

2011 IL App (2d) 100949-U
No. 2—10—0949
Order filed August 17, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 10—CF—665
)	
MARCOS A. PEQUENO,)	Honorable
)	Allen M. Anderson,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Birkett concurred in the judgment.

ORDER

Held: The police had probable cause to search defendant's vehicle when, upon effecting a traffic stop, they found outside the car a blunt that was dry despite the prevailing rain; it was irrelevant that they did not see any movements suggesting that a passenger in the car had thrown the blunt out.

¶ 1 Defendant, Marcos A. Pequeno, was charged with unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2008)), unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(c)(2) (West 2008)), unlawful possession of cannabis (720 ILCS 550/4(d) (West 2008)), and unlawful possession of cannabis with the intent to deliver (720

ILCS 550/5(d) (West 2008)). Defendant successfully moved to suppress the evidence found during a search of his vehicle. The State appeals. For the reasons that follow, we reverse and remand the matter to the trial court.

¶ 2

BACKGROUND

¶ 3 The evidence presented at the hearing on defendant's motion to suppress tended to prove the following. On March 13, 2010, at approximately 4:10 p.m., Officer Matt Huber of the Aurora police department stopped the vehicle defendant was driving, because the vehicle had a broken taillight. Defendant's friend was in the passenger's seat. Earlier in the day, the weather had been rainy and, at the time of the stop, it was sprinkling. At some point during the stop, Officers William Sullivan and Dominick Tamberelli arrived to assist Huber. While Huber was speaking with defendant at the driver's side of the vehicle, Sullivan proceeded to the passenger's side of the vehicle. On the passenger's side of the vehicle, Sullivan found a blunt (cannabis wrapped in cigar paper) floating in a puddle directly outside the car. He picked up the blunt, which he noted was wet on the bottom, where it had come in contact with the puddle, but dry on top. He showed it to Huber and told Huber that it was dry. Defendant and his passenger denied that the blunt belonged to them. Neither officer observed defendant or the passenger make any movements that would suggest that one of them had thrown the blunt out of the car. Nor did either officer notice the smell of cannabis coming from the vehicle. Sullivan then opened the blunt on top of the car, and he and Huber observed what they, based on their experience, believed to be cannabis. The cannabis inside the blunt was dry. Based on this, the officers removed defendant and the passenger from the vehicle, searched the vehicle, and located the contraband that gave rise to the offenses with which defendant was charged. The officers

did not have a warrant to search the vehicle, and defendant did not consent to the search of the vehicle.

¶ 4 The trial court granted defendant's motion, finding that probable cause for the search of defendant's car was lacking because there was no evidence connecting the blunt to defendant's vehicle. According to the trial court, to connect the blunt to defendant's vehicle, some sort of movement in the vehicle suggesting that the object had been tossed out of the car was required.

¶ 5 The State filed a certificate of impairment and brought this timely appeal.

¶ 6 ANALYSIS

¶ 7 On appeal, the State contends that the trial court erred in granting defendant's motion to suppress, because the condition of the blunt supported a reasonable belief that it had been tossed out of defendant's vehicle. Defendant has not filed a brief on appeal. While we may not reverse summarily on that basis alone, we need not serve as defendant's advocate or search the record for a basis upon which to affirm. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976); *Orava v. Plunkett Furniture Co.*, 297 Ill. App. 3d 635, 636 (1998). "[I]f the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal. In other cases if the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed." *Talandis*, 63 Ill. 2d at 133. Because the State has demonstrated *prima facie* reversible error supported by the record, we conclude that the trial court's decision should be reversed.

¶ 8 In reviewing a trial court's decision on a motion to suppress, we apply a two-part standard of review. First, the trial court's factual findings are given great deference and will be disturbed only

if they are against the manifest weight of the evidence. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Second, the ultimate legal conclusion as to whether suppression is warranted is reviewed *de novo*. *Luedemann*, 222 Ill. 2d at 542.

¶ 9 The fourth amendment to the United States Constitution guarantees the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const., amend. IV. Generally, a warrant is necessary to satisfy the reasonableness requirement of the fourth amendment. *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001). An officer may conduct a warrantless search of a vehicle, however, if there exists probable cause to believe that the vehicle contains evidence of criminal activity that the officers are entitled to seize. *People v. James*, 163 Ill. 2d 302, 312 (1994). “Probable cause to search the vehicle exists where the totality of the facts and circumstances known to the officer at the time of the search, in light of the officer’s experience, would cause a reasonably prudent person to believe that a crime occurred and that evidence of the crime is contained in the automobile.” *People v. Stroud*, 392 Ill. App. 3d 776, 803 (2009).

¶ 10 We hold that there was probable cause for the officers to search defendant’s vehicle in this case. When Sullivan approached the passenger’s side of the vehicle, he found a cannabis-filled blunt floating in a puddle directly outside the car. Despite testimony that it had rained earlier and was still sprinkling at the time of the stop, the blunt was wet only on the bottom where it was in contact with the puddle, and the cannabis inside the blunt was also dry. This suggests that the blunt had been in the puddle for only a very short time and supports a reasonable inference that it was tossed from defendant’s vehicle. While the blunt could have been thrown out the window of another passing car or dropped by a pedestrian, “[t]he existence of possible innocent explanations for the individual

circumstances or even for the totality of the circumstances does not necessarily negate probable cause.” *People v. Rodriguez-Chavez*, 405 Ill. App. 3d 872, 876 (2010).

¶ 11 The trial court granted defendant’s motion because it could not find any caselaw that would support a finding of probable cause absent “some kind of gestures, movements, that also then lead eventually to finding something outside the car, such as an arm motion or throwing motion or something like that.” We disagree that some sort of motion by a vehicle occupant is required for a finding of probable cause. First, no case specifically imposes such a requirement; rather, existing cases simply state that probable cause exists when the totality of the surrounding facts and circumstances would cause a reasonable person to believe that a crime has been committed and that evidence of the crime is in the vehicle. See *Stroud*, 392 Ill. App. 3d at 803. As discussed, we conclude that this standard was met. More important, however, is that we have held that proximity to contraband can support a finding of probable cause. See *People v. Holman*, 402 Ill. App. 3d 645, 649-50 (2010) (cocaine found in bush where the defendant was seen crouching along a public bike path provided probable cause to arrest the defendant); *People v. Long*, 369 Ill. App. 3d 860, 869-70 (2007) (cocaine found under the defendant’s table provided probable cause for his arrest, despite the fact that there were 35 to 40 other patrons in the bar).

¶ 12 Because the condition and location of the blunt allowed for the reasonable inference that it came from defendant’s vehicle, and because there is no requirement that a vehicle occupant be observed discarding the object, we conclude that the trial court erred in finding that there was no probable cause to search defendant’s vehicle.

¶ 13

CONCLUSION

¶ 14 For the reasons stated, we reverse the judgment of the circuit court of Kane County and remand the matter.

¶ 15 Reversed and remanded.