

No. 1-12-1549

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	Nos. 11 M3 2940
)	YT-305-995
)	
ERIC YATES,)	Honorable
)	Hyman I. Riebman,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* Police officer was justified in a *Terry* stop of defendant where officer observed that defendant, who was in the driver's seat of a vehicle, had glassy, bloodshot eyes with dilated pupils, was looking around nervously, and had next to him a pack of cigars of a brand commonly used for smoking marijuana.

¶ 2 In a bench trial, defendant Eric Yates was convicted of driving while under the influence of cannabis, possession of drug paraphernalia, and possession of not more than 2.5 grams of a substance containing cannabis. He was given three concurrent periods of one year's supervision for those offenses. On appeal, he contends that the trial court erred in denying his motion to

quash his arrest and suppress the resulting evidence. Defendant argues that the police officer illegally detained him by making him step out of his car where the officer did not have a reasonable suspicion that defendant had committed an offense.

¶ 3 Prior to trial, defendant successfully petitioned to reinstate his driving privileges, which were rescinded after he was arrested. Because the testimony at that hearing is relevant to the determination of whether the police had a reasonable suspicion that defendant had committed an offense, we will summarize it. Mount Prospect police officer Michael Angarola testified that at 1:08 a.m. on July 26, 2011, he observed a car parked in front of St. Thomas Beckett church. There were a number of occupants in the car, and its interior was darkened. Officer Angarola testified that the police often made drug arrests in the parking lot behind the church and in a nearby park. He parked his police car about five to seven yards behind the car he was investigating, and approached the driver's side. He spoke to defendant, who was in the driver's seat, asking him if he was alright. Because it was dark, the officer used a flashlight to look inside the car, but he did not shine the flashlight directly into defendant's face. The driver's-side window was rolled down, and Officer Angarola observed that defendant's eyes were red, bloodshot, and glassy and his pupils were dilated.¹ Based upon Officer Angarola's training, he believed that these were signs that defendant could be under the influence of cannabis. Lying on the center console was a package of Swisher Sweet Cigarillos. Officer Angarola testified that in his experience, this particular brand of cigarillos was used to smoke cannabis. The tobacco would be removed from the cigarillo, and cannabis would be placed inside the wrapper.

¶ 4 The defense subsequently moved to suppress the evidence obtained as the result of this stop of defendant. The parties stipulated to the testimony heard at the summary suspension

¹The officer also identified a photograph taken at the police station, which he testified depicted defendant's eyes dilated to the same degree as they were when defendant was in his car.

hearing and Officer Angarola was then recalled. He testified that when he asked defendant if he was alright, defendant replied that he was lost. The officer noticed that defendant was looking around, and appeared to be nervous. When asked "were the keys in this vehicle?" the officer responded "yes." Based upon defendant's condition and the fact that the Swisher Sweet Cigarillos were in the car, Officer Angarola suspected that defendant was under the influence of cannabis or another drug, and that cannabis or drug paraphernalia might be inside the car. The officer requested a backup officer and asked defendant to get out of the car, which he did.

¶ 5 Officer Angarola asked defendant if there was cannabis in the car, and defendant told him that the passenger who had been sitting next to him might have some. Defendant also said that a "bowl" and a "one-hitter" were in the car. According to Officer Angarola, these were pipes used to smoke cannabis. Defendant then consented to a search of his person and his car. Officer Angarola recovered a small digital scale from defendant's pocket. Defendant told the officer that he used this scale to make sure he was not "shorted" when he purchased cannabis. In defendant's car, Officer Angarola recovered what he believed to be cannabis, two cannabis pipes, and a grinder used to process cannabis for smoking. Defendant told him that the pipes belonged to him and that he had last smoked cannabis two hours earlier. Based upon this information, Officer Angarola arrested defendant and took him to the police station.

¶ 6 The trial court found that Officer Angarola was free to walk up to defendant's car and ask him questions. When he observed defendant's bloodshot, glassy eyes with dilated pupils and saw that the keys were in the car, he had a reasonable suspicion that defendant had been driving while under the influence of drugs and therefore had a right to detain him briefly for questioning.

¶ 7 We will also summarize the trial evidence because it is relevant to a pretrial motion to suppress. *People v. Sims*, 167 Ill. 2d 483, 500 (1995). The parties stipulated to the testimony of Officer Angarola, which was substantially the same as his testimony at the two pretrial hearings.

The stipulation did add some additional details to the officer's testimony. He testified that a small amount of marijuana was discovered in the search of defendant's person. After he asked defendant to step out of his car, he asked defendant to perform some field sobriety tests, which defendant failed. At the police station, defendant gave a urine sample. The parties stipulated that a forensic scientist with the Illinois State Police Crime Lab would testify that she determined that the sample contained tetrahydrocannabinol (THC), an ingredient of cannabis. Based upon this testimony, the court convicted defendant of driving under the influence of cannabis, possession of drug paraphernalia, and possession of cannabis, and placed him on three concurrent terms of one year's supervision. This appeal followed.

¶ 8 Defendant contends that Officer Angarola did not have a reasonable suspicion that defendant had committed or was about to commit an offense when he asked defendant to get out of his car, an act which placed him under temporary seizure for questioning. Under *Terry v. Ohio*, 392 U.S. 1, 22 (1989), a police officer may briefly detain an individual for questioning if the officer has a reasonable suspicion, based upon specific and articulable facts, that the individual has committed or is about to commit a crime. *People v. Hackett*, 2012 IL 111781, ¶ 201; *People v. Linley*, 388 Ill. App. 3d 747, 749 (2009). Our review of the trial court's ultimate finding on a motion to suppress is *de novo*. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). We will affirm the court's findings of fact if they are not against the manifest weight of the evidence. *People v. Harris*, 228 Ill. 2d 222, 230 (2008).

¶ 9 Defendant contends, and the State agrees, that when he was told to get out of his car, he was being seized or detained within the meaning of *Terry*. *People v. Luedemann*, 222 Ill. 2d 530, 557 (2006); *People v. Robinson*, 368 Ill. App. 3d 963, 973-74 (2006). The issue is whether, at that time, Officer Angarola had a reasonable suspicion, based upon specific and articulable facts, that defendant had committed or was about to commit a crime. *Luedemann*, at 544.

¶ 10 Defendant cites to *People v. Gherna*, 203 Ill. 2d 165 (2003) as supporting his contention that he was unlawfully seized. However, in *Gherna* it was determined that the police lawfully seized the defendant in her car in order to investigate a possible instance of underage drinking by the defendant's young passenger. *Id.* at 170-71. The police were then found to have unlawfully prolonged that seizure after they determined that there was no underage drinking, by questioning the defendant further and looking inside the defendant's vehicle from the outside. *Id.* at 185-186. Similarly, in *People v. Torres*, 347 Ill. App. 3d 252, 263-65 (2004), also cited by defendant, police officers investigated a possible fight in a truck between a man and a woman. But when they determined, upon questioning the woman, that she was not in any danger, they persisted in their investigation by ordering the defendant out of the car and running a name check on him. *Id.* at 265. As in *Gherna*, the reviewing court found that the officers rendered a valid *Terry* stop invalid by prolonging it beyond the time when their suspicions were allayed. *Id.*

¶ 11 Here, in contrast to *Gherna* and *Torres*, there was no extended detention of defendant once Officer Angarola determined that he had reason to believe defendant had been driving under the influence of drugs. Defendant was asked to get out of his car and then questioned, at which point he admitted that a passenger might have cannabis on his person and that the car also contained two pipes used to smoke cannabis. He also consented to a search of his person and his car, which uncovered cannabis and drug paraphernalia. This was a justifiable *Terry* stop which developed into probable cause to arrest immediately after defendant was questioned. There was no illegal prolonged detention after police suspicion was allayed, as in *Gherna*. Defendant's citation to *People v. Beverly*, 364 Ill. App. 3d 361 (2006) is also unavailing. In contrast to the many elements supporting a reasonable suspicion of criminal activity in this case, the court in *Beverly* found that the police officers who made a *Terry* stop and seizure did not have a reasonable suspicion justifying that stop where the defendant was parked in a private parking lot

during the daytime in a high-crime area for 10 to 15 seconds, without a parking sticker on his car. *Id.* at 372-74.

¶ 12 Officer Angarola had ample grounds for reasonably suspecting that defendant had been driving under the influence of drugs. When Officer Angarola told defendant to get out of the car, he had already observed that defendant's eyes were bloodshot and glassy and his pupils were dilated. According to the officer's training, these were possible indicia of drug use. In addition, he saw a box of Swisher Sweets Cigarillos lying on the center console of the car. The officer knew from his experience that marijuana users would use this brand of cigarillos by emptying them of tobacco and refilling them with marijuana. Defendant was in the driver's seat and the car keys were in the car. Finally, the officer observed that defendant was looking around and appeared nervous. *People v. Moore*, 341 Ill. App. 3d 804, 810-811 (2003) (nervous behavior is one valid factor supporting a *Terry* stop). These were specific, articulable facts giving the officer a reasonable suspicion that defendant had been driving under the influence of drugs.

¶ 13 Our conclusion is supported by what was deemed sufficient to support a *Terry* stop in *Village of Lincolnshire v. Kelly*, 389 Ill. App. 3d 881, 887 (2009), where the defendant was stopped for speeding, but was found to have a strong odor of alcohol and admitted to having drunk one drink. See also *People v. Jackson*, 2012 IL App (1st) 103300 §§ 42, 49 (the defendant's presence in a high-crime area and his bizarre behavior supported a *Terry* stop); *People v. Bruni*, 406 Ill. App. 3d 165, 171-72 (2010) (*Terry* stop was justified where the defendant's eyes were "glossy," there was a faint odor of alcohol from the passenger compartment, and the defendant admitted that he drank one beer).

¶ 14 Here, the officer had grounds to detain defendant for a reasonable period for questioning, and he did so when he asked defendant to get out of the car. When Officer Angarola asked defendant if there was cannabis in the car, defendant told him that one of the passengers might

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have some, and that the car also contained a "bowl" and a "one-hitter," two types of pipes used to smoke cannabis. Defendant then consented to a search of the car and his person. It was in this search that the police found the incriminating items which defendant seeks to suppress.

¶ 15 We find that the police properly detained defendant for brief questioning after finding sufficient evidence that he may have been driving under the influence of drugs. As the result of that questioning, the officer developed probable cause to arrest defendant. For this reason, we find no basis for quashing defendant's seizure or suppressing the evidence found as the result of that seizure.

¶ 16 For the reasons set forth in this order, we affirm the judgment of the trial court.

¶ 17 Affirmed.