

FIRST DIVISION
MAY 13, 2013

No. 1-11-2730

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 11 CR 6242
)	
JOHNNY SPENCER,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellee.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court erred in suppressing evidence where trial court's legal determination was incorrect under *People v. Fitzpatrick*, 2013 IL 113449. Cause remanded for further proceedings.

¶ 2 Defendant Johnny Spencer was charged with one count of possession of a controlled substance (less than 15 grams of a substance containing benzylpiperazine), and filed a motion to suppress, which the trial court granted following an evidentiary hearing. The State has appealed pursuant to Illinois Supreme Court Rule 604(a)(1) (eff. Feb. 6, 2013), contending that probable cause existed for defendant's arrest and search.

¶ 3 On March 29, 2011, Chicago police stopped defendant's car near 4938 West Quincy Street, in Chicago, Illinois, because he failed to stop at a stop sign. When the police asked defendant for a driver's license and proof of insurance, defendant failed to produce those items. The police then arrested defendant, performed a custodial search, and found five ecstasy pills and five bags of cannabis on defendant's person. Defendant made inculpatory statements to the police at the police station. Defendant actually did have a valid driver's license and insurance, but forgot to have the driver's license with him that day.

¶ 4 On May 19, 2011, defendant filed a written motion to suppress the contraband and the inculpatory statements, and on August 17, 2011, a hearing on the motion to suppress was held. At the hearing, one of the arresting officers, Officer Rojas, made an in-court identification of defendant as the driver of the car, but mistakenly referred to him as Ronald Ward (Ward), who was actually the passenger. Officer Rojas explained that, in the arrest report and the vice case report, he incorrectly wrote that defendant was the passenger and that Ward was the driver. He testified that three days before the hearing, Officer Rojas discovered the error and prepared a supplementary report correcting the error and clarifying that defendant was the driver and Ward was the passenger. However, even in the erroneous reports, Officer Rojas had correctly written defendant's name in the offender's box. Defendant's girlfriend testified at the hearing on the motion to suppress that there "absolutely" was proof of insurance inside the car in March 2011, but that she was not present in the car at the time of the arrest.

¶ 5 The trial court granted defendant's motion to suppress. The trial court stated:

"I don't believe the defendant had the ability—I mean, that the

officers could do a full-blown arrest and search of the defendant once they indicated that they found out and learned that he had a driver's license, and then when we put in the credibility issues and the report issued—inconsistent issues, the motion is granted."

¶ 6 On appeal, the State contends that the police officers had probable cause to arrest defendant. The State further contends that the factual basis of the court's ruling was manifestly erroneous because the police did not learn that defendant had a valid driver's license until after they arrested and searched him.

¶ 7 Defendant responds that a full-blown arrest was not warranted for the offenses with which he was charged because traffic stops are analogous to investigative stops, not formal arrests. Defendant maintains that a minor traffic stop does not justify a search of the detainee or the motor vehicle, and that the state constitution should be interpreted to afford broader protection under these circumstances. Defendant further responds that the trial court's resolution of credibility questions is a basis for affirming its decision because the evidence was inconsistent as to whether defendant was the driver. He argues that if the State failed to prove that defendant was the driver, then even a *Terry* (*Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)) pat down of defendant as a passenger would have been improper unless the officer had a reasonable and articulable suspicion that the passenger was armed and dangerous, which had not been shown in this case.

¶ 8 The State replies that the court's decision was based on its erroneous legal finding, subject to *de novo* review, that the custodial search was invalidated when the officers learned that defendant had a valid driver's license. The State maintains that the police had probable cause to arrest

defendant for failure to stop at a stop sign, which provided a valid reason to arrest and search him. The State argues that the officers' discovery that defendant had a valid driver's license, after the arrest and search, only invalidated the traffic citation but did not invalidate the search. The State further argues that the credibility finding was manifestly erroneous.

¶ 9 On his motion to suppress, the defendant has the burden of proving that the police lacked probable cause for the search and seizure. 725 ILCS 5/114-12(b) (West 2010). Generally, the trial court's factual findings and credibility determinations on a motion to suppress will be reversed only if manifestly erroneous, and the legal determination of whether the facts warrant suppression is reviewed *de novo*. See *People v. Jones*, 215 Ill. 2d 261, 268 (2005).

¶ 10 The standard for determining probable cause (see 725 ILCS 5/107-2(1)(c) (West 2010)) is whether a reasonably cautious person with the police officer's knowledge would believe that a crime had been committed and that the defendant committed it. See *People v. Grant*, 2013 IL 112734, ¶ 11.

¶ 11 In this case, a reasonable person in the position of Officer Rojas would have believed that defendant had committed a crime. Officer Rojas saw defendant fail to stop at a stop sign. At that point, probable cause existed for defendant's arrest because the officer had observed defendant commit an offense. Even assuming that defendant was only arrested for the offenses of failure to produce a valid driver's license and proof of insurance, there was probable cause for defendant's arrest because defendant failed to produce those items upon request by the police.

¶ 12 Reviewed *de novo*, the trial court's legal determination that the facts warranted suppression was incorrect. In *People v. Fitzpatrick*, 2013 IL 113449, the defendant was arrested for a petty

offense, namely, walking in the middle of the street. The arresting officer testified that the defendant was not doing anything threatening and that he had no particular belief that the defendant was armed, but that the officer patted the defendant down for weapons and then arrested him. At the police station, the defendant was searched and cocaine was found in his sock. The defendant filed a motion to suppress the cocaine, which the trial court denied. The appellate court and the Illinois Supreme Court affirmed. The supreme court observed that, "since 1962, Illinois has consistently recognized that police are allowed to conduct a custodial search after an arrest for a traffic or petty offense." *Id.* at ¶ 19. The court further observed that custodial arrests and searches are reasonable after arrests for petty or traffic offenses. *Id.* The defendant in *Fitzpatrick*, like defendant in the present case, tried to draw an analogy to *People v. Krueger*, 175 Ill. 2d 60 (1996). However, the supreme court in *Fitzpatrick* rejected that analogy because *Krueger* concerned the exclusionary rule but not searches and seizures after traffic stops. *Id.* at ¶¶ 16, 18. Thus, in *Fitzpatrick*, the Illinois Supreme Court rejected defendant's arguments that the state constitution affords broader protection to him in cases involving a minor traffic offense because those circumstances could not support a full custodial arrest.

¶ 13 We find that application of *Fitzpatrick* to the present case discloses that the trial court made an error of law by ruling that a custodial search could not follow an arrest for a traffic offense which was subject only to a fine. Here, defendant was arrested for failure to stop at a stop sign. Regardless of whether he had a valid driver's license or whether there was proof of insurance in the car, the police had probable cause to arrest him for failure to stop at a stop sign, and the search was proper incident to that arrest. Therefore, under the circumstances, the trial court erroneously granted the

1-11-2730

motion to suppress.

¶ 14 Finally, the trial court in its ruling commented on the credibility of the witnesses. We can infer that the court found the State's witnesses incredible. However, we cannot and need not speculate as to the trial court's credibility findings. As discussed, we have determined based on other grounds, that it was error for the court to suppress the evidence.

¶ 15 For the foregoing reasons, the order of the circuit court is reversed, and the cause is remanded for further proceedings.

¶ 16 Order reversed; cause remanded.