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2013 IL App (3d) 110353-U

Order filed January 16, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 9th Judicial Circuit,
Plaintiff-Appellee,) McDonough County, Illinois,
)
v.) Appeal No. 3-11-0353
) Circuit No. 10-CF-210
KEVIN D. BETZ,)
) Honorable
Defendant-Appellant.) Steven R. Bordner,
) Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Wright and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err when it denied defendant's motion to suppress evidence.

¶ 2 Defendant, Kevin D. Betz, was charged with unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)). Prior to trial, defendant filed a motion to suppress evidence, which was denied by the trial court. Defendant was convicted of the charge and sentenced to probation. We affirm.

¶ 3

FACTS

¶ 4 On September 15, 2010, Illinois State Police Officer Shane Kimbro initiated a traffic stop on defendant's vehicle. During the stop, defendant informed Kimbro that he had been drinking alcohol while driving and that he placed an open bottle of alcohol in his backpack when he was pulled over. Following a search of the backpack, Kimbro found the open beer bottle as well as a number of bottles containing pills. The State charged defendant with unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)).

¶ 5 Prior to trial, defendant filed a motion to suppress evidence obtained from the search of his backpack. At the hearing on defendant's motion, Kimbro testified that he initiated a traffic stop on defendant after he determined that he was going over the posted speed limit. When he first approached defendant, he detected the odor of alcohol on his breath. Thereafter, Kimbro asked defendant if he had been drinking. Defendant eventually informed Kimbro that he had been drinking a beer while he was driving and that he placed an open beer bottle in his backpack when he was pulled over. Kimbro asked defendant if he could search the backpack, and defendant agreed.

¶ 6 Kimbro found defendant's backpack in the car and immediately noticed an open bottle of beer sticking out of it. When he pulled it out, he determined that the beer bottle still held some of its contents. After he removed the bottle from a front compartment of the backpack, Kimbro could see four pill bottles at the bottom of the same compartment. He knew that the bottles contained pills because he could hear them rattle, and he noticed that only one of the pill bottles had a label identifying its contents. Upon further investigation, Kimbro learned the identity of the pills in the bottles and concluded that it was illegal for defendant to possess them. Defendant was placed under arrest.

¶ 7 At the conclusion of the hearing, the trial court denied defendant's motion to suppress

evidence. The court found that Kimbro had consent to search the entire backpack and that his discovery of the pill bottles did not exceed the consent he was given. The cause proceeded to a stipulated bench trial where defendant was found guilty of unlawful possession of a controlled substance. Defendant appeals his conviction.

¶ 8

ANALYSIS

¶ 9 Defendant argues that the trial court erred in denying his motion to suppress evidence because the officer's search exceeded the scope of his consent when he removed the pill bottles from the backpack. We review a trial court's ruling on a motion to suppress evidence pursuant to a two-part test. *People v. Absher*, 242 Ill. 2d 77 (2011). First, we will uphold the court's factual findings unless they are against the manifest weight of the evidence. *Id.* Second, we assess the established facts in relation to the issues presented and review the ultimate legal question of whether suppression is warranted *de novo*. *Id.*

¶ 10 Both the fourth amendment to the United States Constitution (U.S. Const., amend. IV) and article I, section 6, of the Illinois Constitution (Ill. Const. 1970, art. I, § 6) protect individuals from unreasonable searches and seizures. *People v. Garcia*, 2012 IL App (1st) 102940. The general rule is that searches and seizures are unreasonable unless they are conducted pursuant to a warrant supported by probable cause. *Id.* There are, however, exceptions to the warrant requirement. One such exception is a search conducted pursuant to consent. *People v. Plante*, 371 Ill. App. 3d 264 (2007). To be valid, consent must be voluntary and freely given without duress or coercion. *Id.* Further, the search must not exceed the scope of consent. *People v. Baltazar*, 295 Ill. App. 3d 146 (1998). The standard for measuring the scope of a suspect's consent is that of objective reasonableness, which requires consideration of what a typical reasonable person would have

understood by the exchange between the officer and the suspect. *Id.*

¶ 11 In this case, defendant had informed Kimbro that he had an open bottle of alcohol in a backpack located in his car. Kimbro asked defendant if he could search the backpack, and defendant agreed. Defendant did not limit the officer's search to a certain compartment within the backpack or to a search only for specific contraband. Therefore, Kimbro was justified in searching defendant's entire backpack, and the search was reasonable. The court correctly denied defendant's motion to suppress evidence.

¶ 12

CONCLUSION

¶ 13 The judgment of the circuit court of McDonough County is affirmed.

¶ 14 Affirmed.