

SIXTH DIVISION
June 20, 2014

No. 1-12-0805

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	No. 08 CR 19796
LEONARD FRANKLIN,)	
)	Honorable
Defendant-Appellant.)	Steven J. Goebel,
)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirmed defendant's conviction of aggravated unlawful use of a weapon. We held that the trial court did not err in denying defendant's motion to quash arrest and suppress evidence where the search of the vehicle driven by defendant was a valid inventory search following defendant's arrest for driving without a license.
- ¶ 2 Following a bench trial, defendant, Leonard Franklin, was convicted of aggravated unlawful use of a weapon and sentenced to three years in prison. On appeal, defendant contends the trial court erred in denying his motion to quash arrest and suppress evidence. We affirm.

¶ 3 Defendant was charged with aggravated unlawful use of a weapon after a gun was recovered during a search of the vehicle he was driving on October 3, 2008, at approximately 2:45 a.m. Prior to trial, defendant filed a motion to quash arrest and suppress evidence. At the hearing on the motion, Officer Nomellini testified that in the early morning on October 3, 2008, he was on duty, wearing plain clothes and driving an unmarked vehicle. His partner, Officer Caballero, was with him in the vehicle. At approximately 2:43 a.m., Officer Nomellini and Officer Caballero met with a person in a red, four-door Chevy Trail Blazer. That person informed the officers that earlier that morning he had been at 240 South Washtenaw arguing with his girlfriend, when a black male wearing braids who was sitting in the driver's seat of a grey Ford Taurus pulled a handgun on him and "made a threat." There was also a black male passenger in the Ford Taurus.

¶ 4 Officer Nomellini testified that after receiving this information, he and Officer Caballero drove to 240 South Washtenaw Avenue at approximately 2:45 a.m., where they saw a grey Ford Taurus pulling away. A black male with braids was driving the vehicle, and a second black male was sitting in the front passenger seat. The officers followed the Ford Taurus, which stopped at a red light at an intersection at California Avenue and Adams Street. The Ford Taurus remained stationary at the intersection for 10 to 15 seconds after the traffic light turned green; according to Officer Nomellini, the vehicle was "obstructing traffic at that point."

¶ 5 Officer Nomellini testified that the Ford Taurus eventually moved through the intersection, turned north on California Avenue and then east on Monroe Street. At that point, Officer Nomellini stopped the vehicle, approached the driver's side, and asked the driver, who he

identified in court as defendant, for his driver's license. Defendant was unable to produce a driver's license, so Officer Nomellini asked him to step out of the vehicle and handcuffed and arrested him for driving without a driver's license. The passenger was also asked to exit the vehicle. Since the officers were in an unmarked squad car that did not have a cage between the front and back seat, they needed another unit to transport defendant. In the interim, defendant and the passenger were kept at the back of the Ford Taurus.

¶ 6 Officer Nomellini testified that the Ford Taurus was going to be towed following defendant's arrest, and as a part of that process, the vehicle was searched and the contents of the vehicle were inventoried. During this search, Officer Caballero recovered a firearm.

¶ 7 Officer Nomellini further testified in pertinent part:

Q. "[W]hile the search was going on this defendant was handcuffed and the other person was behind the car completely away from the vehicle—well, not able to get into the vehicle if they wanted to, right?

A. That's correct."

¶ 8 Following Officer Nomellini's testimony, both the defense and the State rested. Defendant then argued that the gun should be suppressed under *Arizona v. Gant*, 556 U.S. 332 (2009). In *Gant*, the United States Supreme Court addressed the issue of a search of a vehicle without a warrant, and held:

"Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these

justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies." *Id.* at 351.

¶ 9 Defendant argued neither justification was applicable here and, therefore, the warrantless search of the Ford Taurus was unconstitutional, and the gun recovered in the search should be suppressed. The trial court denied the motion to suppress. The cause proceeded to a bench trial.

¶ 10 At trial, Officer Caballero testified that on October 3, 2008, he was on patrol with his partner, Officer Nomellini. They were in plain clothes and driving an unmarked squad car. Officer Nomellini was the driver. At approximately 2:45 a.m., they were driving eastbound on Adams Street when they were "waved down" by a black male in a maroon or red Chevy Trail Blazer, who stated he had been arguing with his girlfriend at the 200 block of South Washtenaw Avenue when a black male in a Ford Taurus told him to shut up and waved a pistol at him.

¶ 11 Officer Caballero testified that the officers then drove to the 200 block of South Washtenaw Avenue, which was only about a minute and a half away. They observed a grey Ford Taurus going northbound on Washtenaw Avenue. They followed the Ford Taurus as it turned westbound on Adams Street and then stopped at a red light at California Avenue. When the light turned green, the Ford Taurus remained stopped for approximately 10 to 15 seconds, after which it turned northbound on California Avenue and then turned eastbound on Monroe Street.

¶ 12 Officer Caballero testified they curbed the Ford Taurus after it turned eastbound on Monroe Street. The officers exited their squad car. Officer Nomellini approached the driver side

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of the Ford Taurus, while Officer Caballero approached the passenger side. Two black males were in the Ford Taurus, one in the driver's seat and one in the front passenger seat. Officer Caballero identified defendant in court as the driver of the Ford Taurus. Officer Nomellini asked defendant to produce a driver's license, which he was unable to do. The officers then asked defendant to step out of the Ford Taurus, and he was taken to the back of his vehicle. Officer Caballero also "removed" the passenger from the Ford Taurus and brought him to the back of the vehicle as well. Defendant was placed in custody "for the traffic violations." Officer Caballero searched the Ford Taurus and recovered an uncased, chrome 357 revolver, loaded with three live rounds, from under the driver's seat.

¶ 13 On cross-examination, Officer Caballero testified defendant was charged with the offense of driving without a driver's license. Officer Caballero further testified, in pertinent part, as follows:

"Q. Officer, your search of that vehicle was to look to determine whether there was a gun in the vehicle?

A. No, we were taking the vehicle so we do a vehicle search of the vehicle.

Q. Okay. And what was the purpose of doing a search for the contents of the vehicle?

A. No license, no insurance.

Q. I see. Was it also to look to see whether there was a weapon inside the car?

A. Well, we look for anything that's going to be in the car."

¶ 14 Officer Sandoval testified that at approximately 2:45 a.m. on October 3, 2008, he and his partner, Officer Lara, responded to a call for an officer assist for Officers Caballero and Nomellini. When Officer Sandoval arrived, he observed defendant and another person "stopped behind the vehicle." While waiting for a transport vehicle to arrive, Officer Sandoval read defendant his *Miranda* warnings. Defendant stated he understood his *Miranda* rights. Defendant was transported to the police station about 10 minutes later. At the police station, defendant agreed to talk with Officer Sandoval. Officer Sandoval asked defendant why he had the firearm, and defendant responded that he had it "for protection."

¶ 15 Alan Washington testified that at approximately 2:45 a.m. on October 3, 2008, he was riding in a vehicle with defendant. They were pulled over by the police at Monroe Street and California Avenue. The police never asked defendant for his driver's license or insurance; instead, the officers "grabbed" defendant and Mr. Washington and dragged them out of the vehicle. The officers searched the vehicle and found a gun under the hood. After finding the gun, the officers let Mr. Washington go.

¶ 16 On cross-examination, Mr. Washington testified defendant was the driver of the vehicle on October 3, 2008, and Mr. Washington was in the front passenger seat. Defendant had braided hair that night. Mr. Washington denied coming into contact with any persons in a Chevy Trailblazer while driving with defendant. Mr. Washington stated the officers stopped them "for no reason," and that approximately six officers pulled them out of the vehicle. Defendant was taken down to the ground, while Mr. Washington was taken over toward the police car and told

to stand against it. The officers then searched the vehicle defendant had been driving and recovered a gun from under the passenger side of the hood.

¶ 17 Defendant testified that at approximately 2:45 a.m. on October 3, 2008, he was driving his girlfriend's vehicle. His cousin, Mr. Washington, was a passenger in the vehicle. They were stopped by the police, and six officers pulled them from the vehicle. The officers took defendant to the side of the vehicle and sat him on the ground; they took Mr. Washington over to the police car. The officers searched his girlfriend's vehicle and found a chrome revolver under the hood. The officers never asked defendant for his driver's license or insurance. Defendant never told the officers that the gun belonged to him and that he carried it for protection.

¶ 18 On cross-examination, defendant testified that on October 3, 2008, he was driving on a suspended driver's license. Prior to being pulled over by the police, he had stopped at a red light at an intersection. After the light turned green, defendant proceeded onto Monroe Street, at which point the police stopped him. The officers opened the door with guns drawn, pulled him out, handcuffed him, and sat him on the ground next to his girlfriend's vehicle. They also pulled Mr. Washington out and had him stand against the police car. Defendant saw two police officers search the inside of his girlfriend's vehicle but he did not see them recover anything. An officer then went under the hood and came out with a chrome revolver. Defendant identified his girlfriend's vehicle as a grey Ford Taurus.

¶ 19 The parties stipulated that Mr. Washington had prior convictions for manufacture and delivery of a controlled substance, aggravated unlawful use of a weapon, and possession of a

controlled substance. The parties stipulated that defendant had a prior conviction for delivery of a controlled substance.

¶ 20 At the conclusion of the trial, the trial court found defendant guilty of aggravated unlawful use of a weapon. Defendant filed a motion for a new trial, which the trial court denied. The trial court sentenced defendant to three years in prison. Defendant appeals.

¶ 21 Defendant contends the trial court erred in denying his motion to quash arrest and suppress evidence. In reviewing the trial court's ruling, we give deference to the trial court's factual findings and will reject them only if they are against the manifest weight of the evidence. *People v. Johnson*, 237 Ill. 2d 81, 88 (2010). We review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Id.* at 88-89. In addition to evidence presented at the hearing on the motion to quash arrest and suppress evidence, the evidence presented at trial may be used to sustain the denial of the motion. *People v. Bobe*, 227 Ill. App. 3d 681, 694 (1992).

¶ 22 The United States and Illinois Constitutions guarantee citizens the right to be free from unreasonable searches and seizures. U.S. Const., amends. IV, XIV; Ill. Const. 1970, art. 1, § 6. Searches conducted without a warrant are *per se* unreasonable under the fourth amendment subject to a few specifically established exceptions, one of which is an exception for a search incident to a lawful arrest. Defendant argues that, under *Gant*, the police may search a vehicle incident to a recent occupant's arrest in two situations: (1) where the arrestee is unsecured and within reaching distance of the passenger compartment or (2) where evidence related to the crime of arrest may be found in the vehicle. *Arizona v. Gant*, 556 U.S. at 351. Defendant argues

that neither situation was applicable here, where defendant was handcuffed and away from the passenger compartment at the time of the search, and where no evidence of defendant's crime (driving without a license) could be found in the vehicle. Therefore, defendant contends that the warrantless search of the vehicle violated the fourth amendment. Defendant makes no argument on appeal regarding whether the officers' initial stop of the vehicle was justified, and so our focus is on the constitutionality of the search.

¶ 23 The State responds that the search of the vehicle was a constitutionally valid inventory search. "An inventory search is a judicially created exception to the warrant requirement of the fourth amendment." *People v. Hundley*, 156 Ill. 2d 135, 138 (1993). "In order to qualify as a valid inventory search, three requirements must be satisfied: (1) the impoundment of the vehicle must be lawful; (2) the purpose of the search must be to protect the owner's property and to protect the police from claims of lost, stolen, or vandalized property and to guard the police from danger; and (3) the search must be conducted in good faith pursuant to reasonable standardized police procedures and not as a pretext for an investigatory search." *People v. Spencer*, 408 Ill. App. 3d 1, 7-8 (2011). "An inventory search will satisfy the requirements of the fourth amendment if it is conducted pursuant to reasonable police regulations and administered in good faith." *Id.* at 8. "The threshold question in determining whether the search of an individual's vehicle qualifies as a valid inventory search is whether the prior impoundment was proper, since the need and justification for the inventory arise from the impoundment." *Id.*

¶ 24 Defendant acknowledges that an inventory search of the vehicle is a judicially created exception to the warrant requirement of the fourth amendment. However, defendant argues that

the inventory search here was not valid under the fourth amendment because the first requirement of such a search, that the impoundment of the vehicle was lawful, was not met; defendant makes no argument that the other two requirements were not met.

¶ 25 Defendant failed to argue in his motion to suppress that the inventory search was invalid because the impoundment of the vehicle was unlawful. Therefore, the issue is waived on review. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988); *People v. Blankenship*, 353 Ill. App. 3d 322, 324 (2004) (a defendant may not argue on appeal that a motion to suppress should have been granted for reasons not specified in the motion and not argued in the trial court). Even choosing to address the argument on its merits, we find no reversible error.

¶ 26 Pursuant to their community-caretaking function, police officers have the authority to impound a vehicle where it is "impeding traffic or threatening public safety and convenience." *People v. Nash*, 409 Ill. App. 3d 342, 348 (2011). Defendant argues that there was nothing in Officer Nomellini's testimony at the suppression hearing or Officer Caballero's testimony at trial to suggest that the vehicle driven by defendant was impeding traffic or threatening public safety and convenience where it was stopped. Accordingly, defendant contends the initial impoundment was not lawful and, therefore, the subsequent inventory search was invalid and the gun recovered in the search, as well as the defendant's subsequent inculpatory statement regarding his possession of the gun, should have been suppressed.

¶ 27 We need not address whether the vehicle driven by defendant was impeding traffic or threatening public safety and convenience thereby subjecting it to impoundment under the community-caretaking function, because, for the reasons that follow, we hold that the vehicle

was otherwise subject to impoundment under section 6-303(e) of the Illinois Vehicle Code. Section 6-303(e) provides in relevant part that "[a]ny person" who drives with a suspended driver's license, "who is also in violation of Section 7-601 of this Code relating to mandatory insurance requirements *** shall have his or her motor vehicle immediately impounded by the arresting law enforcement officer." 625 ILCS 5/6-303(e) (West 2008). In the present case, defendant admitted at trial that at the time of the stop, he was driving on a suspended driver's license. Officer Caballero testified at trial that defendant did not have insurance. Accordingly, the impoundment of the vehicle being driven by defendant was lawful under section 6-303(e) of the Illinois Vehicle Code. See *Nash*, 409 Ill. App. 3d at 350 (holding that where defendant was driving with a suspended driver's license and operating an uninsured motor vehicle, section 6-303(e) required the officer to impound the vehicle).

¶ 28 Defendant argues that section 6-303(e)'s requirement that a person driving with a suspended driver's license and without insurance "shall have his or her motor vehicle" immediately impounded only applies to individuals driving their own vehicle, and does not apply here where defendant was driving his girlfriend's vehicle.

¶ 29 We disagree. "The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent, and the plain language of the statute is the best indication of that intent." *People v. Martin*, 2011 IL 109102, ¶ 21. The plain language of section 6-303(e) states that "[a]ny person" driving on a suspended driver's license and who is also in violation of section 7-601's mandatory insurance requirements shall have "his or her motor vehicle immediately impounded." 625 ILCS 5/6-303(e) (West 2008). Section 6-303(e) does not state that

impoundment is required only when the vehicle is being driven by its owner; rather, impoundment is required when "[a]ny person" is driving it with a suspended driver's license and without insurance. Defendant asks us to limit the statute to only a subset of drivers (*i.e.*, to a vehicle's owner as opposed to any person driving the vehicle), but we may not read such a limitation into the statute where it was not included by the legislature. *Wilkins v. Williams*, 2013 IL 114310, ¶ 23.

¶ 30 Defendant next argues that, even under section 6-303(e), which requires impoundment of the vehicle when the driver has a suspended driver's license and no insurance, the Ford Taurus should not have been impounded because "it is not apparent from the record that [he] could not provide proof of insurance at the time of the stop." Defendant does not dispute that his suspended driver's license meets one of the requirements for impoundment under section 6-303(e), but he contends that the other requirement, specifically, his failure to comply with the mandatory insurance requirements, has not been met.

¶ 31 We disagree, as Officer Caballero testified to defendant's lack of insurance at the time of the vehicle stop. Defendant argues that the officer's testimony conflicted with defendant's testimony and Mr. Washington's testimony that defendant was never asked by the officers to produce proof of insurance. However, at the conclusion of trial, the trial court specifically stated, "I have found numerous times that I don't believe certain police testimony that has come in front of me. However, that is not the case here. I do believe the testimony of the police officers in this case." We will not substitute our judgment for the trial court's credibility findings. *People v. Shanklin*, 2014 IL App (1st) 120084, ¶ 89.

¶ 32 Further, even *if* defendant was never asked by the officers to produce proof of insurance, the impoundment of the vehicle was lawful pursuant to section 9-80-240(a) of the Municipal Code of Chicago which states that any vehicle operated by a person with a suspended driver's license "shall be subject to seizure and impoundment pursuant to this section." Here, defendant admitted to driving on a suspended driver's license. Thus, regardless of whether defendant had insurance, the impoundment of the vehicle was lawful under section 9-80-240(a).

¶ 33 As the impoundment of the vehicle was lawful, and as defendant makes no other arguments regarding the validity of the resulting inventory search, we affirm the trial court's denial of the motion to quash arrest and suppress evidence.

¶ 34 Defendant next contends his counsel provided ineffective assistance by failing to argue in his motion to suppress that the impoundment of the vehicle was improper. To determine whether defendant was denied his right to effective assistance of counsel, we apply the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Defendant must show first, that "counsel's representation fell below an objective standard of reasonableness" (*Strickland*, 466 U.S. at 688), and second, that he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. at 669.

¶ 35 To prevail on his claim of ineffective assistance, defendant must satisfy both prongs of the *Strickland* test. If we can dispose of defendant's ineffective assistance claim because he suffered no prejudice, we need not address whether his counsel's performance was objectively reasonable. *People v. Lacy*, 407 Ill. App. 3d 442, 457 (2011).

¶ 36 As we discussed earlier in this order, the vehicle driven by defendant was lawfully impounded and the subsequent inventory search was valid and therefore the trial court did not err in denying his motion to quash arrest and suppress evidence. Accordingly, defendant's claim of ineffective assistance fails for lack of prejudice because even if his counsel had argued that the impoundment of the vehicle was improper, his motion to suppress still would have been denied.

¶ 37 For the foregoing reasons, we affirm the trial court.

¶ 38 Affirmed.