¶ 27 On appeal, the State argues the trial court focused on an improper time period when determining whether Lanphear had an objectively reasonable suspicion of a traffic violation. It maintains that the court erroneously focused on events occurring after Lanphear had already stopped defendant's vehicle when it should have focused on the initial acceleration that brought defendant's vehicle to Lanphear's attention, *i.e.*, the inception of the investigatory stop.

¶ 28 Here, we disagree that the record demonstrates any improper considerations by the trial court. Specifically, evidence demonstrating the noise level of defendant's vehicle during the traffic stop supports reasonable inferences as to the noise level of defendant's vehicle just prior to the execution of the stop when defendant first drew Lanphear's attention. In this instance, a reasonable inference from evidence demonstrating a lack of excessive or unusual noise from defendant's vehicle during the traffic stop—including when defendant pressed on his vehicle's accelerator and "revved" its engine—is that there was also a lack of excessive or unusual noise emanating from defendant's vehicle when Lanphear first observed defendant leaving the lounge's parking lot and accelerating onto the roadway.

¶ 29 The State next argues that the evidence showed defendant's exhaust system was not properly maintained and, thus, louder than vehicles with "properly maintained exhaust." However, as discussed, although Groves testified defendant's exhaust system had a leak and agreed that defendant's vehicle would be louder than a vehicle with no leak, he described the leak as being only small or slight. Further, he testified the sound of defendant's exhaust system was "minimal" and "hardly audible." Groves' inspection of defendant's vehicle included listening to the exhaust system as the accelerator was pressed and he denied that defendant's vehicle would have been louder while in motion than it was while stationary during his

inspection.

¶ 30 Finally, the State argues that, even if Lanphear was mistaken as to the noise level of defendant's vehicle, his mistake of fact was, nevertheless, objectively reasonable, resulting in a lawful traffic stop. See *Heien v. North Carolina*, 135 S. Ct. 530, 539 (2014) ("The Fourth Amendment tolerates only reasonable mistakes, and those mistakes—whether of fact or of law—must be objectively reasonable."(Emphases omitted.)); *People v. Theus*, 2016 IL App (4th) 160139, ¶ 27, 64 N.E.3d 61 ("A police officer's objectively reasonable mistake, whether of fact or law, may provide the reasonable suspicion necessary to justify a traffic stop."). Again, although we do not disagree with the legal proposition cited by the State, for the reasons already expressed, the evidence presented at the suppression hearing reflects the lack of an objectively reasonable suspicion of a loud exhaust.

¶ 31 To support its contention, the State relies on Lanphear's testimony that he heard defendant's vehicle as it accelerated, that nothing obstructed his hearing, and that defendant's exhaust was louder than other vehicles. However, evidence at the hearing demonstrated the actual noise level of defendant's vehicle during the traffic stop. Additionally, the evidence showed defendant "revved" his engine to demonstrate the noise level of his exhaust when the accelerator was pressed. At the time defendant "revved" his engine, Lanphear was standing next to the vehicle and had a microphone on his belt. As the trial court found, the recording did not demonstrate excessive noise emanating from defendant's vehicle. A reasonable inference follows that defendant's vehicle was also not making excessive noise just prior to the investigatory stop. Further, Groves described the noise level of defendant's vehicle as "minimal" and "hardly audible." Given these circumstances, Lanphear's asserted belief that defendant's exhaust was

abnormally loud was not objectively reasonable.

¶ 32 Finally, we note that, although the trial court deemed all of the witnesses credible, its comments otherwise reflect that it gave less weight to Lanphear’s testimony than the other evidence presented. In particular, the court relied on the video and audio recording, which demonstrated the actual noise level of defendant’s vehicle. A trial judge’s evaluation of the credibility of witnesses and weight of the evidence should not be substituted on appeal. *People v. Miller*, 242 Ill. App. 3d 423, 436, 611 N.E.2d 11, 20 (1993) (“Based on the evidence presented \*\*\*, it was within the province of the trial judge to conclude the loud muffler could not have been the reason [the] defendant’s vehicle was stopped.”). Here, the trial court’s factual findings were supported by the record and not against the manifest weight of the evidence. Ultimately, we find no error in the court’s grant of defendant’s motion to suppress evidence.

¶ 33

### III. CONCLUSION

¶ 34

For the reasons stated, we affirm the trial court’s judgment.

¶ 35

Affirmed.