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2013 IL App (3d) 110367-U

Order filed January 8, 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 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-11-0367
)	Circuit No. 10-CF-1025
MODESTO DIAZ III,)	
)	Honorable
Defendant-Appellant.)	Richard C. Schoenstedt,
)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Presiding Justice Wright dissented.

ORDER

¶ 1 *Held:* The trial court properly denied defendant's motion to quash arrest and suppress evidence where the arresting officer had reasonable suspicion to stop defendant for a traffic violation.

¶ 2 Following a stipulated bench trial, defendant, Modesto Diaz III, was found guilty of aggravated driving while license revoked (625 ILCS 5/6-303(d-3) (West 2010)) and was sentenced to one year of imprisonment. Defendant appeals, arguing that the trial court erred in denying his motion to quash arrest and suppress evidence because the arresting officer lacked

sufficient grounds to stop his vehicle for a traffic violation. We affirm.

¶ 3

FACTS

¶ 4 Following a traffic stop, defendant was arrested and charged with aggravated driving while license revoked. 625 ILCS 5/6-303(d-3) (West 2010). Defendant subsequently filed a motion to quash arrest and suppress evidence, arguing the officer made an unlawful stop of his vehicle.

¶ 5 At the hearing on defendant's motion, Officer James Eiden was the only witness to testify. Eiden testified that on May 17, 2010, he first observed defendant's conversion van, with license plate number 9560247, while stopped behind him at a red light. Defendant had a trailer hitch ball on the back of the van, but he was not towing anything. Eiden explained that he initiated a traffic stop of defendant's van because "[y]ou can't have the tow hitch sticking off the back, in front of the license plate if you are not towing something." Defense counsel then submitted photographs into evidence, indicating that the bottom left corner of the zero on defendant's license plate was obstructed from view when directly behind the van.

¶ 6 On cross-examination, Eiden testified that the trailer hitch ball obstructed one of the letters of defendant's license plate so that he was unable to determine whether one letter was a zero or a Q from behind the van. On redirect, Eiden believed that his obstructed view of the license plate prevented him from performing a registration check on defendant's license plate until after the traffic stop. However, Eiden testified that it was possible he verified defendant's registration before stopping defendant. Following the traffic stop, Eiden placed defendant under arrest for driving on a revoked license.

¶ 7 The trial court denied defendant's motion, finding the officer had sufficient basis to stop

defendant's van based upon a partially obstructed rear license plate. The cause proceeded to a stipulated bench trial, where defendant was found guilty of aggravated driving while license revoked and sentenced to one year of imprisonment. Defendant filed a motion for new trial, which the trial court denied. Defendant appeals.

¶ 8

ANALYSIS

¶ 9 On appeal, defendant argues the trial court erred in denying his motion to quash arrest and suppress evidence because the arresting officer lacked sufficient grounds to stop his vehicle for a traffic violation.

¶ 10 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 trial 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.*

¶ 11 The fourth amendment of the United States Constitution and article I, section 6, of the Illinois Constitution guarantee citizens the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. The temporary detention of individuals during a traffic stop constitutes a seizure of persons within the meaning of the fourth amendment. *Whren v. United States*, 517 U.S. 806 (1996). Therefore, the decision to stop an automobile is constitutional only if the police have, at the very least, a reasonable, articulable suspicion that the driver has violated the Illinois Vehicle Code (Code) to justify an investigative stop. *People v. Hackett*, 2012 IL 111781.

¶ 12 In the present case, the trial court denied defendant's motion, finding that the officer had a

sufficient basis to stop defendant's van based upon a partially obstructed rear license plate under section 3-413(b) of the Code. 625 ILCS 5/3-413(b) (West 2010). Section 3-413(b) of the Code states "[e]very registration plate *** shall be maintained in a condition to be clearly legible, free from any materials that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers." 625 ILCS 5/3-413(b) (West 2010).

¶ 13 Eiden testified that one of the letters on defendant's license plate was not visible due to the obstruction caused by the trailer hitch ball. Eiden further testified that the obstruction of the zero on defendant's license plate prevented him from performing a registration check on defendant's license plate until after he initiated the traffic stop. Based on this testimony and the photographs of defendant's license plate, the trial court determined that the officer had a reasonable basis for the traffic stop. We cannot say this finding was against the manifest weight of the evidence.

¶ 14 Defendant argues Eiden's testimony that "[y]ou can't have the tow hitch sticking off the back, in front of the license plate if you are not towing something" was a fundamental misapprehension of the law and did not justify the traffic stop. We agree that there is no legal prohibition against having a trailer hitch protruding from the rear of the vehicle when there is nothing being towed. However, defendant ignores the fact that the officer was unable to read one of the letters on his license plate. As a result, the license plate was not "clearly legible" as required by the statute. 625 ILCS 5/3-413(b) (West 2010). At the very minimum, this gave the officer a reasonable, articulable suspicion that the driver was in violation of the Code. See *Hackett*, 2012 IL 111781; *People v. Miller*, 242 Ill. App. 3d 423 (1993) (stating that a license plate which was partially obstructed by a trailer hitch would provide grounds for conducting a

traffic stop). Accordingly, the trial court's denial of defendant's motion to quash arrest and suppress evidence is affirmed.

¶ 15

CONCLUSION

¶ 16 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 17 Affirmed.

¶ 18 PRESIDING JUSTICE WRIGHT, dissenting.

¶ 19 I respectfully dissent. To carry the majority's analysis to its logical extreme, any driver actually towing another vehicle would be in violation of the statute because most towed vehicles completely obstruct the rear license plate of the tow vehicle, from every vantage point behind the tow vehicle.

¶ 20 I submit the language of the statute at issue addresses only the positioning and legibility of the face of the license plate. As the majority notes, the statute provides that “[e]very registration plate shall at all times be *** in a place and position to be clearly visible and shall be maintained in a *condition* to be clearly legible, *free from any materials* that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers.” (Emphasis added.) 625 ILCS 5/3-413(b) (West 2010).

¶ 21 When legibility is at issue, as in the case at bar, the vehicle code triggers a violation only when certain conditions exist or foreign materials become affixed to the face of the license plate, such as mud, snow, license plate covers, or decorative holders that actually prevent an officer from *reading* the license plate, otherwise properly positioned in a visible location on the vehicle. *Cf. People v. Bradi*, 107 Ill. App. 3d 594 (1982) (stating that a license plate which was so dirty

that the officer thought the plate was missing, and later determined it was illegible, was sufficient grounds to conduct a traffic stop).

¶ 22 Here, Eiden's testimony established that due to the position of the tow hitch, in relation to the position of his squad car, one character on the license plate could have been the letter "Q" or the letter "O." However, the photograph of the license plate, taken from the officer's vantage point directly behind the van, shows the license plate itself was maintained in a physical condition that did not negate its legibility. Moreover, it is not difficult read the plate and then determine from the photograph that the letter at issue is not a "Q." While I acknowledge the officer may have had to look twice, the investigatory approach of this officer enabled him to eliminate all concerns regarding whether the character at issue was an "O" or "Q" by simply reading the license plate, either shortly before or shortly after the traffic stop occurred.

Ultimately, neither the condition nor the position of the license plate in this case prevented the officer from reading the plate and sharing the information with the dispatcher.

¶ 23 Consequently, the evidence of record, including the photograph taken from the viewpoint of the officer positioned behind the van, does not support this court's conclusion that the plate was not "clearly legible" as required by the statute at issue. 625 ILCS 5/3-413(b) (West 2010). Therefore, I believe the trial court's finding was contrary to the manifest weight of the evidence and the court erred by denying defendant's motion to quash arrest and suppress evidence.