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2011 IL App (3d) 100853-U

Order filed November 8, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF  
ILLINOIS,

Plaintiff-Appellant,

v.

NINA C. JONES,

Defendant-Appellee.

) Appeal from the Circuit Court  
) of the 13th Judicial Circuit,  
) Bureau County, Illinois,  
)  
) Appeal No. 3-10-0853  
) Circuit No. 10-CF-8  
)  
) Honorable  
) Marc P. Bernabei,  
) Judge, Presiding.

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JUSTICE SCHMIDT delivered the judgment of the court.  
Presiding Justice Carter and Justice O'Brien concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not err in granting the defendant's motion to suppress where: (1) the police officer did not have a reasonable, articulable suspicion that the driver and passenger were involved in drug activity; (2) the trial court's finding that defendant was unreasonably detained before the drug dog arrived was not against the manifest weight of the evidence; and (3) the evidence was properly suppressed as the fruit of the unlawful detention.

¶ 2 The defendant, Nina C. Jones, was charged with unlawful possession of a controlled substance. 720 ILCS 570/402(c) (West 2010). Jones filed a motion to suppress evidence, which the trial court granted. On appeal, the State argues that the trial court erred when it granted the

defendant's motion to suppress. We affirm.

¶ 3

### FACTS

¶ 4 The hearing on the defendant's motion to suppress began on July 9, 2010. Officer Michael Ori testified that he was employed as a deputy sheriff for Bureau County, and he had held that position for two years. On January 29, 2010, he was driving westbound on Route 6 when he observed a vehicle traveling at a high rate of speed up an exit ramp from Interstate 80. After he saw the vehicle fail to stop at a stop sign, he activated his lights and stopped the vehicle. He pulled the vehicle over at 11:51 p.m.

¶ 5 After informing dispatch of his location, Ori obtained identifying information from the driver, Tyler Isaacson, and Jones, who was a passenger in Isaacson's car. Dispatch advised him that Isaacson and Jones did not have any warrants, and Isaacson was legally able to drive. Ori initially testified that after he received this information, he requested that a canine unit report to the area because Isaacson and Jones appeared nervous and evasive, and they were unwilling to make eye contact with him. He testified that this took approximately three or four minutes.

¶ 6 Ori returned to the vehicle, and noted that there was a "faint to moderate odor of alcohol" on Isaacson's breath, and Isaacson admitted he had been drinking at the Cadillac Ranch. Isaacson's speech was not slurred or "thick-tongued[.]" and he did not mumble. Ori brought Isaacson into his patrol car to perform the horizontal gaze nystagmus (HGN) test, and Ori testified that the test should take no more than a minute. Ori could not specifically recall whether he asked Isaacson to perform the one-leg stand test, although he testified that if a driver's "horizontal gaze is not bad, then I don't—I typically don't go to the next [tests]." While in the car, Ori had a brief conversation about what Isaacson was doing that night and if he had been

drinking. Ori could not remember if he had that conversation prior to or after performing the HGN test. Isaacson passed the HGN test.

¶ 7 Officer Dan Jaeger testified that he heard Ori request a drug dog at 12:08 a.m., and he arrived on the scene at 12:15 a.m. When he arrived, he exited his vehicle and saw Ori talking with Isaacson. Jaeger did not recall seeing Ori perform any field sobriety tests on Isaacson. Jaeger performed a free-air sniff of the vehicle with the dog, and the dog "alerted" at the driver's side door. The vehicle was searched, and Ori found two small bags of white powder in a cigarette box in the center console. The substance tested positive for heroin. Ori finished writing the traffic citation at the police station after the discovery of the contraband.

¶ 8 Officer Eric Sorenson testified that he was a police officer with the city of Princeton, and that he was also a member of the Tri-Dent Multi-Agency Drug Task Force. He stated that on the evening in question, he was returning home when he saw a Bureau County squad car on a traffic stop. Sorenson pulled over and asked Ori if he needed any assistance, and Ori asked him to "keep an eye on" Isaacson. Ori then went to speak to the passenger of the vehicle, and he told Sorenson that the passenger was Jones. Sorenson then advised Ori that he had previously arrested Jones for a drug offense. Sorenson could not remember when Ori called for the drug dog.

¶ 9 After hearing the evidence, the trial court made the following findings of fact: (1) Ori lawfully seized the vehicle based on a clear stop sign violation; (2) Ori was allowed to detain the vehicle for a reasonable amount of time to dispel any concern that Isaacson was impaired; (3) that based on the circumstances known to Ori, there was not a reasonable articulable suspicion of drug activity to warrant a further detention; and (4) that Jones was being detained at the time of

the drug dog alert. The court then summarized that "the issue that [the] defendant's motion [to suppress] ultimately turns on is whether the initially lawful detention \*\*\* for the legitimate purpose of investigating the alcohol impairment concern was still legitimately and lawfully taking place when the dog alerted."

¶ 10 In reaching the conclusion that Ori was no longer investigating a DUI when the drug dog alerted, the trial court found that the vehicle was pulled over at 11:52 p.m., Ori called for the dog at 12:08 a.m., Jaeger arrived at 12:15 a.m., and the dog alerted at 12:17 a.m., which would be 25 minutes from stop to alert. The court further found that any concerns that Isaacson was impaired were alleviated when Isaacson passed the HGN test in the squad car.

¶ 11 The court thus concluded that there was a time period before the dog alerted where Isaacson and Jones were detained solely for the purpose of a drug investigation, and they were therefore unlawfully seized. This was further supported by the fact that Ori wrote the traffic citation at the police station. The court reasoned that by Ori's "election not to start writing the ticket, he essentially abandoned the traffic stop." Consequently, the trial court granted Jones's motion to suppress.

¶ 12 The State filed a motion to reconsider, which was denied. The State filed a certificate of impairment and a notice of appeal.

¶ 13 ANALYSIS

¶ 14 On appeal, the State argues that the trial court erred when it granted Jones's motion to suppress. Specifically, the State alleges that the traffic stop was not impermissibly prolonged because Ori was still investigating Isaacson's sobriety when the drug dog alerted. Alternatively, the State argues that Jones did not have a reasonable expectation of privacy in the area being

searched.

¶ 15 We employ a two-part standard of review when faced with a challenge to a trial court's ruling on a motion to suppress. *People v. Luedemann*, 222 Ill. 2d 530 (2006). First, we review the trial court's findings of historical fact for clear error, and we afford deference to any inferences the trial court drew from those facts. *Id.* We will not disturb the trial court's factual findings unless they are against the manifest weight of the evidence. *Id.* Second, because a reviewing court is free to assess the facts relative to the issue presented in the case, we review the trial court's ultimate legal ruling on the motion to suppress *de novo*. *Id.*

¶ 16 The fourth amendment of the United States Constitution and article I, section 6, of the Illinois Constitution guarantee citizens the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. The driver of a vehicle, and any passengers within the vehicle, are subjected to a lawful seizure when a police officer initiates a traffic stop of the vehicle based on probable cause. *Brendlin v. California*, 551 U.S. 249 (2007). Nevertheless, an initially lawful seizure can become unlawful if subsequent police conduct violates the fourth amendment's reasonableness standard. *Illinois v. Caballes*, 543 U.S. 405 (2005). An individual "may not be lawfully seized without reasonable, objective grounds to support the seizure." *People v. Davenport*, 392 Ill. App. 3d 19, 27 (2009)

¶ 17 The State in this case concedes that Jones was detained as a passenger in the vehicle pursuant to *Brendlin*, 551 U.S. 249. Furthermore, the State does not challenge the trial court's finding that there was no reasonable suspicion of drug activity that would justify a further delay of Isaacson's vehicle. Instead, the State argues that the trial court erred by finding that Ori was no longer involved in a DUI investigation when the dog alerted on the vehicle. We disagree.

¶ 18 The evidence at the suppression hearing established that Isaacson had a faint to moderate odor of alcohol on his breath. This fact, combined with the fact that Isaacson had failed to stop at a stop sign, certainly allowed Ori to investigate Isaacson's sobriety. Ori testified that he brought Isaacson into his squad car to perform the HGN test, that the test would take less than a minute to conduct, and that Isaacson passed the test. While Ori could not specifically recall whether he asked Isaacson to do the one-leg stand test, he testified that he typically does not conduct any additional sobriety tests if the driver passes the HGN test. In addition, Jaeger did not remember seeing Isaacson perform any field sobriety tests, thus indicating that Ori had finished conducting sobriety tests by the time Jaeger arrived. Furthermore, 25 minutes after the stop, the officer had not even begun to write a traffic ticket for the stop sign violation.

¶ 19 Based on the above, the trial court's factual finding that Ori was no longer involved in a DUI investigation when the drug dog alerted was not against the manifest weight of the evidence. A reasonable person could find that Ori had finished the HGN test, determined that Isaacson was not intoxicated, but nonetheless detained Isaacson and Jones until the canine unit arrived. The fact that Ori did not begin to write a traffic citation until he returned to the police station further supports the trial court's conclusion that Ori essentially "abandoned" the traffic stop. See *People v. Brownlee*, 186 Ill. 2d 501 (1999) (holding that defendant was illegally detained after officers decided not to write the defendant a traffic citation but stood on either side of the vehicle for two minutes before asking the defendant if they could search the car).

¶ 20 The State argues that the trial court's finding was against the manifest weight of the evidence because Jaeger testified that when he arrived on the scene Ori was conversing with Isaacson, and the only testimony regarding a conversation between Isaacson and Ori involved

whether Isaacson had been drinking at the Cadillac Ranch. Therefore, Ori was still investigating a DUI when Jaeger arrived and the dog alerted.

¶ 21 However, the State's depiction of Ori's testimony is not quite accurate. During the hearing, Ori stated that he asked Isaacson whether he had been drinking, but that he would have asked him that question immediately. Ori further testified that after Isaacson was in the squad car, he and Isaacson had a brief conversation. This conversation included "what [Isaacson] was doing, where he was going, [and] if there was anything in the car." These questions are certainly not unique to a DUI investigation, and they actually support the trial court's conclusion that Ori was investigating possible drug activity. Therefore, it is simply not true that the only conversation between Ori and Isaacson involved drinking at the Cadillac Ranch. Accordingly, because Ori was no longer investigating a DUI, and he had no reasonable, articulable suspicion of other illegal activity, the trial court did not err by holding that the traffic stop was impermissibly prolonged. The State does not argue that the traffic stop had ended and that the police and defendant were involved in a consensual encounter until the dog arrived.

¶ 22 The State further argues that the trial court should have denied the motion to suppress because Jones did not have a reasonable expectation of privacy in the area searched. The State claims that because Jones was merely a passenger, she did not have a privacy interest in the vehicle, and therefore the search was not unreasonable. See *Caballes*, 543 U.S. 405; *Rakas v. Illinois*, 439 U.S. 128 (1978). However, the crucial distinction in this case is that the search of the car was a direct consequence of Jones's illegal detention. In other words, Jones was not lawfully detained at the time of the search, and therefore the subsequent discovery of the contraband was the "fruit of the poisonous tree" and should have been suppressed.

¶ 23 The State alleges that the fruit of the poisonous tree doctrine should not apply because the contraband would have been discovered irrespective of Jones's seizure. We disagree. If Ori had not unlawfully detained the vehicle, Isaacson and Jones would have left the scene before the canine unit arrived. Without the canine alerting on the vehicle, there was no reason to search for contraband. Thus it is clear in this case that the search of the vehicle and the subsequent discovery of the contraband flowed from the illegal seizure. The evidence was therefore tainted and should have been suppressed. *Davenport*, 392 Ill. App. 3d 19.

¶ 24

#### CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of Bureau County is affirmed.

¶ 26 Affirmed.