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).

2012 IL App (3d) 110757-UB

Order filed August 13, 2012
Modified upon denial of rehearing November 28, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

	)	Appeal from the Circuit Court
CITY OF BRAIDWOOD,	)	of the 12th Judicial Circuit
	)	Will County, Illinois
Plaintiff-Appellant,	)	
	)	Appeal Nos. 3-11-0757, 3-11-0758
v.	)	Circuit Nos. 10-OV-7200, 10-TR-89411
	)	
KAYLA WILLIAMS,	)	Honorable
	)	Raymond Nash,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: City of Braidwood cannot appeal a judgment of acquittal after defendant was found not guilty of the ordinance violations of fleeing and eluding and possession of drug paraphernalia.

¶ 2 The City of Braidwood (the City) filed three ordinance violations against defendant, Kayla Williams, for speeding, fleeing and eluding, and possession of drug paraphernalia following a traffic stop. The trial court granted defendant's motion to suppress the contraband

seized during the traffic stop. After defendant stipulated to a finding of guilty for speeding, the court found defendant not guilty of both fleeing and eluding and possession of drug paraphernalia. The City appeals the trial court's findings of not guilty, and the court's ruling granting defendant's motion to suppress. We dismiss the appeal for want of jurisdiction.

¶ 3 FACTS

¶ 4 On September 22, 2010, officer Michael Gatto, a City of Braidwood police officer, stopped defendant for speeding. Subsequently, the officer issued citations to defendant for speeding, fleeing and eluding, and possession of drug paraphernalia. On April 18, 2011, defendant filed a motion to quash arrest and suppress the contraband seized during the traffic stop which the trial court initially denied. The court later reconsidered that ruling on September 15, 2011, pursuant to defendant's request, and allowed the motion to suppress. The City did not file an interlocutory appeal regarding this ruling. *People v. Young*, 82 Ill. 2d 234 (1980).

¶ 5 Based on a stipulation presented to the court following the suppression ruling, the trial court found defendant guilty of speeding. On September 29, 2011, following a bench trial on the two remaining ordinance violations, the court found defendant not guilty of fleeing and eluding and possession of drug paraphernalia.

¶ 6 On the same date, September 29, 2011, the City filed a motion for a new trial on the grounds that the trial court improperly allowed defendant's motion to suppress evidence, and allowed defendant to invoke her Fifth Amendment privilege against self-incrimination with regard to the hearing on the motion to reconsider the ruling on the motion to suppress. The trial court denied the City's motion for a new trial.

¶ 7 The City filed a timely notice of appeal on October 7, 2011 based on Illinois Supreme

Court Rule 301 (eff. Feb. 1, 1994). We dismiss the appeal for lack of jurisdiction.

¶ 8 ANALYSIS

¶ 9 On appeal, the City argues the trial court erred when it denied the City's motion for a new trial because the court improperly granted defendant's motion to quash arrest and suppress evidence on September 15, 2011, and also improperly permitted defendant to invoke her Fifth Amendment privilege against self-incrimination during a motion hearing. Defendant has not filed a brief or a motion to dismiss the appeal in this case.

¶ 10 First, we note that a reviewing court has a duty to ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009). Therefore, before addressing the substance of this appeal, we examine whether the City is entitled to appeal the trial court's decision after the trial court found defendant not guilty of violating the municipal ordinances prohibiting fleeing and eluding and possession of drug paraphernalia. In this case, defendant was charged with ordinance violations for fleeing and eluding and unlawful possession of drug paraphernalia, and she was acquitted of both charges.

¶ 11 The Illinois Constitution provides that "after a trial on the merits in a criminal case, there shall be no appeal from a judgment of acquittal." Ill. Const. 1970, art. VI, §6. In addition, our lawmakers have established that rules of criminal procedure must be followed in a prosecution for ordinance violations where a conviction could result in incarceration. 65 ILCS 5/1-2-1.1 (West 2010); see also *County of Peoria v. Schielein*, 87 Ill. App. 3d 14, 16 (1980). For this reason, we conclude that we do not have jurisdiction to consider an appeal from a judgment of acquittal in this case.

¶ 12 The City argues in its petition for rehearing that Illinois Supreme Court Rule 579 (eff. Dec. 7, 2011) gives this court jurisdiction over this case involving ordinance violations. Although Rule 579 was enacted two months after the City filed its notice of appeal in this case, we elect to consider the City's argument in the interests of justice.

¶ 13 Specifically, Rule 579 provides, "[e]ither party shall have the right to appeal any final judgment entered in an ordinance violation case." Ill. S. Ct. R. 579(d) (eff. Dec. 7, 2011). However, the committee comments to Illinois Supreme Court Rule 570, which governs the applicability of Rule 579, state "[r]ules 570 through 579 apply to the prosecution of ordinance violations not punishable by a jail term *and other than traffic and conservation offenses.*" (Emphasis added.) Ill. S. Ct. R. 570, Committee Comments (eff. Dec. 7, 2011).

¶ 14 Under the plain language of the committee comment to Rule 570, Rule 579 is inapplicable to traffic ordinance violations. Clearly, fleeing and eluding is considered a traffic offense which does not trigger Rule 579.

¶ 15 Section 1-8 of the City Code also provides that any violation of the municipal code, where a specific penalty is not set forth, carries a punishment of a "fine not exceeding $750.00 and/or imprisonment not exceeding six months." Braidwood City Code § 1-8 (eff. Nov. 11, 2008). The unlawful possession of drug paraphernalia, prohibited by section 58-255[1] of the City Code, provides for a non-specific "*minimum* fine of $750.00." ((Emphasis added.) Braidwood City Code § 58-255 (eff. Nov. 11, 1997). Since the City Code provides for the possibility of jail, following a conviction for the possession of drug paraphernalia as an ordinance violation, Rule

[1]The citation issued to defendant incorrectly provided that the offense of possession of drug paraphernalia was a violation of section 58-256 of the Braidwood City Code.

579 is also inapplicable.

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, the appeal from the judgment of the Will County circuit court is dismissed.

¶ 18 Appeal dismissed.