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2011 IL App (3d) 100507-U

Order filed December 13, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Plaintiff-Appellant,)	
)	Appeal No. 3-10-0507
v.)	Circuit No. 06-CF-1575
)	
ROBERT ROGERS,)	Honorable
)	Amy Bertani-Tomeczak,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred as a matter of law in granting the defendant's motion to suppress evidence gathered as a result of an inventory search following impoundment of his vehicle. The trial court's holding that *Arizona v. Gant*, 556 U.S. 332 (2009), rendered the inventory search unconstitutional was erroneous as a matter of law.

¶ 2 The defendant, Robert Rogers, was charged in a three-count felony indictment with armed violence, unlawful possession of cannabis with intent to deliver, and aggravated unlawful use of a weapon by a felon. The defendant filed a pretrial motion to suppress evidence,

maintaining that the stop of his vehicle was pretextual, the impoundment of his vehicle was invalid, and the subsequent inventory search of his vehicle violated his constitutional right to be free from unreasonable search and seizure. Following a hearing on the motion, the circuit court granted the defendant's motion to suppress evidence. The State filed a certificate of impairment and appealed. This court reversed the circuit court's ruling and remanded the matter for further proceedings. *People v. Rogers*, No. 3--07--0890 (September 5, 2008) (unpublished order pursuant to Supreme Court Rule 23). On remand, the defendant filed a new motion to suppress evidence, maintaining that the inventory search violated constitutional restrictions articulated in *Arizona v. Gant*, 556 U.S. 332 (2009). The parties agree that *Gant* was decided after the trial court issued its original order suppressing the evidence. The State opposed the motion to suppress, maintaining that the issue had been waived, forfeited, or barred by *res judicata*, or was without merit in any event. The circuit court denied the State's motion to dismiss and held an evidentiary hearing on the defendant's motion to dismiss. The circuit court granted the defendant's motion to dismiss, finding that *Gant* allowed the court to revisit the issue regarding the inventory search and that it also compelled suppression of the evidence gathered in the search of the defendant's vehicle. The State filed a certificate of impairment and appeals from the circuit court's order.

¶ 3

BACKGROUND

¶ 4 The facts of the defendant's arrest and the subsequent impoundment and search of his vehicle are stated in great detail in this court's prior order and need not be repeated with particularity here. The salient facts were that the defendant's vehicle was stopped for having illegally tinted windows and that his vehicle was impounded pursuant to a Joliet city ordinance

permitting the impoundment and towing of vehicles with illegally tinted windows. A subsequent inventory search of the defendant's vehicle revealed a handgun and quantity of cannabis. The defendant moved to suppress the evidence. The circuit court granted his motion, finding that: (1) the traffic stop based upon illegally tinted windows was pretextual; (2) the impoundment of the vehicle in accordance with the Joliet city ordinance was invalid; and (3) the subsequent inventory search of the vehicle was unconstitutional. This court reversed the circuit court's order, specifically rejecting each of those three findings by the circuit court.

¶ 5 On remand, the defendant filed a new motion to suppress evidence, maintaining that *Gant* articulated a new rule of law concerning inventory searches. The circuit court agreed with the defendant's interpretation of *Gant* and allowed the matter to proceed to a hearing on the defendant's new motion to suppress evidence. At the second evidentiary hearing, the defendant produced, over the State's objection, video and photographic evidence which purported to show that the entire encounter from arrest of the defendant to impoundment of the vehicle took only 6 minutes rather than the 20 to 30 minutes that the police testified at the first hearing. The relevance of this evidence, according to the defendant, was that the elapsed time was insufficient for the police to have complied with the towing and impoundment policies contained in the police department's impoundment protocol. The State maintained that, even if the impoundment had taken less than the 20 to 30 minutes as stated in the original testimony, the shorter time frame did not establish that the police had violated their impoundment protocol, nor did it establish that the protocol was rendered unconstitutional under *Gant*. The trial court held that the inventory protocol was unconstitutional under *Gant* and granted the defendant's motion to suppress on that basis. The State appeals from that ruling.

¶ 6

ANALYSIS

¶ 7 When reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Luedeman*, 222 Ill. 2d 530, 542 (2006). A ruling on a motion to suppress evidence involves mixed questions of law and fact. Factual findings will be upheld upon review unless the findings are against the manifest weight of the evidence. *People v. Gherna*, 203 Ill. 2d 165, 175 (2003). The legal conclusions as to whether suppression of evidence is warranted is, however, subject to *de novo* review. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). Here, the question of whether the rule of law articulated in *Gant* warrants suppression of the evidence is a pure question of law which we will review *de novo*.

¶ 8 The trial court issued the suppression order at issue in this appeal on June 16, 2010. On August 31, 2010, this court issued its opinion in *People v. Mason*, 403 Ill. App. 3d 1048 (2010), in which we held that *Gant* did not change the law regarding inventory searches following an arrest. In *Mason*, the trial court granted a defendant's motion to suppress evidence, holding that *Gant* precluded an inventory search of a vehicle once the defendant had been placed into custody. *Mason*, 403 Ill. App. 3d at 1054. This court reversed the trial court, holding that *Gant* did not overrule the Illinois jurisprudence regarding inventory searches following impoundment of a vehicle. *Mason*, 403 Ill. App. 3d at 1055.

¶ 9 In the instant matter, both parties argued the applicability of our decision in *Manson* to the ruling of the trial court that a second motion to suppress was available to the defendant.¹ The

¹ The State maintains that the principles of waiver, forfeiture, and *res judicata* bar the defendant's second motion to suppress evidence. However, since it is undisputed that the applicability of the *Gant* decision could not have been addressed in the prior proceedings, we

State maintains that *Mason* stood squarely for the proposition that *Gant* had not changed prior Illinois law regarding inventory searches following impoundment. Thus, the State maintains, there was no reason for the circuit court to revisit the issue after this court had overruled the circuit court's prior ruling regarding the propriety of the inventory search in the instant matter. In reversing the trial court's original ruling, this court determined that there was no pretext in stopping the defendant for having illegally tinted windows, the impoundment of his vehicle was done in accordance with proper procedures, and the search of the vehicle was constitutional. The State maintains that *Mason* clearly established that *Gant* had no bearing on any of those findings. Thus, the circuit court should not have entertained the second suppression motion.

¶ 10 The defendant maintains that *Mason* is distinguishable from the instant matter on the facts and argues that he was not afforded protection from an unconstitutional inventory search because the stop was based upon a pretext and the impoundment was not in accordance with proper procedures. Thus, the defendant maintains, the trial court properly considered his second motion to suppress the evidence gathered during the inventory search of his vehicle.

¶ 11 We agree with the State. In accordance with our holding in *Mason*, we find that *Gant* did not have any effect upon Illinois jurisprudence regarding inventory searches following a valid impoundment. *Mason*, 403 Ill. App. 3d at 1055. We further held in *Mason* that the threshold issue in considering whether a valid inventory search subsequent to impoundment occurred was whether the impoundment of the vehicle had been proper (*People v. Clark*, 394 Ill. App. 3d 344, 348 (2009); *People v. Alewelt*, 217 Ill. App. 3d 578, 579 (1991)), and *Gant* had done nothing to

find that those principles did not preclude the defendant from raising the applicability of *Gant* on remand. See *People v. Blair*, 215 Ill. 2d 427, 443-44 (2005).

change the state of the law. *Mason*, 403 Ill. App. 3d at 1054-55. Given our holding in *Mason*, the circuit court erred, as a matter of law, in holding that *Gant* mandated a finding that the inventory search of the defendant's vehicle was unconstitutional. As the circuit court's decision was erroneous, as a matter of law, we reverse the trial court's ruling suppressing the evidence gathered during the search of the defendant's vehicle following its impoundment and remand the matter for further proceedings.

¶ 12

CONCLUSION

¶ 13 For the foregoing reasons, the judgment of the circuit court of Will County is reversed, and the cause is remanded for further proceedings.

¶ 14 Reversed and remanded.