

No. 1-10-1349

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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-416-822
	)	
MICHAEL POWELL,	)	Honorable
	)	Thomas J. O'Hara,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Quinn and Justice Cunningham concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in denying the State's request for a continuance to procure a document, and did not err in granting defendant's motion to quash arrest and suppress evidence.

¶ 2 Defendant Michael Powell was charged by citation with failing to produce a driver's license, driving under the influence of alcohol, driving with an alcohol concentration of 0.08 or more, and operating an uninsured vehicle. He filed a motion to quash his arrest and suppress evidence, which the trial court granted. The State thereafter filed a certificate of substantial impairment and appealed. Although the appellant has not filed a response brief in this court, we

may proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 3 On appeal, the State contends that the trial court abused its discretion in denying its motion for a continuance and erred in finding that a discovery violation had occurred. The State further contends that defendant's motion to quash and suppress should not have been granted because defendant failed to make a *prima facie* showing that his arrest was illegal and did not establish what evidence was to be suppressed. For the reasons that follow, we affirm.

¶ 4 Defendant filed a motion to quash arrest and suppress evidence on January 13, 2010. In the motion, defendant alleged that on July 5, 2008, he was arrested, without the authority of a valid search or arrest warrant, at a "Roadside Safety Checkpoint" in Chicago. Defendant asserted that the checkpoint was not conducted in accordance with State law, and that his conduct prior to his arrest was such as would not reasonably be interpreted by the arresting officers as constituting probable cause that he had committed or was about to commit a crime. As relief, defendant sought to have the court quash his arrest and suppress any resulting evidence, including physical evidence; statements, utterances, reports of gestures, and responses he made while detained; in-court or out-of-court identification of him; witnesses who viewed him while he was detained or who were discovered as a result of his arrest; photographs, fingerprints, and other information produced while he was processed following his arrest; and "[a]ll other knowledge and the fruits thereof, witnesses, statements, whether written, oral or gestural and physical evidence which is the direct and indirect product of the arrest."

¶ 5 A hearing on the motion to quash and suppress was scheduled for January 21, 2010. However, the State was not ready to proceed on that date due to the unavailability of one of the police officers, so the proceedings were continued to March 9, 2010.

¶ 6 On that date, the State informed the trial court that again, it was not ready. The assistant State's Attorney (ASA) indicated that in the course of preparing the police officers for the hearing, she and her partner "realized there is something missing from the discovery that was tendered in regards to the roadside material." The ASA asked for a continuance to obtain "the full roadside materials," but defense counsel objected, arguing that the State had been present for several status dates, had tendered a packet of materials, and earlier that very afternoon, had indicated the materials were complete. When the trial court noted that the roadside materials had been tendered on October 1, 2009, the ASA responded, "But in prepping just now, there's a page missing that is essential to putting on a motion to quash the stop where the basis is the constitutionality of the roadside."

¶ 7 The trial court then questioned the ASA regarding the State's diligence in tendering discovery to the defense since October 2009. The ASA replied that the State had trouble getting the roadside material by subpoena, and therefore had a Chicago police officer photocopy the materials as a favor. The trial court interrupted the ASA's explanation and went off the record. After the group came back on the record, the trial court denied the motion for a continuance. The ASA asked whether she could have a minute "to run and get something" and said someone was "attempting to print the missing page right now." The trial court told the ASA to "go get them" and the case was passed.

¶ 8 When the case was recalled later that afternoon, the State answered not ready to proceed on the motion due to the absence of the material document. The trial court noted that the document was supposed to have been tendered in October 2009 with the other discovery materials, and made the following statement:

"There's an affirmative obligation on the State to comply with this. And actually there's special motions for sanctions that

relate to these discovery violations. If it's one month or two months, whatever, I could understand, but five months? And the last court date on [January] 20th was order of court the next day for a hearing, and it still wasn't ready then. And so we go all this period of time where it's set for hearings, and it's not ready, and it's because of a discovery violation."

¶ 9 The court then asked the ASA what the State had done since October 2009 to comply with its affirmative obligation to tender discovery. In response, the ASA stated that the State had tendered everything it had and that she had only just that day realized the document was missing. The trial court reiterated that there was still a matter of diligence at issue and that the motion to quash and suppress would be going forward that day. The court stated, "It's been up too many times, and the reason you're not ready is not because the officers aren't here, because they are here, and it's because there's a document that wasn't properly tendered \*\*\* in the last year and a half since this case was first up."

¶ 10 After a short recess, defendant testified on his own behalf. He stated that about 10:10 p.m. on July 5, 2008, he was traveling in the vicinity of 74th Street and Stoney Island Avenue when he came across a roadblock. He testified that at the time, there were no warrants out for his arrest and he did not commit any traffic violations.

¶ 11 Following defendant's testimony, the defense rested. The State made a motion for directed finding, arguing that defendant had failed to establish that the roadblock was unconstitutional. The trial court denied the State's motion. The ASA indicated that the State would not be presenting any evidence because it was not ready. Accordingly, the trial court granted defendant's motion to quash and suppress.

¶ 12 Subsequently, the State filed a motion to reconsider, along with a copy of the document which had not been tendered with discovery earlier: a one-page news release for the roadside safety check. In the motion to reconsider, the State argued that the trial court abused its discretion in denying the State's request for a continuance where it was missing a material piece of evidence and where the defendant's speedy trial rights were not being infringed because he could have withdrawn his motion to quash and suppress and demanded trial. The State further argued that the trial court erred in granting the motion to quash and suppress where defendant had not presented evidence regarding whether he was stopped at the roadblock, how long he was stopped, whether he was arrested, or whether he took a breath test and/or field sobriety test.

¶ 13 The trial court denied the motion to reconsider, finding that the State had not been diligent in the discovery process. The trial court noted that the roadside tickets were issued on July 5, 2008; that discovery was tendered 13 court dates later, on October 1, 2009; and that the hearing on the motion to quash and suppress was held five months later, on March 9, 2010. The court further observed that the officer was present on the day of the hearing and could have testified, but that the State did not take the opportunity to put on any evidence or try to introduce the missing document through the police officer.

¶ 14 The State thereafter filed a certificate of substantial impairment and appealed.

¶ 15 On appeal, the State contends that the trial court abused its discretion in denying its motion for a continuance. The State argues that the news release was material and would have affected the outcome of the hearing because it would have shown that the roadblock was publicized in advance, a necessary showing to rebut defendant's contention that the roadblock was unconstitutional. The State argues that it was diligent in attempting to produce the news release, as it did not realize the document was missing until the ASA was preparing for the hearing, whereupon the ASA immediately asked for a continuance, made an attempt to procure

the news release that day, and tendered the document four weeks later. Finally, the State asserts that it was prejudiced as a result of the trial court's "inappropriately harsh sanction," as the denial of a continuance rendered it unable to respond to defendant's motion to quash and suppress and unable to proceed with prosecution.

¶ 16 In support of its contention, the State relies upon cases where the party seeking a continuance was doing so in order to secure the presence of a witness. *People v. Ward*, 154 Ill. 2d 272, 306 (1992); *People v. Moore*, 397 Ill. App. 3d 555, 560-61 (2009); *People v. Wadell*, 190 Ill. App. 3d 914, 920 (1989); *People v. Peruscini*, 188 Ill. App. 3d 803, 805-07 (1989); *People v. Verstat*, 112 Ill. App. 3d 90, 99 (1983). In such circumstances, factors to be considered on appeal include whether the movant was diligent in attempting to secure the presence of the witness, whether the movant has shown that the testimony of the witness was material and might have affected the verdict, and whether the movant was prejudiced by the exclusion of the testimony. See, e.g., *Moore*, 397 Ill. App. 3d at 561.

¶ 17 In the instant case, however, the State asked for a continuance in order to obtain a document, not in order to secure a witness's presence. The State has not provided us with any authority addressing such circumstances. While the cases cited by the State are informative, in our view, they are also distinguishable. Whether a witness is present in court may depend on many factors out of a party's control. For example, a witness may be on vacation, ill, or on furlough (see *Verstat*, 112 Ill. App. 3d at 94, 98), or may refuse a subpoena, fail to show, or never have been located by an investigator (see *Ward*, 154 Ill. 2d at 306). A document, in contrast, is static. Here, the news release was in the State's control, and no external factor impeded the State from tendering the document with the other discovery materials. The State simply did not notice it had not been included with the other materials until the day of the

hearing on the motion to quash and suppress. Through a lack of diligence, the State failed to tender the news release.

¶ 18 The decision whether to grant or deny a request for a continuance is a matter within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *Ward*, 154 Ill. 2d at 307. An abuse of discretion will be found when the trial court's decision is fanciful, arbitrary, or so unreasonable that no reasonable person would agree with it. *People v. Staple*, 402 Ill. App. 3d 1098, 1102-03 (2010). In this case, we agree with the trial court that the State did not show diligence in producing and tendering the news release. As the trial court noted, five months elapsed between the time the roadside materials were tendered on October 1, 2009, and the hearing on March 9, 2010. The State has not shown that it was diligent during that time. The trial court's decision not to grant a continuance for the State to procure the news release was not fanciful, arbitrary, or completely unreasonable. We find no abuse of discretion.

¶ 19 The State further argues that the trial court abused its discretion in holding that a discovery violation had occurred, as the case was not set for trial and discovery had not been closed. We are mindful that the trial court twice used the term "discovery violation" after deciding to deny the State's request for a continuance: once when noting the existence of motions for sanctions relating to discovery violations, and again when it stated the case was not ready to proceed "because of a discovery violation." In our view, the trial court's utterances do not amount to an outright finding that the State had committed a discovery violation. Accordingly, it is immaterial that the case was not yet set for trial and discovery was not yet closed.

¶ 20 The State's second contention on appeal is that defendant's motion to quash and suppress should not have been granted because he failed to make a *prima facie* showing that his arrest was illegal and did not establish what evidence was to be suppressed. On appeal from a ruling on a motion to quash and suppress, the trial court's factual findings and credibility determinations will

be upheld unless they are against the manifest weight of the evidence. *People v. Beverly*, 364 Ill. App. 3d 361, 368 (2006). A finding will be deemed against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Beverly*, 364 Ill. App. 3d at 368. The trial court's ultimate legal rulings on a motion to quash and suppress are reviewed *de novo*. *Beverly*, 364 Ill. App. 3d at 368.

¶ 21 A defendant who files a motion to quash and suppress stemming from a warrantless arrest carries the burden of presenting a *prima facie* case that his conduct was not unusual or indicative of the commission of a crime. *Beverly*, 364 Ill. App. 3d at 369; *People v. Long*, 351 Ill. App. 3d 821, 824 (2004). If the defendant satisfies his burden, then the State must present evidence to justify the intrusion of the warrantless search or seizure. *Beverly*, 364 Ill. App. 3d at 369.

¶ 22 Here, defendant alleged in his motion to quash and suppress that he was arrested without a warrant at a roadside safety checkpoint, and that as a result of his arrest and subsequent detention, the police became aware of and/or elicited from him physical evidence and verbal and written statements connecting him with a crime. At the hearing on the motion, defendant testified that at the time he came across the roadblock, there were no warrants out for his arrest and he did not commit any traffic violations. The State did not cross-examine defendant and did not present any evidence of its own.

¶ 23 Given the unchallenged nature of defendant's allegations and testimony, we find that defendant made a *prima facie* showing that he was doing nothing unusual or indicative of the commission of a crime when he came across the roadblock. In addition, it is undisputed that at some point, a search and seizure occurred without a warrant. Thus, the burden shifted to the State to present evidence that would establish the validity of the search and seizure. *Beverly*, 364 Ill. App. 3d at 369. This the State did not do.

1-10-1349

¶ 24 We cannot find that the trial court's decision to grant the motion to quash and suppress was against the manifest weight of the evidence. While defendant certainly could have presented more testimony, the evidence before the trial court was not so lacking as to make the opposite conclusion -- that defendant's conduct was indicative of a crime -- clearly evident. Defendant carried his burden of presenting a *prima facie* case, but the State failed to meet its burden of presenting evidence to justify defendant's arrest. The trial court's decision to grant the motion to quash and suppress was not in error. The State's contention fails.

¶ 25 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.