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).

2019 IL App (3d) 180294-U

Order filed May 23, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Iroquois County, Illinois,
Plaintiff-Appellant,	)	
v.	)	Appeal No. 3-18-0294 Circuit No. 13-CF-135
TAVARES X. REED,	)	Honorable James B. Kinzer,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Officer did not have probable cause to initiate traffic stop of defendant.

¶ 2 The State appeals following the Iroquois County circuit court's order granting defendant's motion to suppress. It argues that the arresting officer's actions throughout the duration of the traffic stop and vehicle search were supported by the requisite quantum of suspicion. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant, Tavares X. Reed, was charged via indictment with unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(B) (West 2012)) and unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(e) (West 2012)). The indictment alleged that defendant was in possession of more than 100 but less than 400 grams of a substance containing cocaine and more than 500 but less than 2000 grams of a substance containing cannabis.

¶ 5 Defendant filed a motion to suppress evidence. Following a hearing, Judge Gordon Lustfeldt orally denied defendant's motion. Defendant then obtained new counsel, who filed a motion for rehearing, arguing that it was necessary for the court to enter a written order stating findings of facts and conclusions of law with respect to the suppression motion. At a hearing on that motion, the State argued that a written order was unnecessary because defendant was free to renew the suppression motion at trial. Judge James Kinzer, having taken over the case for Judge Lustfeldt, denied counsel's rehearing motion.

¶ 6 At a later pretrial date, the court and parties discussed the potential for defendant to renew the suppression motion at trial. The parties agreed that defendant would renew his motion to suppress at that time. The court ruled that the arresting officer would testify first as part of the State's case-in-chief, at which point defendant, if he chose to, could provide limited testimony relating only to the suppression motion. The court would then rule upon the renewed suppression motion and continue with the bench trial if necessary.[1]

¶ 7 Patrick Van Hoveln of the Illinois State Police testified that he was patrolling Interstate 57 when he observed a vehicle "following a truck tractor semi trailer too close." The driver of the vehicle was defendant. When asked to elaborate on what he meant by "too close," Van

[1]The State raises no contentions of error with respect to the procedure employed by the circuit court.

Hoveln explained that the rules of the road recommends that a vehicle should remain at least three seconds behind the vehicle in front of it. He could determine that interval by observing the front vehicle pass a fixed point and counting off three seconds. If the back vehicle passes that fixed point before three seconds have elapsed, Van Hoveln determined it to be following too closely. Van Hoveln testified that when he applied that test to defendant's vehicle and the semitruck, defendant was no more than one second behind. At 70 miles per hour, a one second interval translated to 103 feet between the vehicles.

¶ 8 Van Hoveln did not immediately conduct a traffic stop because the involved vehicles "were entering a blind curve" around mile marker 288. It was safer to pull defendant over on a straighter stretch of the road. As a result of this delay in pulling defendant over, Van Hoveln testified that the dashboard video recording of the traffic stop begins after he had already decided to conduct a traffic stop. He conducted the stop at mile marker 290. The video was played in court.

¶ 9 The video recording shows a car following a semitruck in the right lane, with Van Hoveln positioned in the left lane some distance behind the car. Van Hoveln progressively closes the distance, but always remains at least a car length behind the car. At one point in the video, the car temporarily activates its left turn signal. Approximately one minute into the video, Van Hoveln pulls behind the car and effectuates a stop.

¶ 10 On cross-examination by defense counsel, Van Hoveln agreed that the Illinois rules of the road are not laws. He affirmed that the section from which he derived the three-second rule was "a section with regard to safe driving tips." Defense counsel entered a copy of the rules of the road into evidence, then handed to the copy to Van Hoveln. The following exchange ensued:

"Q. *** I just want you to look at it and ask if that's what you are basing your opinion upon that [defendant] was driving too closely?

***

A. Yes, sir.

Q. Is there anything else that you relied upon?

A. Could you repeat the question?

Q. [Is there anything else] that you based your opinion that he was driving too closely, other than what you hold in your hand there?

A. I think just through my experience other—I mean, this describes how to do it, but I don't know how to answer that question. Could you repeat the question one more time, sir?

Q. Yeah, I'm just trying to determine what your basis for determining that he was driving too closely—

A. This is what I used to determine that, yes, on the initial—

Q. Solely this?

A. On the initial portion, yes, I count 1001, that's how I determine it, yes, sir."

Van Hoveln reiterated that he only counted one second between defendant and the semitruck. He clarified: "I realize this is officer discretion, there is not a lot of education on this, and one second is when I enforce it."

¶ 11 Defendant testified that he was traveling southbound on Interstate 57 when he passed a squad car and an unmarked car parked on the median. He was not speeding at the time. When defendant passed the cars, they pulled out onto the highway behind him. Defendant testified that

the two cars followed him for approximately 5 to 10 miles. The semitruck was one or two miles ahead of him at the time those cars began to follow him. At some point, the unmarked car stopped pursuing him. Defendant testified that at mile marker 288 he "really got behind the truck and *** couldn't get over." Defendant explained that the squad car remained in his blind spot in the left lane for five or six miles, which eventually prevented him from getting over to pass the semitruck.

¶ 12 Defendant testified that the semitruck began to slow down, to the point of almost stopping. He opined that the semitruck had noticed the squad car and decelerated as a precaution. Defendant knew that he was getting too close to the truck and applied his brakes, but he could not get over to pass the truck because of the position of the squad car. He estimated that he got to within 75 feet of the semitruck at the closest, which occurred just before he was pulled over.

¶ 13 The circuit court granted the motion to suppress, finding that Van Hoveln was "unconvincing about his reason for the stop." The court pointed out that defendant's testimony regarding a second unmarked car pursuing him was unrebutted. Further, the court found that Van Hoveln and the other car "created a situation where [defendant] couldn't follow the traffic law." Van Hoveln's actions forced defendant to choose between slowing down drastically behind the semitruck, cutting Van Hoveln off, or going over the speed limit to pass the truck. The court explicitly found that Van Hoveln's intent was to "box[ ] [defendant] in against the back of the truck." The court continued: "I'm not talking about a pretextual stop here, but the trooper has created what they think is probable cause." Finally, the court again commented that Van Hoveln had not been fully candid about his actual reasons for pulling defendant over. In granting the motion to suppress, the court concluded: "Based on my observation of the witnesses and my summary of their testimony I find that I believe [defendant] more than I believe the trooper."

¶ 14 The State filed a motion to reconsider, which the circuit court subsequently denied. The State filed a certificate of substantial impairment.

¶ 15 II. ANALYSIS

¶ 16 On appeal, the State argues that the circuit court's factual findings were contrary to the manifest weight of the evidence and that its judgment suppressing evidence was error.[2] We disagree.

¶ 17 In reviewing a circuit court's judgment on a motion to suppress evidence, the appellate court applies a bifurcated standard of review. *People v. Slater*, 228 Ill. 2d 137, 149 (2008). We show great deference to all findings of fact and determinations of credibility, reversing only where they are contrary to the manifest weight of the evidence. *Id*. Such findings are against the manifest weight of the evidence only where "the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). However, the ultimate question—whether the evidence should have been suppressed—is reviewed *de novo*. *Slater*, 228 Ill. 2d at 149.

¶ 18 Both article I, section 6 of the Illinois Constitution and the fourth amendment to the United States Constitution protect citizens from unreasonable searches and seizures. Ill. Const. 1970, art. I, § 6; U.S. Const., amend. IV. The stopping of a vehicle and the detention of the driver constitutes a seizure under the fourth amendment. *Brendlin v. California*, 551 U.S. 249, 255-56 (2007). Under the principles set forth in *Terry v. Ohio*, 392 U.S. 1 (1968), an officer may conduct such a stop where he or she has a reasonable, articulable suspicion to believe that a person has committed a crime. *People v. Timmsen*, 2016 IL 118181, ¶ 9. Thus, an officer's

[2]While defendant has not filed a brief, we may still decide the State's appeal on its merits. See, *e.g.*, *People v. Barwicki*, 365 Ill. App. 3d 398, 399 (2006) (citing *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976)).

observation of a traffic violation generally provides a sufficient basis for a traffic stop. *E.g.*, *People v. Rozela*, 345 Ill. App. 3d 217, 225 (2003). "In judging the officer's conduct, we apply an objective standard and consider, 'would the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate?' " *Timmsen*, 2016 IL 118181, ¶ 9 (quoting *Terry*, 392 U.S. at 21-22, quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)).

¶ 19 The State first submits that the circuit court's findings of fact were contrary to the manifest weight of the evidence. The State contends: "There is nothing from the testimony offered, or the recording of the traffic stop, that casts any doubt in [*sic*] Van Hoveln's testimony" that he pulled defendant over for a following-too-closely violation that occurred before the video started. The State continues: "The trial court simply chose not to believe Trooper Van Hoveln's testimony." Finally, the State asserts that the court's conclusion that defendant was boxed in by Van Hoveln is belied by the video recording, arguing that the beginning of the video shows "more than sufficient room for defendant to be able to move over and avoid being behind the semi."

¶ 20 We begin by addressing the video recording. In a freeze frame at the beginning of the video, Van Hoveln is behind defendant's car by a length of two to three white-dashed lines separating the lanes. Ten seconds into the video, that space has shrunk to one white-dashed line between the cars. While the initial distance between the vehicles would seem sufficient, spatially, for defendant to change lanes, the fact that Van Hoveln was quickly closing the gap must also be considered. The rate at which Van Hoveln was gaining on defendant, if anything, supports the circuit court's conclusion that any attempt by defendant to change lanes could have been interpreted as cutting Van Hoveln off. Further, while defendant's left turn signal can be seen

activated as Van Hoveln gets closer to his vehicle, it is impossible to determine if the turn signal was on at an earlier time. After our careful observation of the video recording, we find that it is inconclusive at best, and not a grounds on which we could find the court's conclusions arbitrary or unreasonable.

¶ 21 Next, we observe that the circuit court did not, as the State asserts, "simply [choose] not to believe Trooper Van Hoveln's testimony." The court was presented with two separate versions of events from Van Hoveln and defendant. The court found that Van Hoveln was unconvincing and was withholding his actual reason for pulling defendant over. Indeed, the court found explicitly that defendant's testimony was more credible than Van Hoveln's. It is well-settled that

> "the trial court has the opportunity to observe the demeanor and testimony of the witnesses firsthand and, thus, is in a better position than the reviewing court to judge the witnesses' credibility, to determine the weight to be given to testimony, to decide the inferences to be drawn from the evidence, and to resolve any conflicts in the evidence." *People v. Shepherd*, 2015 IL App (3d) 140192, ¶ 28.

Accordingly, we find that the court's determination that defendant's testimony was credible—and its resultant factual finding that defendant was forced into following the semitruck closely by Van Hoveln's actions—are not contrary to the manifest weight of the evidence.

¶ 22 We next consider the impact of these factual findings on the ultimate question, whether Van Hoveln had the requisite reasonable, articulable suspicion to conduct a traffic stop. As Van Hoveln testified, he conducted the stop solely based on defendant's commission of a following-too-closely offense. See 625 ILCS 5/11-710(a) (West 2012). That statute states that "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent,

having due regard for the speed of such vehicles and the traffic upon and the condition of the highway." *Id.*

¶ 23 Defendant did not dispute that his car got within 75 feet of the semitruck in front of him. At highway speeds, that margin would put defendant less than one second behind the truck, according to the counting system employed by Van Hoveln and the rules of the road. The following-too-closely statute, however, defines the offense in terms of reasonableness, rather than through definite distances or times. More importantly, the reasonableness of the following distance is explicitly tied to the specific situation, including the speed of the followed vehicle and the other traffic on the roadway. The court found that Van Hoveln intentionally boxed defendant in. The deceleration of the semitruck and Van Hoveln's location in defendant's blind spot prevented defendant from changing lanes, or making any other safe movements. Given these specific facts, no reasonable person in Van Hoveln's position could have believed that defendant's actions were unreasonable under the following-too-closely statute. Because Van Hoveln could not have reasonably believed that defendant was violating the following-too-closely statute, he did not have the reasonable suspicion required to conduct a traffic stop.

¶ 24 III. CONCLUSION

¶ 25 The judgment of the circuit court of Iroquois County is affirmed.

¶ 26 Affirmed.