

2019 IL App (2d) 170495-U
No. 2-17-0495
Order filed May 16, 2019

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 15-CF-1002
)	
KARLA ZIMMER,)	Honorable
)	David P. Kliment,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly denied defendant's motion to suppress, as the court was entitled to credit the officer's testimony that he identified defendant, whose license he knew was suspended, as the driver of a car before he stopped it, such that the stop was valid.
- ¶ 2 Following a bench trial in the circuit court of Kane County, defendant, Karla Zimmer, was found guilty of aggravated driving with a suspended license (625 ILCS 5/6-303(a) (West 2014)) and was sentenced to an 18-month term of probation. Simultaneously with the trial, the trial court heard a motion to suppress evidence in which defendant argued that the evidence that

she was operating a motor vehicle was discovered as the result of a traffic stop that violated the fourth amendment. We affirm.

¶ 3

I. BACKGROUND

¶ 4 At the combined trial and suppression hearing, Steven Kurzawa, a sergeant with the Sugar Grove Police Department, testified that he knew defendant because he “took a report involving her at one point in time.” Prior to June 29, 2015, Kurzawa knew where defendant lived and would recognize her if he saw her walking down the street. Kurzawa testified that he ran defendant’s driver’s license on June 22, 2015, at 5:51 a.m., and learned that it was suspended. On June 29, 2015, Kurzawa spoke with a detective who stated that he had taken a report from defendant earlier that day. Based on the conversation, Kurzawa ran defendant’s driver’s license again shortly before 7 p.m. and learned that it was still suspended. Kurzawa also obtained defendant’s driver’s license photograph.

¶ 5 At 5:21 a.m. on June 30, 2015, Kurzawa was in his patrol car, which was parked near Merrill New Road and Carlisle Court. Kurzawa ran defendant’s driver’s license a third time; it was still suspended. Kurzawa testified that, at 5:41 a.m., he saw “a black Monte Carlo, similar to a vehicle [the detective] had stated was in the parking lot earlier when [defendant] was making her report.” The Monte Carlo exited onto Merrill New Road from Carlisle Court. Kurzawa saw the driver, whom he recognized as defendant, through the Monte Carlo’s passenger’s-side window. According to Kurzawa, the Monte Carlo “exit[ed] southbound again onto Bliss Road from Windstone Lane.” Through the Monte Carlo’s driver’s-side window, Kurzawa again saw that defendant was driving the Monte Carlo. Kurzawa then pulled the Monte Carlo over. As Kurzawa approached the Monte Carlo, he greeted defendant by name and told her that her driver’s license was suspended. After a brief conversation with defendant, Kurzawa placed

defendant under arrest. Kurzawa's patrol car was equipped with a video camera that recorded his encounter with defendant. The video recording was played in court.

¶ 6 On cross-examination, Kurzawa was asked whether he was waiting near Carlisle Court and Merrill New Road in order to catch defendant driving. Kurzawa initially responded that he "happened to be in the area at that time," but then acknowledged that he was waiting for defendant. When the Monte Carlo was driving on Carlisle Court, it was perpendicular to Kurzawa's patrol car. Kurzawa acknowledged that his arrest report did not mention that he saw defendant driving the Monte Carlo when it was on Carlisle Court. The vehicle made a left turn onto Windstone Lane, stopped at a stop sign at Bliss Road, and then made a left turn onto Bliss Road. When the Monte Carlo made that turn, Kurzawa saw that defendant was driving. Kurzawa testified that the Monte Carlo's side windows were tinted and that the rear window was "heavily" tinted. The Monte Carlo's windows were rolled up before Kurzawa pulled it over.

¶ 7 A certified copy of the abstract of defendant's driving history was admitted into evidence. It showed that, on June 30, 2015, a statutory summary suspension of defendant's driver's license was in effect.

¶ 8 Defendant testified that her home was on Carlisle Court. She lived with her mother and five-year-old son. According to defendant, the Monte Carlo was registered to her mother.

¶ 9 The trial court denied defendant's motion to suppress and found her guilty. As pertinent here, the trial court found as follows:

"I looked from the beginning of the video, as [Kurzawa is] following the car, to when she makes the left-hand turn onto Bliss Road. And then I watched the beginning of the stop
***.

As [defendant is] turning at Bliss Road the testimony was that the windows were up and tinted. The windows weren't up, the driver's side window was partially down, for one thing. And for another thing, you can see through that window.

I couldn't see [defendant] from my angle, but you can see through the window, the front left front driver's side window. And the window was down a certain number of inches, I can't tell how many.

So to suggest that it was impossible for the sergeant to see through the window to see who was driving the car, I think is incorrect. I think you could see who is in the car.

And then when she's pulled over, he says, Karla. And there is an inflection to his voice, but it's an inflection of recognition, not a question that that's Karla, because he follows immediately up with, you know you're still suspended?"

¶ 10

II. ANALYSIS

¶ 11 Defendant argues that the traffic stop that led to her arrest violated the fourth amendment. Under the fruit-of-the-poisonous-tree doctrine, "a fourth-amendment violation is deemed the poisonous tree, and any evidence obtained by exploiting that violation will be suppressed as fruit of that tree." *People v. Bernard*, 2015 IL App (2d) 140451, ¶ 12. Accordingly, if the stop was unconstitutional, Kurzawa should not have been permitted to testify that, after the stop, he saw that defendant had been driving the vehicle.

¶ 12 In *People v. Hackett*, 2012 IL 111781, ¶ 20, our supreme court offered the following summary of the principles governing the constitutionality of traffic stops:

"Vehicle stops are subject to the fourth amendment's reasonableness requirement. [Citations.] ' "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." '

[Citation.] However, as this court has observed, though traffic stops are frequently supported by ‘probable cause’ to believe that a traffic violation has occurred, as differentiated from the ‘less exacting’ standard of ‘reasonable, articulable suspicion’ that justifies an ‘investigative stop,’ the latter will suffice for purposes of the fourth amendment irrespective of whether the stop is supported by probable cause. [Citations.] 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. [Citation.] The officer’s belief ‘need not rise to the level of suspicion required for probable cause.’ [Citation.] The distinction between these two standards may or may not be relevant, depending upon the facts of the case under consideration and the Vehicle Code provision at issue.”

¶ 13 The trial court’s ruling on a motion to suppress is reviewed under a two-part standard. Findings of fact and credibility determinations “are accorded great deference and will be overturned only if they are against the manifest weight of the evidence.” *In re Jose A.*, 2018 IL App (2d) 180170, ¶ 17. “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or if the finding is unreasonable, arbitrary, or not based on the evidence presented.” *Id.* On the other hand, the ultimate issue of whether the evidence should be suppressed is reviewed *de novo*. *Id.*

¶ 14 Here, there is no dispute that Kurzawa was aware that defendant’s driver’s license was suspended and that the constitutionality of the traffic stop therefore hinged on whether, before the traffic stop, Kurzawa had a reasonable suspicion that it was defendant who was driving the Monte Carlo. Kurzawa testified that, before pulling defendant over, he was able to see her behind the wheel at two points: first when she turned left onto Merrill New Road from Carlisle

Court and second when she turned left from Windstone Lane onto Bliss Road. We note that, according to Kurzawa's testimony, the Monte Carlo made three left turns before he stopped it: from Carlisle Court onto Merrill New Road, from Merrill New Road onto Windstone Lane, and from Windstone Lane onto Bliss Road. The patrol car video shows the second and third left turns. It does not show the turn from Carlisle Court onto Merrill New Road.

¶ 15 Having considered Kurzawa's testimony in light of the video recording from his patrol car, we conclude that the trial court's finding that Kurzawa saw defendant before he stopped her was not against the manifest weight of the evidence. The video recording shows some visibility through the driver-side window, which was partially rolled down. To be sure, the video recording does not provide a clear shot of the driver's face. However, the video recording did not begin until after the Monte Carlo turned onto Merrill New Road when, according to Kurzawa's testimony, he saw defendant through the passenger-side window. Because the video recording does not show what Kurzawa saw at that point, defendant cannot rely on it to contradict Kurzawa's testimony.

¶ 16 The trial court also noted that Kurzawa greeted defendant by name as he approached the Monte Carlo. From the inflection of Kurzawa's voice, it was reasonable to infer that he was already aware that she was driving the car.

¶ 17 In view of the foregoing, we conclude that the trial court was entitled to find that Kurzawa observed defendant driving the Monte Carlo and conducted a lawful traffic stop based on his knowledge that defendant's license was suspended.

¶ 18 **III. CONCLUSION**

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for

this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 20 Affirmed.