

**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).

NO. 4-10-0229

Order Filed 5/13/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Morgan County
TERRY L. JACKSON,	)	No. 09CF44
Defendant-Appellee.	)	
	)	Honorable
	)	Richard T. Mitchell,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Justices Turner and McCullough concurred in the judgment.

**ORDER**

*Held:* When considering defendant's motion to quash arrest and suppress evidence, the trial court erred in relying on another circuit court's judgment in the companion case of the driver of the vehicle in which defendant was a passenger. In that case, upon a petition to rescind the driver's statutory summary suspension, the court had found the police officers lacked probable cause to conduct the traffic stop which had resulted in defendant's arrest. The trial court here, on the basis of collateral estoppel, erroneously relied upon the other court's prior probable-cause finding in granting defendant's motion.

**I. BACKGROUND**

In March 2009, defendant was charged with two counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(3)(C), (a)(3)(A) (West 2008)) and one count of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)). The charges stemmed from a traffic stop conducted at approximately 2:45 on a Saturday morning in March 2009. Defendant's wife, Denise Jackson, was driving her Cadillac

Escalade in Jacksonville with defendant as the front seat passenger. Three other passengers were seated in the back. Police dispatch received four 9-1-1 calls reporting shots fired in a particular vicinity. Several county and city officers responded. One deputy spotted Jackson's vehicle in the area and conducted a traffic stop. Four or five responding officers joined the stop for assistance. The officers all drew their service weapons, instructing the passengers one by one to exit the vehicle so they each could be searched. The officers found a handgun and ammunition clip in defendant's pocket.

Once everyone was secured, the officers asked Jackson to perform field-sobriety tests, which she failed. She was arrested for driving under the influence of alcohol (DUI). In her DUI case (Morgan County case No. 09-DT-54), she filed a motion to rescind her statutory summary suspension, claiming the officers lacked a reasonable basis to conduct a traffic stop. After a hearing on her motion in August 2009, the circuit court, the Honorable Tim P. Olson presiding, granted her motion, finding that the arresting officer had "no reasonable grounds to stop this vehicle."

Before the hearing on Jackson's petition to rescind in her case, defendant, in this case, pleaded guilty to one count of aggravated unlawful use of a weapon in exchange for the State's agreement to dismiss the remaining two charges. Prior to sentencing, defendant filed a motion for leave to participate in the impact incarceration program. However, contrary to the opinions of counsel, the State, and the trial court that he, indeed, qualified for the program, defendant learned he did not qualify. As a result, the court allowed defendant to withdraw his guilty plea, and all of the original charges were reinstated.

In October 2009, defendant filed a motion to quash arrest and suppress evidence, claiming (1) the traffic stop was unlawful, (2) the police officers' questioning of defendant at the scene without the benefit of *Miranda* warnings (see *Miranda v. Arizona*, 384 U.S. 436 (1966)) was unlawful, (3) the search of the vehicle was unlawful, and (4) the search of defendant was unlawful. Defendant claimed that any evidence received as a result of this unlawful conduct should be suppressed.

In January 2010, defendant filed a supplemental motion to quash and suppress, alleging the State should be collaterally estopped from arguing that the traffic stop was lawful in light of Judge Olson's order in Jackson's DUI case. Judge Olson had found that the arresting officer "admittedly did not observe the traffic violations," nor did he "have a reasonable articulable suspicion that criminal activity was afoot." The State responded that collateral estoppel would not apply because there was no "identity of specific parties."

At the hearing on defendant's motion to suppress, defendant called Jackson as a witness. She testified that she was driving her black sport utility vehicle (SUV) with defendant in the front passenger seat, and her brother, her sister, and her husband's friend in the backseat. A Morgan County deputy sheriff pulled her over. Immediately thereafter, at least four other patrol cars arrived. She and the other passengers were ordered out of the vehicle at gunpoint. She asked the officers why they were being detained, and the officers just told her to "turn back around." She said the sheriff told the officers to handcuff her and place her in a police car. She said she had not violated any traffic laws. She remained handcuffed in the police car for approximately 35 minutes. She acknowledged that when

the officers removed defendant from the vehicle, they found a gun in his pocket. She denied that any shots were fired from her vehicle.

Morgan County sheriff's deputy, Josh Weber, testified that he was dispatched to a "shots-fired" call issued by the Jacksonville police department. He saw Jackson's vehicle at a stoplight. He began following the vehicle with his lights activated. Jackson immediately pulled over and Weber "[c]alled it in as a regular traffic stop and waited for other officers to arrive." Police units from Jacksonville, Morgan County, and South Jacksonville arrived to assist. Weber said he stopped Jackson's vehicle because it was an SUV and it was heading in the direction as indicated by the 9-1-1 calls. He said he was "pretty sure" that the dispatch included a description of the vehicle as an SUV. However, after reviewing his police report, he acknowledged that dispatch did not describe an SUV, only that it was a vehicle last seen southbound. He noted that in his report, he had requested from dispatch a description of the vehicle, but dispatch responded that no description was available. Weber admitted he had not observed Jackson commit any traffic violations prior to the stop. Defendant rested.

The State called Jacksonville police dispatcher Jessica Sanders, who testified that she had received four separate 9-1-1 calls reporting shots fired. The only specific information she had received was that five or six shots were fired in the area of Clay Avenue and Walnut Street, and that a caller "heard" a vehicle traveling south on Main Street. She dispatched officers to both areas. She had no further information.

Donald Niece, a deputy sheriff with the Morgan County sheriff's office, testified that he heard the dispatch and traveled a few blocks to Main Street, looking for

vehicles "moving in the area." He drove around in the area and did not observe any until he saw Weber's taillights traveling on Main Street. He assisted with the traffic stop. He had his gun drawn and was the officer who took control of defendant. He ordered defendant to walk backward toward him. Once they met, Niece asked defendant if he had anything in his pockets that could harm the officer. When defendant said he did, Niece handcuffed him. Defendant told the officer he had a gun. Niece reached into defendant's pocket and retrieved the gun and the magazine. He "*Mirandized*" defendant and placed him in the patrol car.

Jacksonville police officer, Doug Klendworth, testified that he responded to the shots-fired call as well. He was at the police station when he heard the dispatch, and within 20 seconds, he was in his patrol car heading to the area. He did not see any vehicle on the street until he spotted a Morgan County deputy's vehicle, which he followed to the traffic stop.

The trial court, Judge Richard T. Mitchell presiding, entered a written order granting defendant's motion to suppress, finding collateral estoppel applied and, therefore, Judge Olson's order, finding the officers had no reasonable grounds to stop the vehicle, was dispositive of the suppression issue. Judge Mitchell noted that the State was a party in the companion case (Jackson's DUI case) and had an opportunity to cross-examine witnesses and to defend the matter. The State filed a certificate of substantial impairment. This appeal followed.

## II. ANALYSIS

The State claims the trial court erred in granting defendant's motion to quash

and suppress on the basis of collateral estoppel. In light of the decisions issued by our supreme court, we agree. See *Hurlbert v. Charles*, 238 Ill. 2d 248, 259-60 (2010); *People v. Moore*, 138 Ill. 2d 162, 170 (1990).

First, in *Moore*, 138 Ill. 2d at 165, the supreme court laid to rest the question of whether a probable-cause finding in a rescission hearing could have preclusive effect on a probable-cause determination in a subsequent suppression hearing under the doctrine of collateral estoppel. Finding that the differences between the rescission and criminal proceedings were sometimes "slight" and "insignificant," they were nevertheless "very real." *Moore*, 138 Ill. 2d at 169. The differences between the two are evident in the statutes governing statutory summary suspensions. The legislature specifically directed that suspension proceedings should be "swift and of limited scope" with the intent of quickly resolving whether a person's driver's license should be automatically suspended while his or her criminal charges were pending. *Moore*, 138 Ill. 2d at 169. To allow a decision made in these "swift" proceedings to have a preclusive effect on an issue raised in the criminal proceedings would undoubtedly thwart the intent of the legislature, as the State would be required "to treat the suspension hearing as an integral part of the criminal trial." *Moore*, 138 Ill. 2d at 169-70. Preparing for a mini trial of this nature would "seldom, if ever, be swift." *Moore*, 138 Ill. 2d at 170. Therefore, the court held that a trial court's probable-cause decision in a rescission proceeding could not preclude a probable-cause decision in a subsequent suppression hearing in the criminal proceeding. *Moore*, 138 Ill. 2d at 170.

Next, in *Hurlbert*, the supreme court considered the plaintiff's argument that the *Moore* holding should apply regardless of the nature of the subsequent litigation.

*Hurlburt*, 238 Ill. 2d at 253. In other words, the plaintiff argued that the *Moore* holding should not be limited to subsequent criminal DUI proceedings, but should apply to other proceedings as well. The plaintiff argued that collateral estoppel should not bar the relitigation of the probable-cause issue previously decided in his statutory-summary-suspension proceeding in his subsequent malicious-prosecution proceeding. *Hurlburt*, 238 Ill. 2d at 254.

The lower courts in *Hurlburt*, including this court, had determined that the distinguishing factor in *Moore* from the facts of *Hurlburt* was that the subsequent proceeding was a criminal DUI proceeding. *Hurlburt*, 238 Ill. 2d at 253. This court found that the policy reasons underlying the *Moore* holding were not present when the subsequent proceeding was a civil malicious-prosecution proceeding. Because the *Moore* court had determined that, if collateral estoppel applied to bar the relitigation of issues decided in a statutory-summary-suspension proceeding, the State would be required to treat the summary-suspension proceedings as mini trials and the legislative purpose of swift and limited proceedings would be thwarted. See *Hurlburt*, 238 Ill. 2d at 259. Therefore, in *Hurlburt*, we reasoned that because the plaintiff had sued the defendants for malicious prosecution, an action not even contemplated at the time of the statutory-summary proceedings, the policy concerns underlying the *Moore* decision were absent. *Hurlburt*, 238 Ill. 2d at 253-54. The State would not have to treat the proceedings as a mini trial. *Hurlburt*, 238 Ill. 2d at 254.

However, our supreme court reversed this court's decision and determined that the focus or determining factor is not the nature of the subsequent proceedings, rather

it is the nature of the statutory-summary-suspension proceedings itself. *Hurlburt*, 238 Ill. 2d at 258-59. The court concluded that the *Moore* holding was based on "the likelihood that the State, given the possibility that the results of the statutory[-]summary[-] suspension hearing would be given preclusive effect, would be less likely to simply rely on police reports as evidence, but instead would elect to call witnesses and conduct full blown hearings. Such concerns are no less valid with regard to civil litigation." *Hurlburt*, 238 Ill. 2d at 259-60.

The court also rejected applying a collateral-estoppel analysis on a case-by-case basis in either subsequent civil litigation or criminal prosecutions. *Hurlburt*, 238 Ill. 2d at 260. The *Moore* decision had already rejected such an approach for those cases involving a subsequent DUI prosecution. *Hurlburt*, 238 Ill. 2d at 260. With regard to future civil litigation, the court held that, because there was even a "possibility that collateral estoppel would apply to any potential future civil litigation, however remote, parties to a statutory[-]summary[-]suspension hearing would likely deem it prudent and necessary to conduct a full and complete hearing on the issues raised in that hearing, thereby undermining the very purpose of the statute to provide for expeditious review of the statutory summary suspension." *Hurlburt*, 238 Ill. 2d at 260.

Because our supreme court has rejected the application of collateral estoppel to preclude the use of a trial court's decision in a statutory-summary-suspension proceeding in either a subsequent DUI case or any other civil litigation when both proceedings involved the same defendant, we are confident that such a principle does not apply to defendant's case here. Defendant argued that Judge Olson's decision from his

wife's statutory-summary-suspension proceeding should have preclusive effect to the issue of probable cause in defendant's criminal proceedings. Indeed, both cases address the exact same traffic stop. However, because the parties are different, naturally the precise evidence presented was different. Additionally, the public interests involved in each proceeding are different. A statutory-summary-suspension proceeding involves a "swift" and "limited" proceeding. See *Moore*, 138 Ill. 2d at 169. Whereas, in a criminal proceeding, there exists a public interest to accurately enforce the criminal laws. See *People v. Franklin*, 167 Ill. 2d 1, 13-14 (1995) (most courts have held that a defendant cannot use the acquittal of a codefendant to his own benefit and have required that the defendant seeking to assert collateral estoppel actually have been a party to the prior litigation). For all of the reasons espoused in *Hurlburt* and *Moore*, in addition to the fact that the issue in this case involves two different proceedings involving different defendants, we find the trial court erred in granting defendant's motion to quash arrest and suppress evidence by relying on the doctrine of collateral estoppel. While we make no judgment concerning the trial court's ultimate decision, the court must make its own independent determination on the issues presented in defendant's motion based on the evidence presented at the hearing on defendant's motion and not on the basis of collateral estoppel.

### III. CONCLUSION

We reverse the trial court's judgment granting defendant's motion to quash arrest and suppress evidence, and we remand this cause to the circuit court for further proceedings.

Reversed and remanded.