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2013 IL App (3d) 120458-U

Order filed September 10, 2013

IN THE
APPELLATE COURT OF THE STATE OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D. 2013

PEOPLE OF THE STATE OF ILLINOIS)	Appeal from the Circuit Court
)	of the 12 th Judicial Circuit
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	Appeal No. 3-12-0458
)	Circuit Court No. 12-DT-180
LUIS CORNELIO,)	
)	Honorable
Defendant-Appellee.)	Roger Rickmon,
)	Judge Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justice Carter and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* Because the State's brief demonstrates *prima facie* reversible error that is supported by the record, we reverse the circuit court's judgment and remand for further proceedings.
- ¶ 2 Defendant, Luis Cornelio, was charged in the circuit court of Will County with driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2008)). Defendant filed a petition to rescind the statutory summary suspension of his driver's license. The State appeals

from the circuit court's order granting defendant's motion. We reverse and remand.

¶ 3

FACTS

¶ 4 On January 28, 2012, defendant was arrested for DUI and given notice of statutory summary suspension. The following evidence was adduced at the hearing on defendant's motion to rescind statutory suspension.

¶ 5 Officer Allen Soucie testified that on January 28, 2012, he was on duty and parked in a parking lot when he noticed observed defendant's vehicle "roll through" a stop sign. The weather conditions at the time were snowing and wet. Soucie could not recall if there was snow on the roadway. Soucie exited the parking lot and followed defendant. Soucie never lost sight of defendant's vehicle.

¶ 6 While following defendant's vehicle, Soucie noticed a trailer hitch on the vehicle that obstructed its registration. As he continued to follow defendant's vehicle, Soucie observed it cross over the yellow center line twice. He estimated that defendant's vehicle encroached approximately the width of one tire, eight to ten inches, into the other lane. Soucie did not observe any obstructions in the road that would have required defendant to travel outside of his lane. After the second crossing, Soucie activated his emergency lights and pulled defendant over.

¶ 7 Soucie approached the driver's side of the vehicle and asked defendant for his license and proof of insurance. There was a second individual seated in the passenger seat of the vehicle (the passenger). Soucie noticed a strong odor of alcohol emanating from the vehicle, but he did not know its specific source. Soucie observed the passenger crush a beer can with his foot. At one point in his testimony, Soucie stated the can was not within defendant's "grasp or reach."

However, at another point, Soucie indicated that the beer was within reaching distance of

defendant.

¶ 8 Soucie asked defendant to exit the vehicle so he could investigate further. Defendant had difficulty with the seatbelt. As he exited the vehicle, defendant placed his left arm against the vehicle in an attempt to maintain his balance. Although the road was wet, there were no problems with the gravel or asphalt below defendant's feet. When defendant had gotten out of the vehicle, Soucie noticed his eyes were glassy and bloodshot.

¶ 9 Soucie was within a few feet of defendant while he spoke to him outside the vehicle and he noticed a strong odor of alcohol emanating from defendant's breath. Defendant admitted he had consumed two beers at a bar. Defendant's speech was slurred. Soucie described it as "[j]ust kind of words running together, kind of thick tongued." Soucie acknowledged he did not check the box for "thick tongued" on the alcohol influence report.

¶ 10 Soucie administered a horizontal gaze nystagmus test (HGN test) on defendant. The HGN test revealed a lack of pursuit in both of defendant's eyes and that both eyes showed an onset (or jerking of the eyes) prior to reaching 45 degrees. While Soucie administering the HGN test, defendant was swaying back and forth and side to side. Soucie asked defendant to perform the walk-and-turn and one-legged stand test, but defendant refused. Soucie then placed defendant under arrest for DUI. Soucie's sworn law enforcement report states:

"Disobeyed stop sign, improper lane usage, glassy-blood shot eyes, slurred speech, strong odor of an alcoholic beverage emanating from his breath, admitted consuming "two beers," failed horizontal gaze nystagmus."

¶ 11 After hearing the above evidence, the circuit court granted defendant's petition to rescind

the statutory summary suspension of his driver's license. The court orally held that the initial investigatory stop was valid under *People v. Hackett*, 2012 IL 111781. The court also orally found Soucie credible,¹ however, it ultimately did not believe Soucie had reasonable grounds to believe defendant was driving under the influence of alcohol. The court then entered a written order, which appears to conflict with its previous oral pronouncement that the initial investigatory stop was valid under *Hackett*. Specifically, the order stated, in pertinent part:

"It is hereby ordered that the suspension is ordered
rescinded for lack of reasonable grounds to stop and arrest."

¶ 12 ANALYSIS

¶ 13 The State appeals arguing that the circuit court erred in granting defendant's petition to rescind. A *de novo* standard of review applies to the ultimate determination of whether the petition to rescind the statutory summary suspension or motion to suppress should have been granted, but we will defer to the trial court's findings of fact, unless they are against the manifest weight of the evidence. *People v. Wear*, 229 Ill. 2d 545, 561-62 (2008).

¶ 14 At the outset, we note that defendant has not filed an appellee brief. The supreme court has set forth three distinct, discretionary options a reviewing court may exercise in the absence of an appellee's brief: (1) it may serve as an advocate for the appellee and decide the case when the court determines justice so requires, (2) it may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee's brief, or (3) it may reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d

¹ The court found any discrepancies in Soucie's testimony to be minor and insignificant.

128, 133 (1976). In exercising our discretion, we apply the third option. Because the State's brief demonstrates *prima facie* reversible error that is supported by the record, we reverse circuit court's judgment and remand for further proceedings.

¶ 15 We are confronted with two questions: (1) whether Soucie had a "reasonable articulable suspicion" that justified an investigatory stop of defendant's vehicle (*Hackett*, 2012 IL 111781, ¶ 12), and (2) whether Soucie had probable cause to arrest defendant for DUI (*Wear*, 229 Ill. 2d at 560). We answer both these questions in the affirmative.

¶ 16 Here, the evidence clearly shows that Soucie had a "reasonable articulable suspicion" justifying the stop. Soucie testified that he saw defendant's vehicle cross over the yellow center line twice. Soucie did not observe any obstructions in the road that would have required defendant to travel outside of his lane. This testimony, standing alone, was sufficient to support an investigative stop for a possible violation of section 11-709(a) of the Illinois Vehicle Code (625 ILCS 11-709(a) (West 2012)). *Hackett*, 2012 IL 111781, ¶ 28; *People v. Flint*, 2012 IL App (3d) 110165, ¶¶ 8, 17 (police officer's testimony that he observed defendant's vehicle cross over the center line into the oncoming lane of traffic for "possibly a few seconds" established a reasonable, articulable suspicion to justify an investigatory stop for a possible violation of section 11-709(a)). Moreover, Soucie had two additional independent grounds justifying an investigatory stop: (1) defendant failed to make a complete stop at a traffic stop sign, and (2) defendant's vehicle registration was obscured by a hitch on his vehicle.

¶ 17 The evidence also clearly establishes that Soucie had probable cause to arrest defendant for DUI. "Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has

committed a crime." *Wear*, 229 Ill. 2d at 563. Here, defendant: (1) rolled through a stop sign, (2) crossed over the yellow center line twice, (3) had a beer can in his car, (4) had a strong odor of alcohol emanating from his vehicle, (5) had difficulty with his seatbelt when Soucie requested he exit the vehicle, (6) had to support himself against the vehicle while exiting the vehicle, (7) failed the HGN test, (8) had glassy and bloodshot eyes, (9) had slurred speech, (10) had a strong odor of alcohol emanating from his breath, (11) swayed back and forth and side to side while standing outside the vehicle, (12) admitted to consuming alcohol.

¶ 18 The above evidence all derived from Soucie's testimony, which the trial court expressly found to be credible. We defer to the court's credibility finding even in light of the fact Soucie's testimony regarding the location of the beer can in relation to defendant differed on direct examination and cross-examination. We, like the trial court, do not find this distinction to be material. See *People v. Ceja*, 204 Ill. 2d 332, 347 (2003) (when confronted with a finding regarding a witnesses' credibility, a court of review should defer to the circuit court's credibility finding absent manifest error). Based on the above, we conclude there was probable cause to arrest defendant, as a reasonably cautious person would have thought defendant was operating his vehicle under the influence of alcohol.

¶ 19 For the foregoing reasons, we reverse the judgment of the circuit court and remand the matter for further proceedings.

¶ 20 Reversed and remanded.