

2013 IL App (2d) 120858-U  
No. 2-12-0858  
Order filed May 20, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-TR-68415
	)	
THOMAS McNEALEY,	)	Honorable
	)	Michael B. Betar,
Defendant-Appellee.	)	Judge, Presiding.

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PRESIDING JUSTICE BURKE delivered the judgment of the court.  
Justices McLaren and Spence concurred in the judgment.

**ORDER**

- ¶ 1     *Held:* The trial court erred in granting defendant's motion to quash and suppress, as a police officer did not effect a seizure when he requested and ran a check on defendant's driver's license after defendant had voluntarily stopped his vehicle and approached the officer.
- ¶ 2     The State appeals from an order of the circuit court of Lake County granting the motion of defendant, Thomas McNealey, to quash his arrest for driving while his license was revoked (625 ILCS 5/6-303 (West 2010)) and to suppress evidence. We reverse and remand.

¶ 3 At the hearing on defendant's motion, Illinois State Trooper Gurfinkel testified that, on June 18, 2011, he was patrolling Interstate 94. While traveling east near mile marker 14, Gurfinkel pulled over a motorcycle that was exceeding the speed limit. As Gurfinkel exited his vehicle, he observed another motorcycle pull over up ahead. Defendant was operating that motorcycle and he pulled over about 50 feet east of Gurfinkel's location. While Gurfinkel was speaking with the motorcyclist he had pulled over, defendant walked back toward them. Gurfinkel asked defendant for his driver's license. Defendant provided his license to Gurfinkel. Gurfinkel testified that, when he asked for defendant's driver's license, he had already obtained a license from the other motorcyclist but had not yet issued any citations to him. After obtaining defendant's driver's license, Gurfinkel returned to his vehicle and "ran" the two driver's licenses. Thereafter, Gurfinkel placed defendant under arrest on an outstanding warrant. Gurfinkel acknowledged that the written report he prepared in connection with the incident indicated that he asked for defendant's license *after* issuing citations to the other motorcyclist.

¶ 4 The trial court concluded that defendant was not seized when he acceded to Gurfinkel's request for his license. The court ruled, however, that a seizure did occur when, instead of returning the license to defendant, the officer returned to his vehicle and ran a check of defendant's license.

¶ 5 The defendant bears the burden of proof at a hearing on a motion to quash his arrest and suppress evidence. *People v. Haywood*, 407 Ill. App. 3d 540, 542 (2011). "If the defendant makes a *prima facie* case that the evidence was obtained through an illegal search, the State can counter with its own evidence." *Id.* On appeal from a trial court's ruling on a motion to quash and suppress, the reviewing court "will accord great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence." *People v. Close*, 238

Ill. 2d 497, 504 (2010). However, the trial court’s ultimate decision to grant or deny the motion is subject to *de novo* review. *Id.*

¶ 6 The fourth amendment to the United States Constitution (U.S. Const., amend IV) prohibits unreasonable searches and seizures. Seizures of the person include arrests, which must be supported by probable cause to pass muster under the fourth amendment, and brief investigative detentions, which must be supported by a reasonable, articulable suspicion of criminal activity. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006). A seizure may also be reasonable when an officer is engaged in a “community caretaking” function. *Id.* Not every encounter between a police officer and a civilian constitutes a seizure, however. *Id.* Consensual encounters—those “that involve no coercion or detention”—do not constitute seizures. *Id.*

¶ 7 There appears to be no dispute that, before Gurfinkel had “run” defendant’s license, he lacked either probable cause to arrest defendant or a reasonable, articulable suspicion of criminal activity that would justify an investigative detention. The State argues, however, that a seizure was permissible because Gurfinkel was engaged in a community caretaking function. The State alternatively argues that the encounter between Gurfinkel and defendant was entirely consensual until he placed defendant under arrest on an outstanding warrant. We agree with this argument and therefore have no need to consider whether, had a seizure occurred at an earlier point, it would have been permissible under the community caretaking doctrine.

¶ 8 In *People v. Harris*, 228 Ill. 2d 222 (2008), our supreme court offered the following summary of the principles that govern the determination of whether an individual has been seized within the meaning of the fourth amendment:

“[A]n individual is ‘seized’ when an officer ‘ “by means of physical force or show of authority, has in some way restrained the liberty of a citizen.” ’ [Citation.] ‘So long as a reasonable person would feel free “to disregard the police and go about his business,” [citation], the encounter is consensual and no reasonable suspicion is required.” [Citation.] If, however, when ‘ “all the circumstances surrounding the incident” ’ [citation] are taken into account, the conduct of the police would lead a reasonable innocent person under identical circumstances to believe that he or she was not ‘free to decline the officers’ requests or otherwise terminate the encounter’ [citation], that person is seized.” *Id.* at 246-47

¶ 9 It is clear that defendant was not seized merely because Gurfinkel asked to see his driver’s license and defendant acceded to that request. In *Harris*, our supreme court held that, if a passenger in a vehicle stopped for a traffic violation were not guilty of any crime, he or she would feel free to decline an officer’s request for identification (even though he or she would not feel free to terminate the encounter with the officer). By dint of that holding, a motorcyclist innocent of any crime would likewise feel free to decline a request for identification when he or she is engaged in a consensual encounter with an officer who has stopped a traveling companion riding another motorcycle. The trial court ruled, however, that when Gurfinkel “ran” defendant’s license defendant was no longer free to leave. Although it has been stated that abandoning one’s identification “is simply not a practical or reasonable option for a reasonable person in modern society,” and that a person is therefore “effectively immobilized” while his or her identification is in the possession of a police officer (*State v. Daniel*, 12 S.W. 3d 420, 427 (Tenn. 2000)), we have specifically declined to adopt a bright-line rule that retaining a driver’s license to run a computer check transforms an otherwise consensual encounter into a seizure. *People v. Graves*, 196 Ill. App. 3d 273, 278 (1990). We are

aware of at least one decision from another jurisdiction that appears to hold that retention of identification always constitutes a seizure. See, e.g., *State v. Painter*, 676 P.2d 309, 311 (Or. 1984) (defendant was seized when officer retained his identification because he was then “in fact, unable to leave,” and lower court erred in holding that there was not a seizure until defendant was physically restrained). However, like *Graves*, other decisions have rejected a *per se* rule. See *State v. Martin*, 79 So. 3d 951, 957 (La. 2011); *Golphin v. State*, 838 So. 2d 705, 708 (Fla. Dist. Ct. App. 2003), *aff’d*, 945 So. 2d 1174 (Fla. 2006).

¶ 10 Furthermore, our review of pertinent decisions from other jurisdictions suggests that most courts have not found the fact that an officer retained a defendant’s identification to be determinative of the character of the encounter. By and large, those courts that have found that a seizure occurred have done so based on the existence of circumstances in addition to—and in combination with—the officer’s retention of the defendant’s identification. See, e.g., *United States v. Tyler*, 512 F.3d 405, 411 (7th Cir. 2008) (“[T]he officers retained Tyler’s identification while they ran a warrant check and told him he could not leave until the check was completed. Under these circumstances, a reasonable person would have believed he was obliged to stay put.” (Emphasis added.)); *United States v. Guerrero*, 472 F.3d 784, 786-87 (10th Cir. 2007) (quoting *United States v. Lambert*, 46 F.3d 1064, 1068 (10th Cir. 1995)) (“To be sure, if officers merely examine an individual’s driver’s license, a detention has not taken place. [Citation.] But once the officers take possession of that license, the encounter morphs into a detention: ‘Precedent clearly establishes that when law enforcement officials retain an individual’s driver’s license *in the course of questioning him*, that individual, as a general rule, will not reasonably feel free to terminate the encounter.’ ” (Emphasis added.)); *United States v. Jordan*, 958 F.2d 1085, 1088 (D.C. Cir. 1992) (“[W]hat began as a

consensual encounter between Coates and Jordan graduated into a seizure *when the officer asked Jordan's consent to a search of his bag*, after he had taken and still retained Jordan's driver's license." (Emphasis added.); *Finger v. State*, 799 N.E.2d 528, 530-33 (Ind. 2003) (encounter that was arguably consensual at the outset evolved into an investigative stop when officer retained defendant's identification after running license checks that came back "negative"); *People v. Jackson*, 39 P.3d 1174, 1188 (Colo. 2002), *abrogated on other grounds by Brendlin v. California*, 551 U.S. 249 (2007) ("[w]hat began as a consensual encounter escalated to an investigatory stop *when Officer Harrold ordered Defendant to remain in the car* while returning to his patrol car with Defendant's identification." (Emphasis added)).

¶ 11 *People v. McVey*, 185 Ill. App. 3d 536 (1989), which defendant cites as authority supporting the trial court's ruling, is consistent with this pattern. In that case, the court stated as follows:

"[W]e must first determine at what point in time the defendant was 'seized' within the meaning of the fourth amendment \*\*\*. We note that in the case at bar [the arresting officer] merely pulled up behind the defendant, without activating his lights or siren. The defendant then approached the officer and a conversation ensued. The officer requested the defendant's driver's license and the defendant handed him an apparently valid California driver's license. At that point, a seizure had not yet occurred. However, the officer proceeded a step further *and ordered the defendant to have a seat in the defendant's car while the officer ran a computer check on the defendant's license*. By then, the defendant could reasonably believe that he was no longer free to walk away. *We therefore find that a seizure occurred when the officer required the defendant to return to his car while he ran a computer check.*" (Emphasis added.) *Id.* at 539.

A seizure occurred in *McVey* not merely because the officer retained the defendant's facially valid driver's license to perform a computer check, but because the officer also ordered the defendant to return to, and wait in, his vehicle. Consequently, in *Graves*, where the defendant voluntarily provided his driver's license to a police officer during a consensual encounter, and the officer "ran" the license but did not order the defendant to remain in his vehicle, we held that *McVey* did not apply and that no seizure occurred until the officer subsequently questioned the defendant about a discrepancy on his license. *McVey* is inapplicable here for the same reason. Gurfinkel ran a computer check on defendant's license, but did not order defendant to remain at the scene. Nor, for that matter, did the officer question defendant (see *Guerrero*, 472 F.3d at 786-87) or seek consent to conduct a search (*Jordan*, 958 F.2d at 1088) while defendant's license was in his possession.

¶ 12 This is not to say that a reasonable innocent person in defendant's position—stopped on an interstate highway with a police officer nearby and temporarily dispossessed of a driver's license—would have felt free to leave. For the fourth amendment to be implicated, however, a restraint on liberty must arise by means of physical force or a show of authority by a police officer. Here, any perceived restraint of movement was self-imposed, inasmuch as defendant voluntarily provided his license to Gurfinkel at Gurfinkel's request. There appears to be no dispute that Gurfinkel's request for defendant's license did not amount to a show of authority. A reasonable innocent person would be well aware that a computer check to determine the validity of a driver's license and the existence of any outstanding warrants for the driver's arrest is a routine concomitant of a request to see a driver's license. "Running" the license is no more a show of authority than the request itself.

¶ 13 Defendant insists that he was not able to terminate the encounter with Gurfinkel because “the trooper, *without [defendant’s] consent*, retained his license and then ran a computer check on it.” (Emphasis added.) Defendant cites no authority in support of the premise that conducting a computer check was beyond the scope of consent given when defendant voluntarily provided his license. Furthermore, defendant overlooks authority (albeit from another jurisdiction) supporting the opposite conclusion. In *United States v. Carpenter*, 462 F.3d 981 (8th Cir. 2006), the Eighth Circuit held that no seizure occurred when a sheriff’s deputy took the defendant’s driver’s license and rental car paperwork to his patrol car, where he spent four to five minutes examining those items. The *Carpenter* court reasoned as follows:

“A request to see identification is not a seizure, ‘as long as the police do not convey a message that compliance with their request[ ] is required.’ [Citation.] The district court found that [the deputy] ‘asked’ to see Carpenter’s license and registration, not that he ordered their production, so absent some other ‘message’ of compulsion not present on this record, the deputy’s request did not constitute a seizure. [Citations.] We have held that when a passenger voluntarily hands identification to an officer, the officer may reasonably consider that voluntary act as consent to a brief retention of the document for purposes of a ‘routine, thirty-second computerized records check, using equipment readily at hand.’ [*United States v. Slater*, 411 F.3d [1003,] 1006 [(8th Cir. 2005)]. [The deputy] retained Carpenter’s documents for four to five minutes while he examined them, and the record is unclear whether [the deputy] ran a computerized check, but we see no constitutionally significant distinction between this fact pattern and the situation in *Slater*. [The deputy] reasonably could interpret Carpenter’s act of providing the documents as consent to retain them for brief

examination or check, and the deputy's carrying of the license and rental papers to his vehicle did not effect a seizure." *Id.* at 985-86.

Similarly, in this case, defendant, by voluntarily providing his license to Gurfinkel, may be viewed as having consented to Gurfinkel's retention of the license for the purpose of running a computer check.

¶ 14 For the foregoing reasons, we conclude that there was no seizure before Gurfinkel learned that defendant's license had been revoked and that there was an outstanding warrant for defendant's arrest. Accordingly, we reverse the trial court's order granting defendant's motion to quash and suppress and we remand for further proceedings.

¶ 15 Reversed and remanded.