

2013 IL App (2d) 121200-U
No. 2-12-1200
Order filed August 21, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-TR-160598
)	
D'ARTAGNAN E. CLARK-DENNIS,)	Honorable
)	Jane Hird Mitton,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Burke and Justice Hutchinson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred in granting the State a directed finding on defendant's motion to suppress, as defendant presented a *prima facie* case of an unlawful seizure: according to defendant's evidence, the arresting officer effected a seizure, without any lawful basis, when defendant submitted to the officer's activation of his emergency lights or, at the latest, when the officer took defendant's identification and told him to stay where he was.
- ¶ 2 Following a stipulated bench trial in the circuit court of Du Page County, defendant, D'Artagnan E. Clark-Dennis, was found guilty of driving while his license was suspended (625 ILCS

5/6-303(a) (West 2010)). Defendant argues on appeal that the trial court erred in denying his motion to suppress evidence gathered as the result of an allegedly unlawful seizure. We reverse and remand.

¶ 3 At the hearing on his motion, defendant testified on his own behalf. Defendant also called Hanover Park police officer Pedro Diaz as a witness. Defendant testified that on November 3, 2010, at about 11 p.m., he was standing on the sidewalk near the intersection of Arlington Drive and Catalina Drive, in Hanover Park. Defendant was with a group of eight or nine people including his godbrother, his two godsisters, and his girlfriend. Defendant was standing a few feet from his car, a 1996 Chevrolet Caprice Classic. At some point, a police car, with its overhead flashing lights activated, parked behind defendant's car. The police vehicle parked about three to five feet from where defendant was standing. An officer in uniform emerged from the vehicle and asked defendant and his companions what they were doing. The officer also requested identification from defendant and the others. They complied with the request. Defendant handed the officer traffic tickets in response to the request for identification. The officer returned to his vehicle and then walked back over to defendant and placed him under arrest for driving while his license was suspended.

¶ 4 Diaz testified that at the time and place in question he observed a group of individuals, including defendant, inside or standing next to a parked vehicle. Diaz was familiar with two members of the group, who were known to "hang out" with gang members. However, Diaz did not witness the violation of any law. A few minutes earlier, while conducting an unrelated traffic stop, Diaz had observed defendant driving south on Arlington Drive in a "red Burgundy Impala."

¶ 5 Diaz activated his vehicle's emergency lights and pulled up behind the parked vehicle. Diaz stepped out of his vehicle and requested identification from the members of the group. Defendant provided Diaz with two traffic tickets. Several other members of the group also supplied

identification. Diaz told the members of the group to “stay where they were” and then returned to his vehicle to run a computer check on the identification. At that point, another officer was on the scene. Diaz discovered that defendant’s driver’s license was suspended and he placed defendant under arrest.

¶ 6 After the defense rested, the State moved for a “directed finding.” The State offered no argument in support of its motion. Defendant argued, *inter alia*, that “there was not any reasonable suspicion for this stop and that [defendant] was in fact stopped and detained by the officer at the time that the officer pulled up with his overhead flashing lights on.” The trial court granted the State’s motion and denied defendant’s motion to suppress, stating, without elaboration, that “[t]here was clearly probable cause for this arrest.”

¶ 7 The defendant bears the burden of proof at a hearing on a motion to 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 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.*

¶ 8 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 person is seized during an encounter with a police officer when “ ‘the police conduct would have communicated to a reasonable person that the person was not free to decline the officers’ requests or otherwise terminate the encounter.’ ” *People v. Bartelt*, 241 Ill. 2d 217, 226 (2011) (quoting *Florida v. Bostick*, 501 U.S. 429, 439 (1991)). Defendant maintains that a seizure occurred when Diaz pulled up behind defendant’s vehicle with the emergency lights of his squad car activated. There appears to be no dispute that, at that point, Diaz had no basis to suspect that defendant or his companions had recently committed, or were about to commit, any crime.

¶9 The State insists, however, that the encounter between defendant was purely consensual, and therefore not a seizure implicating defendant’s fourth amendment rights. In support of this argument, the State relies exclusively on the four factors identified in *United States v. Mendenhall*, 446 U.S. 544 (1980), as “[e]xamples of circumstances that might indicate a seizure.” *Id.* at 554. Those factors are “the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” *Id.* According to the State, “[a]rguably, none of the factors were present.” That may be true, but it is abundantly clear that other types of police conduct can amount to a seizure. *Luedemann*, 222 Ill. 2d at 557 (rejecting the proposition that the absence of the *Mendenhall* factors says “ ‘virtually nothing’ ” about whether a seizure has occurred, but acknowledging that “it is true that those factors are not exhaustive and that a seizure can be found on the basis of other coercive police behavior that is similar to the *Mendenhall* factors.”).

¶ 10 Decisions from this court illustrate that an officer's use of emergency lights can amount to a show of authority giving rise to a seizure even in the absence of the particular circumstances described in *Mendenhall*. See *People v. Smulik*, 2012 IL App (2d) 110110, ¶ 6; *Village of Mundelein v. Minx*, 352 Ill. App. 3d 216, 220 (2003). In *Smulik*, we held that the defendant was seized when a police officer activated her vehicle's emergency lights and pulled behind the defendant's parked vehicle. *Smulik*, 2012 IL App (2d) 110110, ¶ 6. In *Smulik* the defendant was seated in a parked vehicle, whereas in this case defendant's testimony indicates that he was standing outside the vehicle when Diaz pulled up behind it. In this respect, *Minx* is closer to the mark. In *Minx*, a police officer followed the defendant who reportedly had been driving recklessly. When the defendant pulled into the driveway of his home, the officer pulled his vehicle into the driveway behind the defendant's vehicle. The officer activated his vehicle's emergency lights either when he pulled up behind the defendant's vehicle or shortly before reaching the driveway. In any event, the defendant had already stepped out of his vehicle before he noticed the emergency lights. Citing our decision in *People v. Scott*, 249 Ill. App. 3d 597 (1993), the Village of Mundelein (Village) argued that no seizure had occurred. In *Scott*, as in *Minx*, a police officer pulled up behind the defendant's vehicle as it pulled into a private driveway. However, in *Scott* we observed that "[t]he record is silent regarding any show of force or authority or any indication that the officer requested defendant to stop. *** The evidence supports the inference that defendant voluntarily stopped his truck, exited and approached the officer." *Scott*, 294 Ill. App. 3d at 603-04. In *Minx*, we concluded that *Scott* was distinguishable and that "the key difference [in *Minx*] is that [the arresting officer] asserted authority by activating his emergency lights." *Minx*, 352 Ill. App. 3d at 220. We also rejected the State's argument that, because the defendant had parked and was no longer in the vehicle, the distinction was irrelevant.

We reasoned that “when [the defendant] noticed the emergency lights, he submitted to them and did not leave; a reasonable person in those circumstances would not have felt free to ignore the officer and enter the house or walk away.” *Id.* We likewise conclude that a reasonable person in the similar circumstances confronting defendant and his companions would not have felt free to terminate the encounter with Diaz and decline Diaz’s request for identification. Moreover, even if we were to find that in these circumstances a reasonable person initially would have felt free to terminate the encounter with Diaz, a seizure occurred when Diaz told defendant and the others to “stay where they were.” See *People v. McVey*, 185 Ill. App. 3d 536, 539 (1989) (although encounter in which officer requested identification and defendant provided an apparently valid California driver’s licence was initially consensual, a seizure occurred when “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”).

¶ 11 Accordingly, we hold that defendant established a *prima facie* case that he was seized in violation of his fourth amendment rights. The burden thus shifted to the State to counter defendant’s *prima facie* showing and the trial court erred in ruling in the State’s favor after defendant rested. The order denying defendant’s motion to suppress must be vacated and the case must be remanded for further proceedings on defendant’s motion. On remand, the trial court must grant the motion to suppress and must vacate defendant’s conviction *unless* the State presents evidence to overcome defendant’s *prima facie* showing of a fourth amendment violation.

¶ 12 For the foregoing reasons, the order denying defendant’s motion to suppress is vacated and the cause is remanded for further proceedings consistent with this order.

¶ 13 Order vacated; cause remanded with directions.