2018 IL App (5th) 170071-U

NO. 5-17-0071

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Marion County.
	)	
v.	)	No. 16-CF-292
	)	
RYAN J. FEEZEL,	)	Honorable
	)	J. Marc Kelly,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE OVERSTREET delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: Pursuant to *People v. Jackson*, 118 Ill. 2d 179 (1987), the trial court properly denied the defendant's motion to dismiss.

¶ 2 Following his involvement in a vehicular accident that resulted in the death of a motorcyclist, the defendant, Ryan J. Feezel, was ticketed for improper lane usage. After the defendant appeared in court and pled guilty to the ticketed charge, the State filed an information charging him with a felony driving-under-the-influence offense based on the same accident. The defendant later moved to dismiss the felony charge, arguing that its prosecution was barred by compulsory joinder. The trial court denied the motion following a hearing, and the defendant appeals. For the reasons that follow, we affirm.

¶ 3 FACTS

¶ 4 On the morning of July 2, 2016, while driving his sport utility vehicle southbound on U.S. Route 51 through Patoka Township, the defendant veered out of his lane and struck an oncoming motorcycle. The impact totaled both vehicles, and the motorcycle's rider, Kevin Koenegstein, died from his resulting injuries.

¶ 5 The Illinois State Police responded to the scene of the accident, and the defendant and Koenegstein were transported by ambulance to St. Mary's Hospital in Centralia. At some point, the defendant indicated that he had drifted out of his lane because he had fallen asleep.

¶ 6 After the defendant received the appropriate statutory warnings (see 625 ILCS 5/11-501.6 (West 2016) (accidents involving personal injury or death)), samples of his blood and urine were taken with his consent. He was also ticketed for improper lane usage (*id.* § 11-709(a)) via a uniform citation and complaint issued by the Illinois State Police. The citation erroneously advised the defendant that he did not have to appear in court. See Ill. S. Ct. R. 551(d) (eff. Jan. 1, 2014) ("A court appearance is required for *** [a]ny traffic offense which results in an accident causing the death of any person or injury to any person other than the accused."). The ticket was filed with the circuit clerk of Marion County on July 5, 2016.

¶ 7 On August 8, 2016, the defendant went to the circuit clerk's office, entered a written plea of guilty to the charge of improper lane usage, and paid a fine of $120. When the clerk's office subsequently realized that the defendant had been required to appear in court, his payment was refunded, and he was ordered to appear on August 22, 2016. On

that date, with an assistant State's Attorney present, the defendant appeared as ordered and again entered a written plea of guilty and paid a $120 fine.

¶ 8 On September 2, 2016, the Illinois State Police forensic science laboratory in Springfield reported that methamphetamine had been detected in the defendant's urine sample. On September 8, 2016, the State filed a felony information charging the defendant with aggravated driving under the influence of a drug, substance, or compound (DUI) (625 ILCS 5/11-501(a)(6), (d)(1)(F) (West 2016)), citing Koenegstein's death as the aggravating factor.

¶ 9 On September 26, 2016, the defendant filed a motion to dismiss the State's DUI charge. Citing sections 3-3 and 3-4 of the Criminal Code of 2012 (720 ILCS 5/3-3, 3-4 (West 2016)), the defendant maintained that because he had previously pled guilty to the offense of improper lane usage, the State was barred from prosecuting him on the DUI charge on compulsory-joinder grounds. In response, the State filed an answer noting that in *People v. Jackson*, 118 Ill. 2d 179 (1987), *overruled on other grounds by People v. Stefan*, 146 Ill. 2d 324 (1992), the supreme court held that compulsory joinder does not apply to offenses charged by use of a uniform citation and complaint.

¶ 10 On February 9, 2017, following a hearing on the defendant's motion to dismiss, the trial court denied the motion, finding that *Jackson* was controlling. On February 24, 2017, the defendant filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 Section 3-3 of the Criminal Code of 2012, commonly referred to as the compulsory-joinder statute (*People v. Baker*, 2015 IL App (5th) 110492, ¶ 81), is a

codified addition to the grounds of double jeopardy in Illinois (*Jackson*, 118 Ill. 2d at 193; *People v. Gray*, 336 Ill. App. 3d 356, 365 (2003)). Section 3-3 specifically provides as follows:

> "Multiple Prosecutions for Same Act.
>
> (a) When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense.
>
> (b) If the several offenses are known to the proper prosecuting officer at the time of commencing the prosecution and are within the jurisdiction of a single court, they must be prosecuted in a single prosecution, except as provided in Subsection (c), if they are based on the same act.
>
> (c) When 2 or more offenses are charged as required by Subsection (b), the court in the interest of justice may order that one or more of such charges shall be tried separately." 720 ILCS 5/3-3 (West 2016).

Pursuant to section 3-4(b)(1), "[a] prosecution is barred if the defendant was formerly prosecuted for a different offense *** if that former prosecution *** resulted in either a conviction or an acquittal, and the subsequent prosecution is for an offense *** with which the defendant should have been charged on the former prosecution, as provided in Section 3-3 of this Code (unless the court ordered a separate trial of that charge)." *Id.* § 3-4(b)(1). "Section 3-4(b)(1) therefore prohibits a subsequent prosecution where the offense charged should have been brought in a former prosecution under section 3-3." *People v. Quigley*, 183 Ill. 2d 1, 11 (1998).

¶ 13 In *Jackson*, following a vehicular accident that resulted in the death of his passenger, the defendant was issued uniform traffic citations for misdemeanor DUI and illegal transportation of alcohol. *Jackson*, 118 Ill. 2d at 183. After appearing in court and pleading guilty to the ticketed offenses, the defendant was indicted on felony charges of reckless homicide based on the same accident. *Id*. Following the trial court's dismissal of the felony charges, the State appealed. *Id*.

¶ 14 When reversing the trial court's judgment, the supreme court held that the State's prosecution of the felony charges was not barred by sections 3-3 and 3-4 because "the compulsory-joinder provisions of section 3-3 do not apply to offenses that have been charged by the use of a uniform citation and complaint form provided for traffic offenses." *Id*. at 192. The court explained,

> [U]niform citation and complaint forms are intended to be used by a police officer in making a charge for traffic offenses and certain misdemeanors and petty offenses. An accused cannot be charged with a felony by the use of a uniform citation form. [Citation.] The traffic ticket (uniform citation and complaint) issued by a police officer constitutes a complaint to which a defendant may plead. [Citations.] All prosecution for felonies must be by information or indictment. [Citation.]
>
> The language of the compulsory-joinder statute requires joinder of offenses only if the several offenses are known to the proper prosecuting officer at the time of the commencement of the prosecution. [Citation.] It is the State's Attorney who

has the responsibility to commence and prosecute all actions in which the people of the State or the county may be concerned." *Id.* at 192-93.

¶ 15 The *Jackson* court further reasoned that the legislature did not intend that a driver could plead guilty to a traffic offense on a traffic ticket and "thereby avoid prosecution of a serious offense brought by the State's Attorney, such as reckless homicide, through the use of sections 3-3 and 3-4." *Id*. at 193. The court also noted that the compulsory-joinder statute contemplates "active involvement" by the State's Attorney. *Id*.

¶ 16 Here, seizing on the supreme court's use of the words "active involvement" (*id*.), the defendant argues that *Jackson* is distinguishable. Emphasizing that an assistant State's Attorney was present when he appeared and pled guilty on August 22, 2016, the defendant asserts that the State had not been present when the defendant in *Jackson* appeared and pled guilty to his ticketed offenses. The defendant thus argues that unlike *Jackson*, the State was "actively involved" when "the actual prosecution commenced" in the present case, which "is the deciding factor." We reject this argument as a tortured reading of *Jackson*.

¶ 17 We initially note that the defendant's suggestion that the State was not present when the defendant appeared and pled guilty to the ticketed offenses in *Jackson* is entirely speculative. The decision does not indicate one way or the other whether the State was present when the defendant appeared. See *Jackson*, 118 Ill. 2d at 182-94. Seemingly, however, had the State's presence or absence been a relevant factor, let alone the deciding factor, the supreme court would have mentioned it. *Cf. People v. Pankey*, 94 Ill. 2d 12, 13 (1983) (specifically noting that "no representative of the State's Attorney's

office was present" when the defendant appeared and pled guilty to a uniform citation purportedly charging him with a felony). In any event, the defendant's argument improperly equates the State's presence at a plea proceeding on a uniform traffic citation with the State's participation in the charging of the underlying offense. Furthermore, the defendant's claim that "the actual prosecution commenced" when he appeared in court on August 22, 2016, is misleading.

¶ 18 The defendant's prosecution for improper lane usage commenced on the date of the accident when he was issued the uniform citation and complaint by the Illinois State Police. See 725 ILCS 5/111-1 (West 2016); *Pankey*, 94 Ill. 2d at 16. The State's Attorney was not involved, actively or otherwise, in the commencement of that prosecution. Nevertheless, on August 22, 2016, when the defendant appeared in court as required, the State was required to "prosecute" the traffic violation, just as the State had been required to "prosecute" the uniform complaints in *Jackson* when it was decided. 625 ILCS 5/16-102(c) (West 2016) ("The State's Attorney of the county in which the violation occurs shall prosecute all violations except when the violation occurs within the corporate limits of a municipality, the municipal attorney may prosecute if written permission to do so is obtained from the State's Attorney."); Ill. Rev. Stat. 1987, ch. 95½, ¶ 16-102 (same). The prosecution on the felony DUI charge, on the other hand, which could not have been commenced by the issuance of a uniform citation and complaint (725 ILCS 5/111-2(a) (West 2016); *Jackson*, 118 Ill. 2d at 192), commenced when the State filed its felony information on September 8, 2016 (see 725 ILCS 5/111-1 (West 2016)). The filing of the felony information was the State's first "active involvement" in the commencement of a

prosecution (*Jackson*, 118 Ill. 2d at 193), which was the deciding factor in *Jackson*. See *id*. at 192-93; see also *People v. Crowe*, 195 Ill. App. 3d 212, 218 (1990) (observing that *Jackson*'s "analysis is premised on the fact that the State's Attorney is the proper prosecuting officer referred to in section 3-3" and that "[i]t is the commencement of prosecution by the State's Attorney which invokes application of the compulsory-joinder provisions"). The trial court rightly determined that *Jackson* was controlling, and we accordingly reject the defendant's contention that the court erred in denying his motion to dismiss.

¶ 19 Lastly, even assuming *arguendo* that sections 3-3 and 3-4 were applicable in the present case, the defendant would be unable to establish that the DUI offense was "known to" the State prior to its receipt of the laboratory report indicating that methamphetamine had been detected in his urine sample. 720 ILCS 5/3-3(b) (West 2016). The record indicates that prior to receiving the report, at most, the State was aware that the defendant had caused a vehicular accident by veering out of his lane, that he had stated that he had fallen asleep at the wheel, and that samples of his blood and urine had been requested and taken as a matter of course because the accident had resulted in a fatality. *Cf. People v. Thomas*, 2014 IL App (2d) 130660, ¶ 25 (observing that the State "knew that [the] defendant had a BAC of 0.08 or more" prior to receiving the hospital records confirming the same). Without any indicia of intoxication, those facts would not have supported a finding of probable cause needed to sustain a DUI charge. See *People v. Boomer*, 325 Ill. App. 3d 206, 210 (2001); see also *Odom v. White*, 408 Ill. App. 3d 1113, 1115 (2011) (noting that section 11-501.6 of the Illinois Vehicle Code "does not require

that the law enforcement officer have any suspicion or cause to believe that the driver is intoxicated or under the influence of alcohol prior to asking him to submit to testing"); *cf. People v. Preston*, 205 Ill. App. 3d 35, 40-41 (1990) (finding probable cause to arrest the defendant for DUI where "the officer came upon a serious traffic accident in the early morning hours, was told by defendant that the other vehicle crossed the center line and hit his vehicle when the object evidence appeared otherwise, and there was an odor of alcohol on defendant's breath which was noticed by the officer as well as other emergency personnel"); *People v. Goodman*, 173 Ill. App. 3d 559, 562 (1988) (finding probable cause to arrest the defendant for DUI following his involvement in a hit-and-run accident, where he smelled strongly of alcohol, had trouble standing, and was generally uncooperative). Given that a State's Attorney must refrain from prosecuting a charge that he or she knows is not supported by probable cause (Ill. R. Prof'l Conduct R. 3.8(a) (eff. Jan. 1, 2016)), it would have therefore been improper for the State to have charged the defendant with DUI solely on the basis of those facts.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, the trial court's judgment denying the defendant's motion to dismiss the State's felony DUI charge is hereby affirmed.

¶ 22 Affirmed.