

No. 1-13-1311

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. TW-066-225
	)	
GREGORY RAPP,	)	Honorable
	)	Susan Kennedy Sullivan,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Justices ROCHFORD and REYES concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Trial court's denial of motion to quash arrest and suppress evidence affirmed where the arresting officer had probable cause to arrest defendant on the scene for driving under the influence of alcohol due to the officer's personal observation of the aftermath of the traffic accident, defendant's slurred speech, and strong odor of alcohol emanating from defendant's person.

¶ 2 Following a bench trial, defendant Gregory Rapp was found guilty of driving under the influence of alcohol and failure to stop at a stop sign and sentenced to a 24-month term of conditional discharge. On appeal, defendant contends that the trial court erred in denying his

motion to quash arrest and suppress evidence because the police lacked probable cause to arrest him.

¶ 3 Defendant was charged with misdemeanor driving under the influence of alcohol, failure to stop at a stop sign, and three counts of striking an unattended vehicle in relation to a traffic accident that occurred around 9:30 p.m. on December 3, 2010, near 1500 West Monroe Street in Chicago, Illinois. Investigating officers arrested defendant on the scene and transported him to the police station. Prior to trial, defendant filed a motion to quash arrest and suppress evidence, asserting that his warrantless arrest was improper because his conduct prior to the arrest could not be reasonably interpreted as constituting probable cause that he had committed a crime. He thus requested that his arrest be quashed and any evidence discovered as a result thereof be suppressed.

¶ 4 At the hearing on the motion, Chicago police officer Brian Cozzi testified that about 9:30 p.m. on December 3, 2010, he and his partner, Officer Jaszczor, who was driving their squad car, were on duty near the scene of a traffic accident that occurred at the intersection of Laflin Street and Monroe Street. The accident involved a silver Oldsmobile and a black Chevrolet Tahoe, which was driven by defendant. Upon approaching defendant, Officer Cozzi noticed that he smelled strongly of alcohol and had slurred speech. Based on these observations, the officers handcuffed defendant and placed him in the back of their squad car, at which point he was not free to leave. Shortly thereafter, they transported him to the police station for field sobriety tests, which defendant refused to take. Officer Cozzi could not recall whether defendant's eyes were bloodshot, and acknowledged that his report does not reflect that they were.

¶ 5 On cross-examination by the State, Officer Cozzi testified that he has been an officer for 12 years and that although he only saw the aftermath of the accident, Officer Jaszczor saw the accident as it occurred. After the impact, Officer Cozzi saw that the Oldsmobile was facing northbound, pointed in the wrong direction. He then saw defendant reverse his vehicle, drive around the Oldsmobile, and proceed into the oncoming lane of traffic. Defendant drove westbound for about three car lengths, but stopped and pulled over when Officer Jaszczor drove into his path. Officer Jaszczor approached defendant, and, after he checked on the driver of the Oldsmobile, Officer Cozzi approached defendant as well. In speaking with him, Officer Cozzi observed that defendant's speech was slurred and he smelled strongly of alcohol. Officer Cozzi had such difficulty understanding defendant's slurred speech that he had to ask him to repeat his phone number numerous times.

¶ 6 Officer Cozzi further testified that Monroe is a two-lane street, with traffic going in both directions. On the night of the accident, cars were parked on both sides of the street and vehicular and pedestrian traffic in the area was heavy due to a Black Hawks game at the United Center nearby. Due to these conditions, Officer Cozzi decided that it would be safer to conduct field sobriety tests at the police station, which was only three blocks away, however, defendant ultimately refused to take those tests. Officer Cozzi testified that he based his conclusion that defendant was driving while intoxicated on the "totality of the whole situation," which included the odor of alcohol on defendant, his slurred speech, and the nature of the impact, which occurred on a side street and involved five cars.

¶ 7 On re-direct examination, Officer Cozzi testified that he wrote a traffic accident report, as well as reviewed the alcohol drug influence report in this case, and neither report includes a

description of his observation of defendant reversing his vehicle after the accident and driving into oncoming traffic. Officer Cozzi acknowledged that he was not familiar with defendant's speech pattern, and that defendant did not stumble when he exited the car.

¶ 8 On re-cross examination, Officer Cozzi testified that he did not ask defendant if he had been drinking because it was obvious to him that defendant had been. He further testified that three parked cars were also involved in the accident. A witness on the scene informed the officers that the Oldsmobile was pushed into two of those cars upon impact, and that defendant hit the other car upon reversing his vehicle.

¶ 9 The trial court denied defendant's motion to quash arrest and suppress evidence, finding that Officer Cozzi had probable cause to arrest defendant on the scene for driving while intoxicated. The court stated, in relevant part:

"He observed, on a residential street, a residential street, the defendant crashing into another car, which was crashed into it with enough force to push it into two additional parked cars and then back up into another car.

This, we know he observed, because citations were given for those. Maybe it didn't occur, maybe there were no cars that were hit; that's for the trial.

But looking at this, at this point in time, did he have reasonable grounds to believe that these offenses had occurred and that the offense of DUI had occurred, that is a factor.

Then he talks to the defendant, observes strong odor of alcohol and glassy bloodshot eyes. And I think he had ample grounds to believe that it was reasonable to place him under arrest, take him three blocks, give him field sobriety tests at the station."

¶ 10 At trial, Officer Cozzi testified consistently with his testimony at the hearing on the motion to quash arrest and suppress evidence. He added that after the impact, he saw that the Oldsmobile was disabled and that the front end of defendant's vehicle was badly damaged. When Officer Cozzi asked him if he was injured, defendant stated "no." Officer Cozzi also asked defendant minor details about the direction in which he had been travelling. He based his conclusion that defendant was under the influence of alcohol at the time of the accident on his observations at the scene, which included defendant's slurred speech and strong odor of alcohol. Officer Cozzi testified that an observation of certain actions, such as defendant's decision to drive into oncoming traffic, may be important in determining whether someone is under the influence of alcohol. Officer Cozzi also testified to details regarding what transpired once defendant was transported to the police station.

¶ 11 On cross-examination, Officer Cozzi testified that 1545 West Monroe, near the scene of the accident, is a residential area, and that it is extremely rare to have a five-car accident on a side street. He acknowledged that the conversation regarding whether defendant was injured was the only conversation between himself and defendant that was included in the two reports that were written in this case. Officer Cozzi testified that he did not detail the entirety of their conversation in those reports because those reports merely summarize the incident.

¶ 12 Chicago police officer Jason Blachut testified that on the night of the incident, he was at the police station when officers Cozzi and Jaszczor asked him to help with defendant's arrest. At that time, defendant was combative, had slurred speech and bloodshot eyes, and Officer Blachut detected a strong odor of alcohol emanating from his breath and person. Officer Blachut testified regarding further details of what transpired at the police station and confirmed that defendant refused to undergo any field sobriety tests. Officer Blachut wrote the alcohol drug influence report in this case, which officers Cozzi and Jaszczor reviewed. In that report, he did not include the fact that defendant's eyes were bloodshot.

¶ 13 Defendant testified that he attended a Black Hawk's game on the night of the incident, and left the game early. There was little traffic at that time, but he ran a stop sign when he was looking for the highway because it was so dark out. He struck a car that was driving northbound, which caused him to strike several cars that were parked on the side of the street. He then backed up and parked on the side of the street, at which point Officer Cozzi approached him and asked if he was injured. He responded that he was not, and Officer Cozzi did not ask him any further questions, but instructed him to get out of the car. After defendant did so, Officer Cozzi handcuffed him and placed him in the backseat of the squad car. Defendant described what transpired after he arrived at the police station, and denied that he was ever asked to undergo any field sobriety tests. On cross-examination, defendant testified that while at the game, he drank one beer around 7:30 p.m., then drank another one around 8:30 p.m.

¶ 14 The trial court found defendant guilty of failing to stop at a stop sign and driving under the influence of alcohol, and not guilty of three counts of striking an unattended vehicle. On

appeal, defendant contends that the trial court erred in denying his motion to quash arrest and suppress evidence.

¶ 15 In reviewing an order denying a defendant's motion to quash arrest and suppress evidence, mixed questions of law and fact are presented. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). Factual findings made by the trial court will be upheld unless they are against the manifest weight of the evidence, whereas the trial court's application of the facts to the issues presented and the ultimate question of whether the evidence should be suppressed is subject to *de novo* review. *Pitman*, 211 Ill. 2d at 512.

¶ 16 The fourth amendment to the United States constitution guarantees the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; *People v. Gherna*, 203 Ill. 2d 165, 176 (2003). The existence of probable cause is determined at the time of the arrest and depends on whether the facts known to the police officer at that time are sufficient to lead a reasonable cautious person to believe that the arrestee has committed a crime. *People v. Love*, 199 Ill. 2d 269, 279 (2002).

¶ 17 Probable cause means less than evidence which would justify a conviction, and may be founded upon evidence, such as hearsay, which would not be admissible at trial. *People v. Jordan*, 282 Ill. App. 3d 301, 304 (1996). The existence of probable cause is based on the totality of the circumstances at the time of the arrest, and that determination is governed by common sense considerations (*People v. Jackson*, 232 Ill. 2d 246, 275 (2009)), and an officer may rely on his training and experience in drawing inferences and making deductions (*People v. Jones*, 215 Ill. 2d 261, 274, 277 (2005)). On appeal, we may consider the evidence presented at the hearing on the motion to quash and suppress, as well as the evidence presented at trial to the

extent that it supports affirming the trial court's judgment. *People v. Butorac*, 2013 IL App (2d) 110953, ¶ 14, citing *People v. Brooks*, 187 Ill. 2d 91, 127-28 (1999).

¶ 18 Defendant first contends that several of the trial court's factual findings are against the manifest weight of the evidence because the court cited facts that were not in the record and made improper inferences therefrom. He first points to the court's statement that in speaking with defendant, Officer Cozzi observed that he had glassy, bloodshot eyes. Defendant is correct that Officer Cozzi never testified that defendant's eyes were glassy and bloodshot, and we therefore will not factor this into our *de novo* review of the existence of probable cause to arrest defendant on the scene.

¶ 19 Defendant also argues that the trial court made erroneous factual findings pertaining to the nature of the traffic accident, pointing to the trial court's statement that Officer Cozzi "observed, on a residential street, a residential street, the defendant crashing into another car, which was crashed into it with enough force to push it into two additional parked cars and then back up into another car." Defendant maintains that these findings were not logically based on the facts presented.

¶ 20 Officer Cozzi testified that he saw the aftermath of the accident, that the accident occurred on a "side street," that in addition to the Oldsmobile and defendant's vehicle, three parked cars were also hit as a result of the accident, and that he saw defendant back up his vehicle after the accident and drive into oncoming traffic. Thus, Officer Cozzi related his personal observations of the placement and condition of the cars at issue, details pertaining to the scene, and defendant's actions after the accident occurred. Defendant is correct in pointing out that Officer Cozzi did not personally witness the accident. However, Officer Cozzi testified that

his partner, Officer Jaszczor, who was driving the squad car which they both occupied, did observe the accident as it occurred. We find that Officer Cozzi's testimony was a reasonable inference based on his 12 years of experience as a police officer and the positions and damage to the vehicle. Further, contrary to defendant's contention, Officer Cozzi's testimony pertaining to his personal observations at the scene reflected how he reached his conclusions about what transpired during the accident. Officer Cozzi also testified that in addition to his partner Officer Jaszczor seeing the traffic accident, that a witness on the scene gave them information about the details of the accident. As previously noted, hearsay evidence may be properly considered in determining probable cause to arrest. *Jordan*, 282 Ill. App. 3d at 304. Accordingly, we find that the trial court's statement summary of Officer Cozzi's testimony was not against the manifest weight of the evidence.

¶ 21 Defendant also challenges the legal finding made by the trial court, arguing that Officer Cozzi lacked probable cause to arrest him. In so arguing, defendant contends, and the State does not contest, that he was seized for purposes of the fourth amendment when Officer Cozzi handcuffed him and placed him in the back of the squad car.

¶ 22 The State maintains that Officer Cozzi had probable cause to arrest defendant on the scene for the commission of multiple traffic offenses, as well as for driving while intoxicated. Because we find that Officer Cozzi had probable cause to arrest defendant for driving while intoxicated, we need not address the State's alternate argument.

¶ 23 It has been held that probable cause to arrest a motorist for driving while intoxicated is commonly established by testimony of the arresting officer that the motorist had a "strong odor of alcohol, had slurred speech *or* had red and glassy eyes." *People v. Wingren*, 167 Ill. App. 3d

313, 320-21 (1988) (emphasis added), and cases cited therein. An officer's observations of defendant's physical state at the time of the accident may be supplemented by observations or inferences made about the accident itself or its aftermath. *Wingren*, 167 Ill. App. 3d at 320-21. Further, the officer need only have a reasonable belief that defendant was driving while intoxicated, and need not have observed the accident itself occur. *Wingren*, 167 Ill. App. 3d at 321.

¶ 24 Here, Officer Cozzi, a law enforcement professional with 12 years of experience, testified that when he approached defendant and spoke with him, he noticed that defendant smelled strongly of alcohol and that his speech was slurred. Further, immediately prior to approaching defendant, Officer Cozzi saw him back up his vehicle and drive into oncoming traffic, stopping only when Officer Jaszczor drove their squad car into his path. Accordingly, although Officer Cozzi did not witness the accident itself, he personally observed defendant exhibiting signs of impaired judgment by driving into oncoming traffic. We find that this, in conjunction, with Officer Cozzi's observation of defendant's slurred speech and strong odor of alcohol were sufficient to lead him to believe that defendant had been driving while intoxicated, thereby giving him probable cause to arrest defendant on the scene. *Wingren*, 167 Ill. App. 3d 320-21.

¶ 25 In reaching this conclusion, we have considered the 12 cases defendant cites in support of his argument that if a traffic accident is not in any way unusual and defendant does not exhibit any signs of intoxication aside from an odor of alcohol, probable cause to arrest will not exist. Even assuming that those cases stand for that legal proposition, and that the traffic accident in this case was in no way unusual, defendant's argument fails because in addition to the odor of alcohol, defendant exhibited slurred speech, which is also a sign of intoxication.

¶ 26 Defendant, however, maintains that we should not consider Officer Cozzi's testimony regarding his slurred speech because it is incredible. In so arguing, he points out that in the arrest report he wrote, the only conversation with defendant Officer Cozzi included was his query regarding whether defendant was injured, and defendant's response of "no." Presumably, defendant's implication is that it was incredible for Officer Cozzi to base his conclusion that defendant's speech was slurred merely on hearing him utter the single word "no." However, Officer Cozzi testified defendant also slurred his words numerous times while stating his phone number, and, at trial, Officer Cozzi testified that he also asked defendant minor details about the direction in which he had been driving. Although these conversations were not included in the arrest report, Officer Cozzi testified that the report was not a verbatim description of the entire conversation he had with defendant, but rather, was merely a summary. Accordingly, defendant's argument is misplaced.

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.