

NOTICE

Decision filed 03/15/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0622

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Richland County.
)	
v.)	No. 08-CF-37
)	
NATHAN T. HARMON,)	Honorable
)	Robert M. Hopkins,
Defendant-Appellant.)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justices Welch and Donovan concurred in the judgment.

R U L E 2 3 O R D E R

Held: Because the police impoundment of the vehicle searched was legal, the trial court did not err in denying the defendant's motion to suppress evidence discovered during the search.

Following a stipulated bench trial, the defendant, Nathan T. Harmon, was convicted of theft (720 ILCS 5/16-1(a)(1) (West 2008)) and was sentenced to a term of five years of imprisonment in the Illinois Department of Corrections. He was also ordered to pay restitution to the victim of his crime in the amount of \$1,100. In this direct appeal, he raises only one issue, contending that evidence discovered during an inventory search of his vehicle should have been suppressed because the police impoundment of that vehicle was improper. For the reasons that follow, we affirm his conviction and sentence.

FACTS

On February 14, 2008, the defendant was charged, by information, with two counts of theft over \$300. The evidence relevant to the sole issue raised on appeal by the defendant was adduced at the defendant's preliminary hearing, at a hearing on the defendant's

subsequent motion to suppress evidence, and at the defendant's sentencing hearing. Accordingly, we shall recite pertinent testimony from each of those hearings. At the preliminary hearing, which was held on March 20, 2008, Deputy Johnny Robinson of the Richland County sheriff's department testified that while on duty at approximately 12:15 a.m. on February 12, 2008, he observed the defendant driving in Olney. Because Robinson knew that the defendant's driving privileges had been suspended, he decided to stop him. Robinson testified that due to icy road conditions, he had to go around a block to turn his squad car around and that when he caught up with the defendant, the defendant had parked his vehicle, gotten out, and begun walking. As to where the defendant's vehicle was parked, when Robinson was asked by counsel for the defendant if the defendant's vehicle was parked in a driveway or on the side of the road, Robinson testified that the vehicle was "actually in the middle of the road," that it was "technically parked in the middle of the road" and "[s]till on [the] city roadway where it was parked at." He also testified about the subsequent arrest of the defendant, the decision by his supervisor, Captain Hout, to impound and tow the defendant's vehicle, and how in the process of conducting an inventory search of the defendant's vehicle he discovered the stolen oil field equipment that led to the theft charges against the defendant. Additional stolen property was found after consensual searches of other locations had been conducted. The propriety of those searches is not contested.

At a hearing held on February 19, 2009, on the defendant's motion to suppress the evidence found in the defendant's vehicle, Robinson reiterated his preliminary hearing testimony. When questioned by counsel for the defendant about where the defendant parked his vehicle, Robinson testified that the defendant parked the vehicle in "the roadway there." During cross-examination by the State, Robinson clarified, "The vehicle was actually sitting on Fair Street." He later reiterated that it was "parked basically in the middle of the intersection" and that it "was sitting on the road." At the conclusion of the hearing, the judge

stated that he needed "to be clear whether or not this car was parked legally or whether it was out in the middle of the street and therefore would have to be moved in any case." The judge then stated that he was not clear on this point. Counsel for the defendant stated that he believed that the issue would become clear to the judge when the judge read "the testimony of the officer from the preliminary hearing." The judge then stated that he would reread the testimony from the preliminary hearing and would take the matter under advisement.

On March 12, 2009, by docket entry, the judge entered an order denying the defendant's motion to suppress. In the order, the judge stated that the evidence before him "tended to show that the vehicle was located on the city street and that, its driver having been arrested, it was subject to being towed and impounded." Thus, the judge reasoned, the inventory search was legal and the evidence found during the search was admissible. On April 16, 2009, the defendant appeared in court to plead guilty to a felony not relevant to this appeal and to participate in a stipulated bench trial on the theft charge that is the subject of this appeal. The parties presented no additional evidence, resting instead on the evidence presented at the preliminary hearing and the suppression hearing. The defendant was found guilty and a sentencing hearing was scheduled.

The sentencing hearing was ultimately conducted on November 12, 2009. Robinson testified yet again about the location of the defendant's vehicle at the time of the defendant's arrest, stating on cross-examination by counsel for the defendant that the vehicle was "right in the middle of Fair Street" and was "basically right at the intersection of Fair and Brentwood." When asked if someone could have gotten around the defendant's vehicle to reach either of the two houses farther down the street, Robinson testified that one could if one "drove in the yard on the other side." He added that he would "never leave a vehicle sitting in the roadway." When asked if he had testified earlier that the vehicle was not illegally parked, Robinson stated: "It was not illegally parked[;] *** it was parked in the

roadway is all I'm saying. That's what I said before, too." After counsel for the defendant accused Robinson of having testified that the vehicle was not illegally parked, Robinson stated that he did not recall so testifying and that he recalled the vehicle "being parked in the middle of the roadway." At the conclusion of the hearing, the defendant was sentenced as described above, and this timely appeal followed.

ANALYSIS

The sole issue raised on appeal by the defendant is his contention that the evidence seized during the inventory search of his vehicle should have been suppressed because the "police had no authority to impound the car[] and therefore no authority to conduct an inventory search." Our review of a trial court's ruling on the motion to suppress involves mixed questions of fact and law. See *People v. Outlaw*, 388 Ill. App. 3d 1072, 1080 (2009). We afford "great deference" to findings of fact made by the trial court "and will reverse those findings only if they are against the manifest weight of the evidence." *Outlaw*, 388 Ill. App. 3d at 1080. On the other hand, we review *de novo* the trial court's legal conclusion regarding whether suppression is required under the set of facts before the trial court. *Outlaw*, 388 Ill. App. 3d at 1080.

In the case at bar, the record before the trial judge, and before this court on review, leads us to conclude that the trial judge's factual determinations were not against the manifest weight of the evidence and must be upheld. As detailed above, the judge well understood that the relevant question before him was whether the defendant's vehicle was, as the judge put it, "parked legally or whether it was out in the middle of the street and therefore would have to be moved in any case." Although it is true, as the defendant contends, that Robinson never directly testified that the vehicle was "illegally parked," it was not his duty to testify regarding legal conclusions—only regarding the facts he observed on the night in question. As a factual matter, Robinson testified multiple times, at multiple hearings, that the

defendant's vehicle was parked in the middle of a public city roadway. He testified that the only way a driver could get around the defendant's vehicle would be to drive through an adjacent yard. No testimony was adduced that contradicted Robinson's testimony with regard to the location of the vehicle. The judge's factual conclusion that the evidence before him "tended to show that the vehicle was located on the city street" was certainly not against the manifest weight of the evidence.

Likewise, our *de novo* review of the trial judge's legal conclusion that suppression was not appropriate under the set of facts before him leads us to conclude that the judge applied the law correctly and did not err in denying the defendant's motion to suppress. "An inventory search is a judicially created exception to the warrant requirement of the fourth amendment." *People v. Hundley*, 156 Ill. 2d 135, 138 (1993). For such a search to be valid, however, three requirements must be met. *Hundley*, 156 Ill. 2d at 138. The only requirement the defendant contends was not met in the case at bar is the requirement that "the original impoundment of the vehicle must be lawful." *Hundley*, 156 Ill. 2d at 138. However, as the appellate court long ago held, "It is beyond challenge that the police have authority to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience." *People v. Ursini*, 245 Ill. App. 3d 480, 483 (1993). The facts recited above make it clear that the defendant's vehicle, which was essentially abandoned in the middle of a public street so that the defendant could attempt to elude Deputy Robinson, was both impeding traffic and threatening public safety and convenience. There was no error.

CONCLUSION

For the foregoing reasons, we affirm the defendant's conviction and sentence.

Affirmed.