

2011

No. 1-08-2606

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).

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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 8665
	)	
LEONARD FAUST,	)	Honorable
	)	Victoria Stewart,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROBERT E. GORDON delivered the judgment of the court.  
Presiding Justice Garcia and Justice Cahill concurred in the judgment.

**ORDER**

*Held:* The case is remanded for the limited purpose of allowing the trial court to conduct an evidentiary hearing on the issue of whether the firearm should have been suppressed.

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Defendant Leonard Faust was convicted on May 21, 2008, after a bench trial: (1) of being an armed habitual criminal; (2) of two counts of aggravated unlawful use of a weapon; and (3) of two counts of aggravated unlawful use of a weapon. All the charges stemmed from the search on April 9, 2007, of a vehicle driven by defendant and the resulting discovery of a firearm. The trial court denied defendant's motion to suppress the firearm, finding that the discovery was the result of a valid search incident to the arrest for a driving violation. As a Class X offender, defendant was sentenced on June 18, 2008, to 10 years in prison.

On appeal, defendant made several claims, including that the search of his vehicle was not valid as a search incident to an arrest. Prior to trial, defendant had moved to quash his arrest and to suppress the evidence obtained as a result of his arrest. On May 21, 2008, the trial court held a pretrial suppression hearing at which only defendant testified. Defendant testified that he did not commit a traffic violation. The trial court denied defendant's motion on the ground that defendant had admitted at the suppression hearing that he was driving with a suspended license, a fact that the arresting officer discovered only after the initial stop. Defense counsel then argued: "the issue is really did they have a basis to stop him in the first place. He is indicating he did not commit a traffic violation." The trial

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court responded that its ruling would stand. Later at trial, the arresting officer did testify, and he stated that defendant had committed a traffic violation prior to the stop.

During oral argument before the appellate court, the State conceded that, if we reviewed only the transcript of the suppression hearing, we would have to find that the trial court erred when it denied defendant's motion. We appreciate the State's candor, and observe that candor is always the correct choice.

The question we must answer is whether, on the record as it exists before us, we can conclude that the search of defendant's vehicle, which resulted in the recovery of the firearm, was a valid search. We observe that the trial court did not make a specific ruling on the validity of the initial stop, and that it did not then have the benefit of the guidelines subsequently provided by the United States Supreme Court in Arizona v. Gant, 556 U.S. \_\_\_, 173 L.Ed. 2d 485, 496, 129 S.Ct. 1710, 1719 (2009) for what constitutes a valid search incident to an arrest.

We remand for a limited evidentiary hearing for the trial court to determine whether defendant's suppression motion should have been granted. We direct the trial court to make specific findings of fact and conclusions of law, as required

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under section 114-12(e) of the Criminal Code of 1961. 725 ILCS 5/114-12(e)  
(West 2008).

Remanded with directions.