

No. 1-10-1629

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. TP 080 286
	)	
DAMIEN WITT,	)	Honorable
	)	Thomas V. Lyons, II,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the police had probable cause to arrest defendant for committing traffic violations, the trial court's order granting defendant's motion to quash arrest and suppress evidence was reversed.

¶ 2 The State appeals from an order of the circuit court granting defendant Damien Witt's motion to quash the arrest and suppress the evidence which resulted therefrom. Ill. S. Ct. R. 604(a)(1) (eff. July 1, 2006). The State contends that the police had probable cause to arrest defendant. We reverse and remand for further proceedings.

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¶ 3 Defendant admittedly sideswiped a parked police car in front of a police station about 2 a.m. on November 9, 2009, was arrested, and taken into the police station where at 2:14 a.m. Officer Jones wrote four tickets. The record includes four tickets all dated November 9, 2009, and timed 2:14 a.m. The tickets are for property damage, "failure to reduce speed/accident," failure to keep in lane, and "driving while under the influence." The four tickets reveal that Officer Elliott witnessed the crash and the tickets are signed by Officer C. Jones. The record indicates that while defendant was arrested and placed into custody for the traffic violations, the driving while under the influence was one of the four tickets written, some 14 minutes after the arrest. On December 4, 2009, defendant filed a motion to quash arrest and suppress evidence, arguing the police had arrested him without lawful authority. On April 8, 2010, the court held a hearing on defendant's motion. Officer Jones, the arresting officer, and defendant testified at the pretrial hearing.

¶ 4 Officer Jones testified that at about 2 a.m. on November 9, she responded to a call that a vehicle struck a squad car parked in front of a police station at 7808 South Halsted Street in Chicago and continued traveling southbound. Although Jones did not witness the accident, Officer Elliot told her that defendant's vehicle struck the squad car. When Jones arrived at the scene, she observed the damage to the cars and characterized the accident as a "sideswipe" in her accident report. Defendant was ordered out of the vehicle, but Jones did not recall if the officers at the scene had their guns displayed. According to Jones, defendant exited the vehicle without any difficulty, but his eyes were bloodshot and his speech was "somewhat" slurred. Jones stated in her report that defendant was "confused," but did not indicate that defendant's speech was

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slurred, that he stuttered, mumbled, or was thick tongued. She also did not perform any field sobriety tests on defendant. Defendant was arrested a couple of minutes after the accident and was taken to the police station by Jones and her partner.

¶ 5 Based on what Jones observed and her conversations with other officers, at 2:14 a.m. she issued four tickets to defendant, including tickets for failing to reduce his speed, failing to remain in his lane, damage to city property, and driving under the influence. She did not write defendant a ticket for leaving the scene of an accident because he did not go more than 10 feet after the crash before the police stopped him inside his vehicle. Defendant's vehicle was damaged. Jones testified that she could give an individual tickets for these offenses without making an arrest.

¶ 6 Defendant, who was a truck driver, testified that at 2:14 a.m. on November 9, he sideswiped a vehicle at 7808 South Halsted Street and then stopped. He denied the State's suggestion that he was forced to stop by another squad car that cut him off. He did state, however, that police were "on the side coming out [of] the police parking lot." About eight police officers arrived at defendant's car window and a couple of them had their guns drawn. Defendant never felt free to leave, obeyed the officers' instructions to exit the car, and did so without any difficulty. He was then placed in handcuffs and taken to the police station without being offered any field sobriety tests. Defendant testified that he may have had bloodshot eyes because it was early in the morning and he was tired. He further indicated that it was possible that he smelled of alcohol because he had previously consumed a few drinks. Defendant was aware that he hit a squad car. According to defendant, he first saw Officer Jones when he was

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inside the police station.

¶ 7 Following closing arguments, the court granted defendant's motion to quash arrest and suppress evidence. In doing so, the court held that at the time defendant was placed under arrest, the evidence only showed that he was involved in a car accident, it was possible that he smelled of alcohol, and he had bloodshot eyes. Without any further investigation, the trial court found that it could not determine if defendant was under the influence of alcohol.

¶ 8 The State filed a motion to reconsider, arguing that police have the authority under the fourth amendment to arrest individuals for "fine only" offenses. The State further emphasized that when an officer has probable cause to believe a person has committed a minor crime, the subsequent arrest of that person is constitutionally reasonable. Therefore, the State concluded that even if there was no probable cause to arrest defendant for driving under the influence, the police did not violate defendant's fourth amendment rights because the arresting officer had probable cause to arrest defendant for either one of the municipal violations, *i.e.* failure to remain in his lane and damage to city property, that defendant committed.

¶ 9 The trial court denied the State's motion to reconsider, finding that defendant was not charged with a crime but with municipal traffic violations. The court added that although other police officers may have witnessed the accident, Officer Jones, the only officer to testify at the hearing, was not present when the accident occurred.

¶ 10 The State filed a certificate of substantial impairment pursuant to Rule 604(a)(1) (eff. July 1, 2006), and now appeals from the trial court's ruling.

¶ 11 On appeal, the State contends that the police had probable cause to arrest defendant. The

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State advances three alternative reasons to justify defendant's arrest: (1) the police had probable cause to arrest defendant for municipal violations; (2) it was reasonable for Officer Jones to conclude that defendant committed the offense of driving under the influence; and (3) the facts established probable cause to believe that he committed the offense of leaving the scene of an accident. Regarding the first reason, we agree with the State that the police officer had probable cause to arrest for traffic infractions even if the violations were minor and only punishable by a fine.

¶ 12 Review of a trial court's ruling on a motion to quash arrest and suppress evidence involves mixed questions of law and fact. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). The court's factual findings will be upheld unless against the manifest weight of the evidence, but we review the ultimate legal determination *de novo*. *Pitman*, 211 Ill. 2d at 512.

¶ 13 The fourth amendment guarantees a person's right against unreasonable searches and seizures. U.S. Const., amend. IV. A warrantless arrest requires proof of probable cause. *People v. Robinson*, 368 Ill. App. 3d 963, 970-71 (2006). Probable cause consists of sufficient facts and circumstances within the arresting officer's knowledge which would warrant a reasonable person's belief that the individual who was arrested committed a crime. *Robinson*, 368 Ill. App. 3d at 970-71. The existence of probable cause depends upon the totality of the circumstances known to the officer at the time of the arrest. *People v. Jackson*, 232 Ill. 2d 246, 275 (2009). In determining whether probable cause exists, we are governed by common sense considerations that are factual and practical, and not by technical legal rules. As such, a police officer's practical knowledge, based on prior law enforcement experience, is relevant in determining

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whether probable cause exists. *People v. Bradford*, 187 Ill. App. 3d 903, 920 (1989).

¶ 14 We find *People v. Taylor*, 388 Ill. App. 3d 169 (2009), relied on by the State, instructive to the case at bar. In *Taylor*, the defendant contended on appeal that the trial court erred in denying his motion to quash his arrest and suppress evidence where a police officer arrested and searched him after being stopped for violating two municipal ordinances regarding bicycle use, *i.e.*, operating his bicycle without a headlamp and riding it on the sidewalk. The defendant specifically asserted that although police may have had reasonable suspicion to stop him because of his purported violations of two municipal traffic ordinances, they had no authority to arrest and search him because they lacked probable cause that he committed an offense more substantial than a traffic violation. This court rejected the defendant's argument that the arrest and search were a violation of his constitutional rights. *Taylor*, 388 Ill. App. 3d at 175. In doing so, we relied on *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001), which held that the fourth amendment does not prohibit a warrantless arrest for minor traffic violations that are punishable by only a fine. In *Atwater*, the defendant was arrested for a seatbelt violation. We also noted that, in Illinois, police have additional authority to place a defendant under custodial arrest for committing a traffic infraction that is punishable only by a fine. See 725 ILCS 5/107-2(1)(c) (West 2008) (providing that a police officer may arrest someone when he has reasonable grounds to believe that the person is committing or has committed an offense); 625 ILCS 5/16-102(a) (West 2008) (providing that the police shall patrol the highways and make arrests for violation of the provisions of the Illinois Vehicle Code). In light of this authority, the court in *Taylor* held that the defendant's violation of the two municipal traffic ordinances provided a

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lawful basis for police to arrest defendant and search him incident to that arrest. *Taylor*, 388 Ill. App. 3d at 178.

¶ 15 Here, similarly to *Taylor*, defendant was charged with two municipal violations, *i.e.*, failure to stay in his lane (Chicago Municipal Code § 9-12-050 (amended December 7, 2005)), and damage to city property (Chicago Municipal Code § 8-4-120 (amended July 29, 1998)), as well as failing to reduce his speed in violation of the Illinois Vehicle Code (625 ILCS 5/11-601(a) (West 2008)). Because Officer Elliot told Officer Jones that defendant struck the squad car, Officer Jones had probable cause to arrest him. See *People v. Fox*, 155 Ill. App. 3d 256, 263 (1987) (when officers are acting in concert, probable cause to arrest can be established from all the information collectively received by the officers). Therefore, under *Taylor*, the traffic violations alone justified defendant's arrest, and the subsequent evidence gathered by police was based on a lawful arrest. Accordingly, we find that the circuit court erred in granting defendant's motion to quash arrest. We also find that any evidence obtained as a product of the valid arrest should not be suppressed.

¶ 16 Defendant essentially responds that there was no testimony at the hearing to establish that he was arrested for a traffic offense, and that he was actually taken into custody for driving under the influence of alcohol. The record, however, rebuts defendant's contention. Officer Jones testified to the following on cross-examination:

"Q. Officer, Beat 621, they're the people that stopped the defendant;  
correct?

A. Correct.

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Q. Beat 621 didn't stop the defendant for driving under the influence of alcohol or any other drug or intoxicating compound; correct?

A. Correct.

Q. Why didn't [*sic*] Beat 621 stop the defendant's vehicle?

A. Because he kept going after he struck a parked vehicle.

MR. SCHRIMPLE [defense attorney]: I'm sorry. I didn't hear you.

Q. Could you repeat that answer.

A. Because he was stopped because he struck a parked vehicle and he kept traveling southbound on Halsted."

Despite defendant's contentions to the contrary, this testimony shows that he was *arrested* for traffic violations, and not driving under the influence of alcohol. (Emphasis added.)

¶ 17 In light of our holding that the police had probable cause to arrest defendant for municipal violations, we need not and do not consider the other alternative arguments presented by the State.

¶ 18 For the foregoing reasons, we reverse the judgment of the circuit court and remand for further proceedings.

¶ 19 Reversed; cause remanded.