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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 De Kalb County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 12-CM-511
)	
WESLEY J. SCHULTZ,)	Honorable
)	Thomas L. Doherty,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in granting defendant's motion to quash and suppress, as no seizure occurred before the officer saw cannabis in defendant's car: the officer stopped his car next to defendant's without using his lights or blocking it in; approached defendant outside the car and merely put questions to him, telling him that he was free to go to his asserted destination; and shined his flashlight into defendant's car.

¶ 2 The State appeals from an order of the circuit court of De Kalb County granting defendant Wesley J. Schultz's motion to quash arrest and suppress evidence. The State contends that the trial court erred in finding that defendant was seized without lawful justification before the police

discovered cannabis in his vehicle. Because defendant was not seized until after the cannabis was observed, we reverse and remand.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged with one count of unlawful possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2010)) and one count of unlawful possession of cannabis (720 ILCS 550/4(c) (West 2010)). He filed a motion to quash his arrest and suppress the evidence found in his vehicle.

¶ 5 The following facts are taken from the hearing on the motion to quash arrest and suppress evidence. On April 6, 2012, at about 3:26 a.m., Officer Aaron Gates of the De Kalb police department was on routine patrol in a marked squad car. As he drove, he observed a moving vehicle and decided to follow it. He followed it for several blocks as it made numerous turns onto various streets. It eventually turned onto a street called Mayflower.

¶ 6 After turning onto Mayflower, the vehicle pulled to the curb and stopped. Officer Gates did not activate any flashing or emergency lights, did not honk his horn or sound his siren, or otherwise direct the vehicle to pull over. There were no vehicles parked in front of or behind the vehicle.

¶ 7 Officer Gates drove alongside the parked vehicle and stopped. As Officer Gates pulled up, defendant exited his vehicle and closed its door. Officer Gates did not direct or command defendant to exit the vehicle.

¶ 8 Officer Gates, who remained seated in his squad car, rolled down the passenger window and asked defendant if he knew where he was going, because he had taken “a strange route from where he started to his final destination.” Defendant answered “yeah.” When asked by Officer Gates why he had taken such a circuitous route when he could have taken a more direct path, defendant responded that he was going to a friend’s house. Officer Gates, in turn, asked defendant where his

friend's house was, and defendant pointed in a general direction down the street. When Officer Gates, who was still sitting in his squad car, shined his spotlight on a house and asked if that was the one, defendant, who was standing next to the passenger window of the squad car, answered that it was "down further."

¶ 9 Officer Gates, who suspected that defendant had parked his vehicle to avoid being followed by him, said, "Well, if that's your friend's house, go ahead and go. Go inside." According to Officer Gates, he "told [defendant] to leave." Defendant responded that he had to first call his friend and began using his phone.

¶ 10 While defendant was using his phone, Officer Gates exited his squad car and walked over to defendant's vehicle. Officer Gates "shined [his] flashlight through [defendant's] driver's side window and observed a bag with suspected cannabis inside of it." Based on his police training and experience, Officer Gates believed that the bag contained cannabis. According to defendant, after Officer Gates shined the flashlight into his car, he asked defendant twice "to open [defendant's] car," and defendant refused both times.

¶ 11 After being asked by Officer Gates about the suspected cannabis, defendant admitted to having less than half an ounce of "weed" in his car. Defendant then asked if he could leave, and Officer Gates said "no," that he was being detained on the basis of his possession of the cannabis.

¶ 12 At the end of the suppression hearing, the trial court set the matter for a ruling. In orally ruling, the trial court stated that it agreed with the State's argument "that at no point was there an arrest, no point was there a Terry stop, that he didn't have reasonable suspicion to pull him over, that the defendant was not seized." Then the trial court, in discussing the evidence, stated that it was "only after" defendant had twice refused to allow Officer Gates to search his car that Officer Gates

shined the flashlight into the car and observed the cannabis. Based on this description of the evidence, the trial court found that Officer Gates engaged in “other coercive behavior” when he used the flashlight, because he had ignored defendant’s two refusals to permit a search. The trial court explained that it considered the coercive behavior to be when Officer Gates “visually search[ed] the vehicle with a flashlight after being told twice” that he could not. Because Officer Gates shined the flashlight into the car after being told he could not search, the trial court granted the motion to quash arrest and suppress evidence.

¶ 13 The trial court noted, however, that, had Officer Gates shined his flashlight in the car “while walking by the car the first time,” that “would [have been] a wise thing to do” and the “plain view argument might [have] come into effect at that point.” The trial court added that, had Officer Gates shined the flashlight into the car initially, it would not “have [made] the same ruling” and it would have considered that to be “just plain good protective police work.”

¶ 14 The State filed a motion to reconsider. In denying that motion, the trial court explained that when Officer Gates exited his vehicle he “made a show of authority.” The trial court stated that, although the State contended that at no time was defendant told he could not leave, Officer Gates “came over to [defendant] and actually directed [him] to do some things.” The trial court added that, when Officer Gates told defendant to “[g]o to [his] friend’s house” and “statements to that effect,” he “showed authority at that point,” which constituted an unjustified “Terry stop.” The trial court did not mention its previous reliance on the use of the flashlight to look into defendant’s car.

¶ 15

II. ANALYSIS

¶ 16 On appeal, the State contends that there was no seizure before Officer Gates shined his flashlight into defendant’s car and that the shining of the flashlight into the car did not to turn the

otherwise consensual encounter into a seizure. Defendant maintains that a seizure occurred before Officer Gates observed the cannabis, because Officer Gates followed defendant, interrogated him about his destination, told him to go to his friend's house, and used the flashlight to inspect the interior of his vehicle.

¶ 17 In reviewing a trial court's ruling on a motion to quash and suppress, we apply the two-part standard of *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). A trial court's findings of historical fact are reviewed for clear error, and a reviewing court must give due weight to any inferences drawn from those facts by the fact finder. *Luedemann*, 222 Ill. 2d at 542. "A reviewing court, however, remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted." *Luedemann*, 222 Ill. 2d at 542. Accordingly, we review *de novo* the trial court's ultimate legal ruling as to whether the motion should have been granted. *Luedemann*, 222 Ill. 2d at 542.

¶ 18 Initially, we address the trial court's misstatement of the evidence. In its ruling granting defendant's motion to quash arrest and suppress evidence, the trial court found that Officer Gates did not shine his flashlight into defendant's car until after he had twice been refused permission to search the car. This finding was clear error. The undisputed evidence showed that Officer Gates shined his flashlight into the car as he was walking past the car on his way to speak further with defendant. It was only after Officer Gates shined his flashlight into the car and observed the cannabis that he asked defendant if he could look in the car. Thus, to the extent the trial court relied on that factual error, its initial ruling was improper.

¶ 19 In denying the motion to reconsider, however, the trial court did not expressly refer to, or rely upon, its prior factual misstatement. Rather, in denying the motion to reconsider, it expressed different reasoning from that in its original ruling. Therefore, we cannot say that the subsequent ruling was based on an erroneous factual finding. Nonetheless, we review *de novo* its ruling that a seizure occurred before Officer Gates observed the cannabis.

¶ 20 In *Luedemann*, our supreme court described three levels of police-citizen encounters. *Luedemann*, 222 Ill. 2d at 544. In doing so, it explained that not every encounter between the police and a citizen results in a seizure. *Luedemann*, 222 Ill. 2d at 544. Thus, the courts have divided police-citizen encounters into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions (*Terry* stops), which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) encounters that involve no coercion or detention and thus do not implicate the fourth amendment (consensual encounters). *Luedemann*, 222 Ill. 2d at 544.

¶ 21 As to a consensual encounter, the law is clear that a police officer does not violate the fourth amendment by merely approaching a person in a public place and asking him questions if he is willing to listen. *Luedemann*, 222 Ill. 2d at 549. The police have the right to approach citizens and ask potentially incriminating questions. *Luedemann*, 222 Ill. 2d at 549.

¶ 22 For fourth amendment purposes, a person is seized when an officer, by the use of physical force or show of authority, restricts a citizen's liberty. *Luedemann*, 222 Ill. 2d at 550. In this context, a seizure occurs only when a reasonable person would not feel free to leave. *Luedemann*, 222 Ill. 2d at 550. The analysis requires an objective assessment of the police conduct and does not depend upon the subjective perception of the defendant. *Luedemann*, 222 Ill. 2d at 551.

¶ 23 Four factors can indicate that a police-citizen encounter is a seizure. *Luedemann*, 222 Ill. 2d at 553 (citing *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). Those factors are: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the citizen; and (4) the use of language or tone of voice indicating that compliance with the officer's request might be required. *Luedemann*, 222 Ill. 2d at 553.

¶ 24 In our case, the undisputed facts established that no seizure occurred before Officer Gates used the flashlight to look into defendant's car. Officer Gates merely followed defendant for several blocks and did not in any way direct or command defendant to pull over or otherwise display a show of authority. Once defendant parked his vehicle, Officer Gates stopped next to him without using any emergency or flashing lights. Defendant's parked vehicle was positioned such that no vehicles were directly in front of or behind it, and defendant was not physically prevented from driving away or otherwise leaving.

¶ 25 After defendant exited his vehicle, Officer Gates lowered his passenger-side window and asked defendant where he was going and why he had taken such an indirect route. When defendant answered that he was there to visit a friend, Officer Gates asked where the friend lived. After asking defendant if a particular house was his friend's, Officer Gates said to defendant that if that house was his friend's he should go ahead and go inside. After Officer Gates told defendant to leave for his friend's house, defendant stated that he needed to call his friend first and began using his phone. It was then that Officer Gates exited his squad car, walked over to defendant's car, and shined his flashlight inside.

¶ 26 Officer Gates's encounter with defendant, up to the point that he used his flashlight to look into defendant's vehicle, was nothing more than a consensual police-citizen encounter. Merely

approaching defendant and asking him questions, even potentially incriminating ones, when defendant was willing to listen, did not constitute a seizure. See *Luedemann*, 222 Ill. 2d at 549.

¶ 27 Defendant emphasizes the fact that Officer Gates told him to go to his friend's house. Assuming that such an order could have effected a seizure, it is clear from the record that Officer Gates was not actually ordering him to do so. Rather, he was merely telling defendant that he was free to go to his destination if that was what he was planning on doing. The fact that he may have said so in an effort to test defendant's story about where he was going does not render the statement coercive. Further, once defendant stated that he needed to call his friend first, Officer Gates did not forbid him from doing so or order him to go directly to his friend's house without first calling. A reasonable person in defendant's position would not have felt compelled to go to his friend's house against his will.

¶ 28 Defendant also makes much of Officer Gates's use of the flashlight. However, using a flashlight, absent other coercive behavior, is insufficient to transform a consensual encounter into a seizure. See *Luedemann*, 222 Ill. 2d at 561-62. The use of the flashlight did nothing more than allow Officer Gates to perform his job after dark, including promoting his safety. See *Luedemann*, 222 Ill. 2d at 563. As we have already discussed, the use of the flashlight was not accompanied by any coercive behavior. Thus, the use of the flashlight did not turn the otherwise consensual encounter into a seizure.

¶ 29 Defendant's reliance on *People v. Bunch*, 207 Ill. 2d 7 (2003), is misplaced, as in that case there were several facts, not present here, that supported the conclusion that the officer seized the defendant. For instance, the officer, among other things, ordered the defendant out of his car and shined his flashlight in the defendant's face while he asked him pointed questions. *Bunch*, 207 Ill.

2d at 19. Our case lacks such coercive behavior and, thus, is clearly distinguishable from the facts present in *Bunch*.

¶ 30 Most significantly, unlike in *Bunch*, the flashlight in this case was not shined directly on defendant. Rather, it was used to illuminate the interior of defendant's vacated vehicle. Thus, there was no coercive effect from the use of the flashlight.

¶ 31 When viewed in their totality, the facts here demonstrate nothing more than a consensual police-citizen encounter in which a reasonable person in defendant's position would have believed he was free to discontinue the encounter and go about his business. Accordingly, there was no seizure, either before Officer Gates shined his flashlight into defendant's car, or when he did so. Because there was no seizure before Officer Gates discovered the cannabis, we need not consider whether there was a lawful justification for any such seizure.

¶ 32

III. CONCLUSION

¶ 33 For the reasons stated, we reverse the order of the circuit court of De Kalb County granting defendant's motion to quash arrest and suppress evidence, and we remand for further proceedings.

¶ 34 Reversed and remanded.