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NO. 4-10-0263  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
MICHAEL REDDING,	)	No. 09CF349
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

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PRESIDING JUSTICE KNECHT delivered the judgment of the court.  
Justice Steigmann concurred in the judgment.  
Justice Appleton dissented.

**ORDER**

¶ 1 *Held:* The trial court did not err in denying defendant's motion to suppress evidence recovered from a search of his car, where officers had a reasonable articulable suspicion defendant had committed a crime.

¶ 2 In April 2009, the State charged defendant, Michael Redding, with one count of unlawful possession of a controlled substance (methamphetamine) (720 ILCS 570/402(c) (West 2008)), a Class 4 felony. In September 2009, the trial court denied defendant's motion to suppress evidence. In January 2010, the court found defendant guilty after a stipulated bench trial. In March 2010, the court sentenced defendant to 24 months' probation. Defendant appeals the court's denial of his motion to suppress evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In January 2009, Officer Anne Frye of the Normal police department (NPD) stopped defendant for having an expired registration. After the stop, Frye conducted a search of defendant and found a glass pipe used for smoking cannabis, two bags containing cannabis, and a cigarette pack later determined to contain 0.1 grams of a substance containing methamphetamine. In August 2009, defendant filed a motion to suppress evidence and statements arising from the traffic stop. At the hearing on defendant's motion, Frye and Officer Shane Hackman, also with NPD, testified. A video of the stop was also played. Testimony at the hearing showed the following.

¶ 5 Frye was a new officer in January 2009, having been with NPD for approximately six months, and on patrol for three of those months. Frye was on patrol on the night in question, when her attention was drawn to defendant's car due to its excessively loud muffler. Frye got behind defendant and ran his license plate through her in-car computer, at which time she learned the registration was expired. Frye then conducted a traffic stop. At some point during the stop, Hackman arrived on the scene, although the record is not clear when exactly.

¶ 6 Upon making contact with defendant, Frye asked for his license and insurance information, which he was unable to produce. At that time, Frye observed defendant's eyes to be red and glassy, which indicated possible impairment. Frye did not smell any alcohol or cannabis but she did note a strong odor of cigarette smoke, which made it hard to detect other odors. Frye conducted the horizontal gaze nystagmus (HGN) test on defendant, as is commonly used to determine if an individual is under the influence of alcohol. The HGN test involved Frye shining her flashlight into defendant's eyes and observing their ability to track her finger while she moved it in different directions. Defendant's eyes tracked properly and Frye did not believe

defendant was under the influence of alcohol; however, she did notice defendant's pupils did not dilate when she shined her light directly into his eyes. Frye stated a lack of pupil dilation was a sign an individual might be under the influence of drugs.

¶ 7 Frye then asked defendant to open his mouth so she could observe whether there was any "heat signature." According to Frye, often a person who has recently smoked cannabis will have raised bumps on their tongue and a green film toward the back of their mouth. Frye claimed she was trained on this method of investigation, but when she testified, she could not remember specifically what the training was. She also stated she had discussed it with other officers. Frye had never previously looked for a "heat signature." Upon looking into defendant's mouth, Frye saw he had raised red bumps and some green discoloration on his tongue. She understood this to be consistent with someone who had recently smoked cannabis. Hackman testified he also observed this "heat signature," but it was not as pronounced as he had seen in other cases, and he was unsure as to whether it indicated recent cannabis use by defendant.

¶ 8 While Hackman was observing the "heat signature," Frye returned to her squad car and ran defendant's information on her computer. Though she could not remember what the specific charge was, Frye stated defendant had some sort of drug possession charge and a burglary charge on his record. While she was in the car, Frye prepared citations for driving without a license and expired registration. Hackman then joined her in the car and reported his observations regarding the "heat signature." Frye then reapproached defendant's vehicle with the citations.

¶ 9 Though the record is unclear what Frye did with the citations, she did not give defendant physical copies when she reapproached the vehicle. Instead, Frye questioned

defendant about what he had been doing prior to the traffic stop. Defendant replied he had just been hanging out at a friend's house and was on his way home. Frye then asked defendant to exit the vehicle so she could speak with him further. Frye stated she had defendant exit the vehicle because she suspected him of being impaired due to cannabis use. Eleven minutes had then elapsed since defendant was stopped.

¶ 10 After defendant exited the vehicle, Frye asked him about his criminal record. Defendant stated he had been arrested before but did not elaborate. Frye then asked for permission to pat the defendant down to check for weapons, and defendant consented. During the pat-down, Frye felt what she suspected was a glass pipe, of the type commonly used for smoking cannabis, in defendant's right front pocket. When Frye asked defendant what the object was, he told her it was a lighter. Frye testified she knew the object was not a lighter. Frye did not remove the suspected contraband at that point because she was unsure whether it was justified and she "didn't want to violate [defendant's] rights."

¶ 11 Frye continued to speak with defendant about his criminal history and further questioned him about the contents of his right front pocket. Hackman was present during this questioning and attempted to convince defendant to cooperate with them. Defendant still did not produce the contents of his pockets at that time. During this portion of the conversation, defendant claimed the object in his pocket was a "pocket dildo," which was inconsistent with his earlier statement to Frye. Defendant then asked the officers whether he was under arrest. Frye told defendant he was not under arrest but he was not free to go. Frye then searched defendant's car, with his permission, but found nothing illegal.

¶ 12 After being informed no contraband was found in his car, defendant again stated

his desire to go home. The officers again stated he was not free to leave. Hackman then told defendant if he would not produce the contents of his pockets the officers would have no choice but to call a canine unit. At that point, defendant admitted he had a glass bowl in his pocket, as well as a "bag of weed." The stop had taken approximately 24 minutes to that point. Defendant was placed in handcuffs and searched.

¶ 13           Upon searching defendant, Frye found a glass bowl, two small plastic bags containing suspected cannabis, and a cigarette pack containing a small amount of a white powdery substance. Defendant told Frye the powdery substance was "ecstasy." Defendant was placed under arrest. The total duration of the traffic stop was approximately 27 to 28 minutes from the initial contact between Frye and defendant to the point where defendant was placed under arrest. Lab tests on the white powder came back positive for methamphetamine.

¶ 14           At the conclusion of evidence, the trial judge made an oral ruling denying defendant's motion to suppress the evidence obtained by Frye and Hackman. The court stated the initial traffic stop was justified. However, the court found when Frye reapproached defendant's car after filling out the citations, the stop should have reasonably only taken another 30 seconds to one minute to complete. Thus, the traffic stop was unreasonably prolonged when Frye asked defendant to exit his vehicle.

¶ 15           Because the stop was unreasonably prolonged, the trial court next analyzed whether sufficient "specific articulable facts" showed defendant had committed or was about to commit a crime, so as to justify expanding the stop into an investigative detention. The court found Frye made enough observations to raise a reasonable suspicion defendant was under the influence of drugs while operating his vehicle, which is a crime. The court focused mainly on

observations of defendant's eyes made by Frye. Specifically, the court pointed to the fact defendant's pupils did not dilate as good evidence of impairment. The court was less impressed with the testimony regarding the "heat signature" and accorded it little weight. The court also made mention of defendant's previous arrest for a drug-related offense and his red, glassy eyes as specific facts supporting Frye's suspicions.

¶ 16 The trial court further found once Frye established specific articulable reasons for further detaining defendant, the pat down was proper, and upon discovering the suspected contraband, Frye could have legally arrested defendant and searched him further. The fact she did not was of little import in the court's opinion. The court concluded:

"[A]nything that happened after [the initial pat down] was the fruit not of an illegal detention but of a completely legal detention at that point; and so from that point on, the court finds that the officers clearly had probable cause to detain the defendant, and anything that was discovered in terms of the search of [defendant's] person is completely and appropriately discovered."

¶ 17 In January 2010, the trial court found defendant guilty after a stipulated bench trial. In March 2010, the court sentenced defendant to 24 months' probation. This appeal followed.

¶ 18 **II. ANALYSIS**

¶ 19 When reviewing a trial court's ruling on a motion to suppress evidence, a two-part standard of review applies. *People v. Harris*, 228 Ill. 2d 222, 230, 886 N.E.2d 947, 953-54 (2008). The trial court's findings of historical facts are reviewed for clear error, giving due

weight to any inferences drawn from those facts by the court and will not be reversed unless against the manifest weight of the evidence. *Id.* However, a reviewing court may assess the facts in relation to the issues and may draw its own conclusions. *Id.* Review of the trial court's ultimate ruling as to whether suppression is warranted is conducted *de novo*. *Id.*

¶ 20 "On a motion to suppress evidence, the defendant has the burden of proving the search and seizure were unlawful." *People v. McQuown*, 407 Ill. App. 3d 1138, 1143, 943 N.E.2d 1242, 1247 (citing 725 ILCS 5/114-12(b) (West 2008)). However, defendant need only make a *prima facie* showing of an illegal search in order to shift the burden to the State, which must then offer evidence to justify the intrusion. *Id.* Upon observing a driver commit a traffic violation, a police officer is justified in briefly detaining the driver to investigate the violation. *Id.* An otherwise valid traffic stop can become unlawful "if it is prolonged beyond the time reasonably required to complete the traffic stop." (Internal quotation marks omitted.) *Harris*, 228 Ill. 2d at 235, 886 N.E.2d at 956. However, merely finding a traffic stop was unreasonably prolonged does not end the inquiry. *People v. Baldwin*, 388 Ill. App. 3d 1028, 1035, 904 N.E.2d 1193, 1199 (2009).

¶ 21 "A traffic stop 'may be broadened into an investigative detention \*\*\* if the officer discovers specific, articulable facts which give rise to a reasonable suspicion that the defendant has committed, or is about to commit, a crime.'" *Id.* (quoting *People v. Ruffin*, 315 Ill. App. 3d 744, 748, 734 N.E.2d 507, 511 (2000)). In determining whether an investigatory stop was conducted in a reasonable manner, courts look to the totality of the circumstances and whether the means of investigation pursued were likely to quickly confirm or dispel the officers' suspicions. *People v. O'Dell*, 392 Ill. App. 3d 979, 986, 913 N.E.2d 107, 113 (2009).

¶ 22 In the instant case, defendant does not claim the underlying traffic stop was improper, and the State acknowledges when Frye reapproached defendant and asked him to exit his vehicle, the stop was unreasonably prolonged beyond the scope of the original traffic stop. Thus, defendant made a *prima facie* showing the seizure was unreasonably prolonged. The question then becomes whether the State showed specific, articulable facts to justify extending the initial traffic stop.

¶ 23 Frye testified defendant's eyes were glassy and bloodshot, which indicated possible drug or alcohol use. Further, Frye stated defendant's pupils did not dilate when she shined her flashlight into his eyes, which also indicated possible drug use. Upon running defendant's name through the computer in her car, Frye discovered he had a previous arrest for a drug-related offense. This further raised her suspicions. In addition, Frye testified to the presence of a "heat signature," which she claimed indicated possible drug use. Though the trial court found this evidence largely unpersuasive, it was consistent with drug use and Frye relied upon it in reaching the decision to investigate further.

¶ 24 All of these observations, when taken together, give rise to the reasonable inference defendant was operating a motor vehicle while under the influence of a drug. Thus, specific, articulable facts led Frye to believe defendant was committing the crime of driving under the influence. Under the circumstances, the pat-down of defendant and search of his car and person were reasonable methods of proving or dispelling those suspicions. In addition, once Frye discovered the glass pipe in defendant's pocket while conducting the pat-down, she had the authority to take him into custody.

¶ 25

### III. CONCLUSION

¶ 26           The record shows specific, articulable facts to allow the officers to transform defendant's traffic stop into an investigatory stop. We affirm the trial court's denial of defendant's motion to suppress. Because the State has successfully defended the judgment, we grant the State the statutory \$50 assessment as costs of this appeal.

¶ 27           Affirmed.

¶ 28 JUSTICE APPLETON, dissenting:

¶ 29 I respectfully dissent from the majority's decision because (1) the incriminating evidence came from a search of defendant's person and (2) the search of his person was the poisonous fruit of an unreasonably prolonged investigative detention. See *People v. Brownlee*, 186 Ill. 2d 501, 519 (1999); *People v. McQuown*, 407 Ill. App. 3d 1138, 1144 (2011).

¶ 30 I argue that the investigative detention was unreasonably prolonged because defendant had been pulled over for approximately 24 minutes when the police told him he would have to wait around even longer because the police were going to call a canine unit. The police could have called the canine unit much earlier, considering that it was at the very beginning of the stop that the police formed a suspicion that defendant was under the influence of drugs.

¶ 31 "[E]ffective crime prevention and detection requires that an officer be allowed to *briefly* detain and question individuals in order to investigate possible criminal behavior \*\*\*." (Emphasis added). *People v. Gherna*, 203 Ill. 2d 165, 181 (2003). A traffic stop, reasonable in its inception, can violate the fourth amendment by being unreasonably prolonged. *McQuown*, 407 Ill. App. 3d at 1144. As this court held in *McQuown*, 407 Ill. App. 3d at 1145-46, if a police officer pulls someone over for a traffic violation and, early on in the stop, becomes aware of facts leading the officer to suspect a drug violation, the officer must promptly call the canine unit at the time the officer becomes aware of those facts (if a canine unit is to be called), instead of delaying calling the canine unit and then making the person wait around for its arrival. The officer must "diligently pursue[] a means of investigation that [is] likely to confirm or dispel [the] suspicions quickly." (Internal quotation marks omitted.) *Id.* at 1145, (quoting *People v. O'Dell*, 392 Ill. App. 3d 979, 986 (2009)). In this case, a drug-sniffing dog was a means of

investigation that the police did not pursue with reasonable promptness, and, consequently, the investigative detention was unreasonably prolonged. See *id.* at 1146.

¶ 32 It might be argued, on the other hand, that waiting until the end to call the canine unit was not unreasonable because defendant might have consented to a search of his person, making a canine unit unnecessary. The problem with that argument is that, on the groundless assumption that the person will waive his or her right not to be subjected to an unreasonable search, the police may routinely drag out what should be a brief investigative detention. Another problem is that upon immediately forming a suspicion that defendant had drugs on his person, the police could have immediately requested defendant's consent to a search of his person and then immediately called for the dog when he said no.

¶ 33 The majority asserts that when Frye patted defendant down and felt the glass pipe in his pocket, "she had the authority to take him into custody," anyway. On the contrary, a glass pipe does not create probable cause, because tobacco, not merely marijuana, can be smoked in such a pipe. *State v. Scovill*, 608 N.W.2d 623, 633 (Neb. Ct. App. 2000); *Walker v. State*, 514 So. 2d 1149, 1151 (Fla. Dist. Ct. App. 1987); *People v. Jenkins*, 432 N.Y.S.2d 956, 958 n.3 (N.Y. App. Div. 1980); *Commonwealth v. Phillips*, 310 A.2d 290, 291 (Pa. Super. Ct. 1973); *State v. Parks*, 485 P.2d 1246, 1248 (Or. Ct. App. 1971). According to Frye's testimony, the car was filled with tobacco smoke.

¶ 34 For these reasons, I would overturn the trial court's denial of the motion to suppress, and I would reverse the conviction on the ground that it is based entirely on evidence that should have been suppressed.