2013 IL App (2d) 120669-U
No. 2-12-0669
Order filed March 13, 2013

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Boone County.
Plaintiff-Appellant,	)	
	)	Nos. 09-DT-104
	)	09-TR-4963
v.	)	09-TR-4964
	)	09-TR-4965
JACOB D. KUDLACIK,	)	Honorable John H. Young,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: We lacked jurisdiction of the State's appeal: the trial court's ruling, that defendant could argue that the police did not comply with an applicable requirement that the arresting officer's squad car be equipped with a recording device, did not have the substantive effect of suppressing the arresting officer's testimony about the arrest, which testimony the court specifically allowed.

¶ 2 The State appeals, under Illinois Supreme Court Rule 604(a)(1) (eff. July 1, 2006), from a ruling of the circuit court of Boone County, which denied the State's motion *in limine*, allowing defendant to argue to a jury that, at the time of his arrest for driving under the influence of alcohol

(DUI) (625 ILCS 5/11-501(a)(2) (West 2008)), section 30 of the State Police Act (the Act) (20 ILCS 2610/30 (West 2008)) required police to have functioning audio and video recording equipment in all patrol vehicles and that the arresting officer's patrol vehicle did not have the equipment. The State argues that the trial court's interpretation of section 30 of the Act, more specifically its effective date, is contrary to the Act's plain language. For the reasons that follow, we dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 Defendant was arrested on April 16, 2009, for DUI (625 ILCS 5/11-501(a)(2) (West 2008)). He was also ticketed for speeding (625 ILCS 5/11-601(b) (West 2008)), improper lane usage (625 ILCS 5/11-709(a) (West 2008)), and failure to signal when required (625 ILCS 5/11-804 (West 2008)). The arresting officer was a state trooper. At the time of defendant's arrest, the arresting officer's vehicle was not equipped with video recording equipment.

¶ 5 On May 12, 2010, the parties appeared for a hearing on defendant's motions to quash arrest and to suppress statements. Although there is no transcript of this hearing in the record, defendant represents that, during the hearing, he orally moved to suppress evidence, based on the failure to record the arrest. The trial court denied the motion. The court suggested that it would instead entertain a request for a jury instruction directing that a negative inference may be drawn as a result of the failure to make a video of the arrest.

¶ 6 On June 20, 2012, the day the matter was set for trial, the State moved *in limine* to prevent defendant from arguing to a jury that, at the time of defendant's arrest, section 30 of the Act (20 ILCS 2610/30 (West 2008)) required police to have functioning audio and video recording equipment in all patrol vehicles. According to the State, although section 30 of the Act did require such equipment, the compliance date was June 1, 2009, *after* defendant's arrest. In response,

defendant moved *in limine* to give a modified jury instruction concerning the State's failure to produce a video of the arrest.

¶ 7 The trial court ruled as follows. First, it found that section 30 of the Act required police vehicles to have recording equipment as of December 15, 2008, prior to defendant's arrest. It then reiterated its earlier ruling that it would not, as a sanction, bar the arresting officer from testifying to anything that would have been recorded. However, it found that defendant may "argue to the jury that the statute was in place and that there was not a recording capability in the squad car." The court considered defendant's proposed jury instruction but made no ruling on whether it would be allowed.

¶ 8 After the court's ruling, the State moved to continue the trial, so that it could file a motion to reconsider the court's ruling. The State further indicated that it wished to prepare a certified question for appeal concerning the effective date of section 30 of the Act. The court denied the State's motion, stating: "I don't find that a certified question as to this would materially advance the ultimate termination of the litigation."

¶ 9 Thereafter, the State announced that it refused to participate in the trial. Defendant waived his right to a jury. After commencement of the bench trial, the State refused to call witnesses. Defendant moved for a directed finding of not guilty. The court granted defendant's motion. In so doing, the court specifically stated: "Just for the record while I ruled about inferences on video cameras I don't believe those are elements of the case. They still could have called the trooper."

¶ 10 The State filed a notice of appeal and a certificate of impairment.

¶ 11 II. ANALYSIS

¶ 12 The State argues that the trial court's interpretation of section 30 of the Act (20 ILCS 2610/30 (West 2008)) is contrary to the Act's plain language. According to the State, under the Act, police

agencies had until June 1, 2009, *after* defendant's arrest date, to install the required recording equipment.

¶ 13 We first consider whether we have jurisdiction over this appeal. The State claims that we have jurisdiction under Rule 604(a)(1). In a criminal prosecution, the State may, under Rule 604(a)(1), obtain review of an order that suppresses evidence where the State certifies that the suppression substantially impairs the State's ability to prosecute the case. *People v. Drum*, 194 Ill. 2d 485, 488 (2000); *People v. Young*, 82 Ill. 2d 234, 247 (1980). "The issue of jurisdiction, which involves the interpretation of Supreme Court Rule 604(a)(1), is subject to *de novo* review." *People v. Baltimore*, 381 Ill. App. 3d 115, 123 (2008); see also *Drum*, 194 Ill. 2d at 488.

¶ 14 The State argues that the "substantive effect" of the trial court's ruling was a suppression of the officer's testimony and thus jurisdiction is proper. According to the State, "the trial court's ruling effectively suppressed the officer's testimony because a negative inference equates to the officer's testimony having little to no weight. The substantive effect of the judge's ruling suppresses the trooper's credibility as it negates the strength of the officer's testimony. The officer's testimony regarding the traffic stop of the Defendant and the Defendant's field sobriety test are at the crux of a DUI case. This testimony is essential for the State to be able to proceed to trial." We disagree with the State and note that there was no suppression of evidence here. In fact, the court made clear that the trooper would be allowed to testify concerning defendant's arrest.

¶ 15 The State's reliance on *People v. Phipps*, 83 Ill. 2d 87, 90 (1980), does not warrant a different conclusion. There, the supreme court considered whether the trial court's ruling that no testimony would be permitted from certain witnesses unless they waived their privilege in relevant personnel records was appealable under Rule 604(a)(1). *Id.* at 90-91. More specifically, the court considered

whether the substantive effect of the court's ruling prevented evidence from being admitted. *Id.* The court held that "as presently constituted, the trial would proceed without these witnesses unless some further acts were performed. Evidence is thus being 'suppressed' as of the moment." *Id.* at 91. Accordingly, an appeal on the merits was allowed. Under *Phipps*, even a conditional exclusion of can trigger an appeal under Rule 604(a)(1). Here, however, no evidence was excluded. As noted, notwithstanding the absence of any video recording of defendant's arrest, the court made clear that the trooper would be allowed to testify concerning the arrest.

¶ 16 The State also argues, relying on *People v. Krause*, 273 Ill. App. 3d 59 (1995), that the mere filing of a certificate of impairment makes the issue appealable under Rule 604(a)(1). While *Krause* does hold that an appellate court will not examine the extent to which the State's case is impaired following the State's certification that its case has been substantially impaired, that does not remove the requirement that there must in fact be a suppression of evidence. Thus, *Krause* does not support the State's position.

¶ 17 Accordingly, based on the foregoing, we hold that we do not have jurisdiction over the appeal.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we dismiss the appeal.

¶ 20 Appeal dismissed.