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SECOND DIVISION  
FEBRUARY 1, 2011  
MODIFIED ORDER FEBRUARY 22, 2011

1-08-1242

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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-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 24594
	)	
WILLIE MARSHALL,	)	Honorable
	)	Michael P. Toomin,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Karnezis and Connors<sup>1</sup> concurred in the judgment.

**ORDER**

*Held:* Based on the supervisory order of our supreme court, the circuit court's judgment is vacated and the cause is remanded to the circuit court for the filing of a motion to suppress and subsequent hearing on that motion.

Following a bench trial in the circuit court of Cook County, the defendant, Willie Marshall, was convicted of one count of felony driving on a revoked license (625 ILCS 5/6-303(a) (West

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<sup>1</sup>Since the filing of our Mach 23, 2010 opinion, Justice Theis, who took part in the original resolution of the case, has joined the Illinois Supreme Court. Justice Connors, having been familiarized with the record, facts and arguments of this case, has substituted for Justice Theis and concurs in this decision.

2006)) and sentenced to two years of imprisonment. On appeal, the defendant argues that: (1) defense counsel was ineffective for failing to file a motion to suppress evidence; and (2) a line of questioning posed by the trial court to the State's sole witness was improperly biased against the defendant. On March 23, 2010, this court issued an opinion in which it reversed the judgment of the circuit court of Cook County and vacated the defendant's conviction and sentence. Subsequently, our supreme court denied the State's petition for leave to appeal, but issued a supervisory order directing this court to vacate its March 23, 2010 opinion, retain jurisdiction, and remand this cause to the circuit court for the filing of a motion to suppress and a hearing on that motion. For the following reasons, we vacate the judgment of the circuit court of Cook County and remand the cause to the circuit court.

#### BACKGROUND

On November 19, 2007, the defendant was arrested and later charged with four counts of felony driving while his driver's license was revoked. On March 6, 2008, a bench trial was held during which two witnesses testified to the events leading up to the defendant's arrest.

The State presented the testimony of one witness, Chicago police officer Joseph Vanourek (Officer Vanourek). Officer Vanourek testified that on November 19, 2007, at approximately 6:20 p.m., he and his partner, Officer Bielema, were traveling westbound in a police vehicle near 1610 West Fargo Avenue in Chicago, Illinois. Officer Vanourek observed the defendant driving a white Cadillac (white car) about 100 feet away, directly in front of Officer Vanourek's police vehicle. A female passenger was seated in the passenger seat of the white car. Officer Vanourek testified that the white car was initially in a "regular lane of traffic," but then it pulled over to the right curb lane

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and “parked in a ‘[no parking]’ zone along the curb,” where a “No Parking” sign was posted. Based on this observation, Officer Vanourek maneuvered the police vehicle to the right curb, “pulled [up] behind the [white car]” and turned on the flashing lights of the police vehicle to “conduct a traffic stop.” Officer Vanourek then exited the police vehicle and approached the defendant, who was sitting in the driver’s seat of the white car. When Officer Vanourek asked the defendant for a driver’s license and proof of car insurance, the defendant was only able to produce a state identification card. A name check of the state identification card revealed that the defendant’s driving privileges were revoked for driving under the influence (DUI). At that point, Officer Vanourek arrested the defendant and the white car was then towed.

Later at a police station, the defendant informed the police officers that he knew that his driver’s license had been revoked. Officer Vanourek issued four traffic citations to the defendant, including one for parking in a “no parking” zone and one for failing to carry car insurance.

On cross-examination, Officer Vanourek stated that approximately 20 to 25 seconds had occurred between the time he first observed the white car to the time that the defendant pulled over to the “no parking” zone. During this short period of time, Officer Vanourek did not observe any traffic law violations being committed by the defendant. Within seconds after the white car had stopped in the “no parking” zone, Officer Vanourek’s police vehicle pulled up behind the white car. Officer Vanourek noted that both he and Officer Bielema approached the defendant’s white car.

Karen Aikens testified on behalf of the defendant, in support of a defense theory of necessity. She stated that she had known the defendant for 14 years. Aikens testified that on November 19, 2007, at approximately 6:20 p.m., she was driving the white car, with the defendant riding as a

passenger, when she suffered an onset of acid reflux. At that point, Aikens pulled over to the side of the road. Aikens stated that during an acid reflux episode, she would be “[unable] to function or do anything until it passes,” and that it would not be safe for her to operate a vehicle. When Aikens stopped the white car, the defendant “switched seats” with Aikens because the defendant had wanted to take her to a hospital. However, at no point did the defendant operate the white car. Shortly thereafter, a police vehicle arrived because the white car was in a “no parking” zone. Aikens then informed the police officers of her illness. On cross-examination, Aikens stated that after the defendant was arrested and the white car towed, she walked to nearby public transportation and went home.

At this point during the bench trial, the trial court asked Aikens the following questions:

“THE COURT: But you weren’t in the driver’s seat?

[AIKENS]: No, because we switched over.

THE COURT: When?

[AIKENS]: When I pulled in the parking space. [The defendant] was like, I want to take you to the hospital, whatever, just he jumped out over, and I slid over, and I start bending down because the pain is so hard. I just started sitting in the chair like this. And that’s when [the police] came and opened the door.”

In rebuttal, the State recalled Officer Vanourek to the witnesses stand. Officer Vanourek testified that he did not observe the woman in the white car switch seats with the defendant. The trial court then engaged in the following exchange with Officer Vanourek:

“THE COURT: You followed the [white] car 100 or 200 feet?

[OFFICER VANOUREK]: Yes, sir.

THE COURT: You could see who was driving the car?

[OFFICER VANOUREK]: Yes, sir.

THE COURT: No doubt in your mind?

[OFFICER VANOUREK]: There is no doubt. There was a pretty good size disparity between the man and the woman, and it was clearly him.

THE COURT: You pulled up to the [white] car and when you got to the [white] car – how soon did you get to the [white] car after it pulled into the [n]o [p]arking space?

[OFFICER VANOUREK]: Within five to ten seconds.

THE COURT: You went right to the driver’s side?

[OFFICER VANOUREK]: Yes, sir.”

On cross-examination during the State’s rebuttal, Officer Vanourek noted that he could “recognize the broad shoulders of a man versus that of a female.” Officer Vanourek testified that he observed the white car during “dusk” and that streetlights illuminated the area. At no time prior to approaching the white car in the “no parking” zone did Officer Vanourek have the benefit of a “profile view” or a “head-on view” of the white car. Instead, Officer Vanourek’s sole vantage point of the white car, while it was being driven on the road, was from behind the white car.

The trial court then asked Officer Vanourek the following questions:

“THE COURT: You asked the defendant for his driver’s license and proof of insurance?

[OFFICER VANOUREK]: Yes, sir.

THE COURT: And he told you what?

[OFFICER VANOUREK]: He didn’t say anything at the time. He just – he produced a state ID. But he said he didn’t have insurance and he did not present proof of insurance.

THE COURT: Did he ever tell you he wasn’t driving?

[OFFICER VANOUREK]: I don’t recall that if he said to me, ‘I wasn’t driving.’ I mean, I saw him driving.

THE COURT: Well, did he or didn’t he?

[OFFICER VANOUREK]: I don’t recall him saying that.

THE COURT: There was no conversation as to whether he was driving the car or she was driving the car?

[OFFICER VANOUREK]: No. There was no conversation about that.”

After the parties’ closing arguments, the trial court found the defendant guilty of one count of felony driving on a revoked license.<sup>2</sup> 625 ILCS 5/6-303(a) (West 2006).

On April 11, 2008, the defendant filed a motion for a new trial. On April 21, 2008, the trial

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<sup>2</sup>The defendant was convicted on count II of the four counts of charges against him. The trial court noted that counts I, III and IV “merged.”

court denied the motion for a new trial and sentenced the defendant to two years of imprisonment. The trial court also denied the defendant's motion to reconsider sentence, which argued that the defendant's two-year sentence was excessive in view of the defendant's background and the nature of the offense. On May 2, 2008, the defendant filed a notice of appeal before this court.

#### ANALYSIS

The issues presented before this court are as follows: (1) whether defense counsel was ineffective for failing to file a motion to suppress evidence; and (2) whether questions posed by the trial court to the State's witness improperly biased the defendant.

Initially, we note that this court, in a March 23, 2010 opinion, had reversed the defendant's conviction outright by holding that the defendant was prejudiced by defense counsel's failure to file a motion to suppress evidence, and thereby vacating the defendant's sentence.

On September 29, 2010, a petition for leave to appeal to our supreme court was denied. However, our supreme court directed this court to vacate its judgment in the March 23, 2010 order, and "to retain jurisdiction and remand to the circuit court for the filing of a suppression motion and hearing. If the outcome of the hearing so requires, a new trial should be ordered. Otherwise, the case should return to the appellate court for consideration of the remaining issue(s)."

Subsequently, this court vacated the March 23, 2010 order.

Thus, following our supreme court's supervisory order, we retain jurisdiction over this case, while directing the trial court to allow the filing of a motion to suppress and to conduct a hearing thereon. Further, if the outcome of the hearing so requires, a new trial should be granted. Otherwise,

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the case should return to this court for consideration of the remaining issue raised by the defendant.

For the foregoing reasons, we vacate the judgment of the circuit court of Cook County and remand the cause to the circuit court for the filing of a motion to suppress and subsequent hearing on that motion.

Vacated and remanded with directions.