

NOTICE
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2013 IL App (4th) 120076-U

NO. 4-12-0076

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
February 26, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
DEVAN M. BROOKS,)	No. 10CF177
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Pope and Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant was not seized within meaning of fourth amendment when officer sought consent to search vehicle.
- ¶ 2 In June 2010, the State charged defendant, Devan M. Brooks, with unlawful possession of morphine and unlawful possession of methadone. In December 2010, defendant filed a motion to suppress evidence. In April 2011, the trial court denied defendant's motion. After a December 2011 bench trial, the court found defendant guilty of the two counts and sentenced him to concurrent four-year prison terms to run concurrent to the sentence in Peoria County case No. 10-CF-1020.
- ¶ 3 On appeal, defendant argues the trial court erred in denying his motion to suppress evidence. We affirm.

¶ 4

I. BACKGROUND

¶ 5 In June 2010, the State charged defendant by information with one count of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)), alleging he knowingly and unlawfully possessed less than 15 grams of a substance containing morphine and one count of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)), alleging he knowingly and unlawfully possessed less than 15 grams of a substance containing methadone. Defendant pleaded not guilty.

¶ 6 In December 2010, defendant filed a motion to suppress evidence, alleging he was unconstitutionally seized when the arresting officer asked him for consent to search his vehicle. In April 2011, the trial court held an evidentiary hearing on the motion.

¶ 7 Livingston County Sheriff's police officer Brad DeMoss testified he and another officer, named Fitzpatrick, initiated a traffic stop of defendant's vehicle on June 26, 2010, based on speeding. DeMoss and Fitzpatrick were assigned to the Livingston County Proactive Unit. DeMoss approached the passenger-side window and defendant handed him his driver's license and proof of insurance. Defendant's driver's license was expired. DeMoss returned to his vehicle to write defendant a warning ticket for speeding and driving with an expired license. He also ran a criminal history check on defendant and his passenger. The criminal history check revealed defendant and his passenger had extensive drug histories.

¶ 8 DeMoss testified that Fitzpatrick remained in the front passenger seat of the squad car and another officer, Deputy McGraw, was also present at the stop but DeMoss did not know "what time or at what point in the traffic stop he showed up, but he did show up at some point." McGraw was also a member of the Livingston County Proactive Unit.

¶ 9 DeMoss wrote two warning tickets and approached defendant's vehicle on the driver's side. DeMoss asked if defendant would step out of the vehicle. DeMoss testified he asked defendant to step out of the vehicle for safety reasons, stating:

"As you can see, we're pretty close to the right lane there on Interstate 55. I feel more comfortable talking to him about his *** warnings and also discussing the possibility of searching his vehicle at the rear of his vehicle instead of standing next to the lane of traffic."

¶ 10 At the rear of defendant's vehicle, DeMoss handed defendant his expired driver's license, insurance card, and written warnings. DeMoss then asked defendant if he had been involved in illegal drug activity as shown by the criminal history check. Defendant denied any involvement in illegal drug activity and DeMoss asked defendant if he had "any problem with me looking through your car." Defendant responded, "No, not at all, not at all."

¶ 11 After DeMoss handed defendant his documents, Fitzpatrick walked to the passenger side of the vehicle and spoke with defendant's passenger. An Illinois state trooper stood several feet from the right rear corner of defendant's vehicle. DeMoss was not sure when the trooper arrived at the scene.

¶ 12 DeMoss and Fitzpatrick searched the interior of defendant's vehicle. In the driver's door compartment, DeMoss found a pill bottle with no label and containing a liquid substance. Fitzpatrick found a pill bottle between the center console and front passenger seat.

¶ 13 Defendant played a videotape of the traffic stop taken from DeMoss's squad car. Following the hearing, the trial court denied defendant's motion to suppress. The court found "no

violations in regards to the stop itself." DeMoss offered uncontroverted testimony that he paced the vehicle speeding and the court found the testimony credible. The court next applied the *Mendenhall* factors (*United States v. Mendenhall*, 446 U.S. 544 (1980)) to determine whether defendant was seized when, after the traffic stop ended, DeMoss sought consent to search the vehicle. The court found the record clear that the conversation between DeMoss and defendant, after DeMoss returned to defendant his paperwork to the point DeMoss asked to search the vehicle, to be approximately one minute. The court determined there was (1) no physical touching of defendant by a police officer, (2) no display of a weapon by a police officer, and (3) no use of language or tone of voice indicating that compliance with the officer's request might be compelled. With regard to the presence of several police officers, the court determined three police officers were present when DeMoss asked defendant if he could search the vehicle, DeMoss and Fitzpatrick who had been present since the beginning of the stop, and "just one extra officer," the trooper. The court stated the following:

"The presence of that one additional officer alone I do not think rises to the level where the defendant would not feel free to leave given the totality of the circumstances here and all of the, consideration to all of the *Mendenhall* factors."

¶ 14 At a December 2011 stipulated bench trial, the trial court found defendant guilty of two counts of unlawful possession of a controlled substance and sentenced defendant to four years in prison.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant argues the trial court erred in denying his motion to suppress

evidence. We disagree.

¶ 17 On review of a motion to suppress, this court is presented with mixed questions of law and fact. *People v. McQuown*, 407 Ill. App. 3d 1138, 1143, 943 N.E.2d 1242, 1246 (2011).

"When reviewing a trial court's ruling on a motion to suppress, we 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; but we will review *de novo* the court's ultimate decision to grant or deny the motion." *People v. Close*, 238 Ill. 2d 497, 504, 939 N.E.2d 463, 467 (2010).

¶ 18 The fourth amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. Similarly, the Illinois Constitution affords citizens with "the right to be secure in their persons, houses, papers[,] and other possessions against unreasonable searches[and] seizures." Ill. Const. 1970, art. I, § 6. Our supreme court has interpreted the search-and-seizure clause of the Illinois Constitution in a manner consistent with the United States Supreme Court's fourth-amendment jurisprudence. See *People v. Caballes*, 221 Ill. 2d 282, 335-36, 851 N.E.2d 26, 57 (2006).

¶ 19 A stop of a vehicle and the detention of its occupants constitutes a "seizure" under the fourth amendment. *People v. Cosby*, 231 Ill. 2d 262, 273-274, 898 N.E.2d 603, 611 (2008). "A person is seized when, by means of physical force or a show of authority, the person's freedom of movement is restrained." *Cosby*, 231 Ill. 2d at 273, 898 N.E.2d at 611 (citing *Mendenhall*, 446 U.S. at 553).

¶ 20 In determining whether a person has been seized, courts consider whether "if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Mendenhall*, 446 U.S. at 554. *Mendenhall* sets forth several examples that may indicate a seizure, including (1) the threatening presence of several police officers, (2) the display of a weapon by an officer, (3) some physical touching of the person by the officer, and (4) the use of language or tone of voice indicating compliance with the officer's request might be compelled. *Mendenhall*, 446 U.S. at 554. Absent any evidence of this nature, "otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." *Mendenhall*, 446 U.S. at 555.

¶ 21 Generally, a traffic stop ends when the paperwork of the driver and any passengers has been returned to them and the purpose of the stop has been resolved. See *Cosby*, 231 Ill. 2d at 276, 898 N.E.2d at 612 ("The requests for consent to search in both of the instant cases followed the officers' returning of the defendants' paperwork. At that point, the traffic stops came to an end."). Applying this rule to the instant case, the traffic stop ended when defendant's paperwork was returned to him. At that point, a reasonable person in defendant's circumstances would have believed he was free to go. See *People v. Ramsey*, 362 Ill. App. 3d 610, 617, 839 N.E.2d 1093, 1100 (2005) (finding no evidence suggested defendant should not have felt he was free to leave when the traffic stop concluded); see also *Ohio v. Robinette*, 519 U.S. 33, 39-40 (1996) (holding the fourth amendment does not require an officer to advise a lawfully seized defendant he is free to go before a subsequent search will be deemed voluntary). Thus, the relevant question is whether the officers' actions after the stop had ended constituted a subsequent seizure of defendant.

¶ 22 Regarding the first *Mendenhall* factor, defendant argues he was "surrounded by three armed officers." While the trial court found three officers present when DeMoss asked permission of defendant to search the vehicle, DeMoss and Fitzpatrick had been present since the beginning of the stop, resulting in "just one extra officer," the Illinois state trooper. Our review of the video footage confirms Fitzpatrick stood at the front passenger-side window speaking with defendant's passenger. The trooper stood several feet from the right rear corner of defendant's vehicle. Contrary to defendant's assertion, the video footage does not show defendant "surrounded by three armed officers." Further, no officer stood between defendant and the vehicle. Neither Fitzpatrick or the trooper had contact with defendant. DeMoss was the only officer at the rear of the vehicle with defendant at the time DeMoss questioned defendant. Nothing indicates the officers' presence was threatening. The court's findings in this regard were not against the manifest weight of the evidence.

¶ 23 Defendant argues his facts are even more compelling than the facts in *People v. Brownlee*, 186 Ill. 2d 501, 713 N.E.2d 556 (1999). In *Brownlee*, after the driver had been handed back his paperwork by one of the two officers and had been told that no ticket would be issued, both officers, who were on opposite sides of the vehicle, stood at their stations, saying nothing. *Brownlee*, 186 Ill. 2d at 520, 713 N.E.2d at 565-66. After about two minutes had elapsed, the officer standing next to the driver's door asked for permission to search the vehicle. After asking whether he had a choice, the driver consented. The supreme court held that the officers' actions constituted a show of authority and that a reasonable person in the driver's position would not have felt free to leave. Thus, the driver and his passengers were subjected to a seizure. *Brownlee*, 186 Ill. 2d at 520-21, 713 N.E.2d at 566.

¶ 24 Here, the record shows only that DeMoss approached defendant's vehicle, returned his paperwork, and asked for consent to search. DeMoss did not wait for any particular period of time before asking for consent. Thus, *Brownlee* does not support defendant's argument for two reasons: the record does not support any inference that officers flanked defendant's vehicle and no show of authority occurred like that in *Brownlee*, where both officers flanked the vehicle and waited for two minutes before asking for consent to search.

¶ 25 With regard to the remaining *Mendenhall* factors, the trial court found (1) no indication that any weapons were displayed during the course of the encounter, (2) defendant was not physically touched by any of the officers, and (3) none of the officers used forceful language or tone of voice in addressing defendant. Thus, the court found the encounter did not amount to an unlawful seizure. The court's findings were not against the manifest weight of the evidence.

¶ 26 Citing *People v. Goeking*, 335 Ill. App. 3d 321, 780 N.E.2d 829 (2002), defendant argues DeMoss did not tell him that he was free to leave prior to requesting consent to search. However, while this is a factor to consider, the Supreme Court has held that such advice is not required. See *Robinette*, 519 U.S. at 35.

¶ 27 In *Robinette*, Deputy Roger Newsome stopped the defendant for speeding. Newsome received the defendant's license and ran a computer check. *Robinette*, 519 U.S. at 35. Newsome then asked the defendant to exit his car, issued him a verbal warning, and returned his license. *Robinette*, 519 U.S. at 35. Thereafter, Newsome asked the defendant if he was carrying any contraband, and the defendant replied he was not. *Robinette*, 519 U.S. at 35-36. Newsome then received the defendant's consent to search his car, and the officer found controlled substances. *Robinette*, 519 U.S. at 36.

¶ 28 The Supreme Court found the fourth amendment does not require a police officer to advise a lawfully seized defendant that he is free to go before a consent to search will be deemed voluntary. *Robinette*, 519 U.S. at 39-40. Instead, a valid consent will be found when it is voluntarily given, and "[v]oluntariness is a question of fact to be determined from all the circumstances." *Robinette*, 519 U.S. at 40 (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49 (1973)).

¶ 29 When DeMoss asked defendant whether he had a "history with drugs," defendant could have refused to answer and proceeded on his way. Instead, defendant chose to answer in the negative. Then, DeMoss asked for consent to search the vehicle. Again, defendant could have declined the request and driven away. The questions here were not of a nature that a person would feel his answer was required based on a show of authority. See *People v. Gherna*, 203 Ill. 2d 165, 179, 784 N.E.2d 799, 807 (2003) ("[A] consensual encounter will lose its consensual nature if law[-]enforcement officers convey a message, by means of physical force or show of authority, that induces the individual to cooperate.").

¶ 30 Nor did the questions posed by DeMoss in this case unduly prolong the encounter in violation of the fourth amendment. The trial court found the record clear that the conversation between DeMoss and defendant, after DeMoss returned to defendant his paperwork to the point DeMoss asked to search the vehicle, to be approximately one minute. Our review of the video footage confirms the court's finding.

¶ 31 The fact that a police officer poses questions to a driver after the purpose of the traffic stop has concluded does not automatically amount to a seizure. In a consensual conversation, the officer could pose questions to the driver or request consent to search the

vehicle. Therein, the driver could decline to answer the officer's questions or refuse to give his consent. Unless the totality of the circumstances indicate a reasonable person would not have felt free to leave, no seizure has occurred and the defendant's consent to search the vehicle is not constitutionally prohibited.

¶ 32 In this case, there was no show of force, no brandishing of weapons, no blocking of the vehicle's path, no threat or command, and no authoritative tone of voice. DeMoss did not exhibit his authority in an intimidating fashion. Instead, he simply asked defendant for consent to search his vehicle. The questions posed by DeMoss were not of such a nature that defendant was forced to cooperate. "Police officers act in full accord with the law when they ask citizens for consent." *United States v. Drayton*, 536 U.S. 194, 207 (2002). Here, the evidence demonstrates defendant's consent was voluntarily given. Thus, DeMoss's questions did not violate defendant's fourth-amendment rights, and the trial court did not err in denying defendant's motion to suppress.

¶ 33 Here, DeMoss did not intimidate defendant or otherwise exhibit a show of authority such that a reasonable person in defendant's position would not feel free to leave. DeMoss did not unlawfully detain defendant after the conclusion of the traffic stop and thus his request to search was not constitutionally prohibited.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 36 Affirmed.