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2014 IL App (3d) 130438-U

Order filed April 4, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 10th Judicial Circuit,
)	Tazewell County, Illinois,
Plaintiff-Appellant,)	
)	Appeal Nos. 3-13-0438 and 3-13-0439
v.)	Circuit Nos. 12-TR-10925 and 12-TR-10926
)	
JOSEPHUS SEYBOLD,)	Honorable
)	Timothy J. Cusack,
Defendant-Appellee.)	Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting defendant's motion to quash arrest and suppress evidence because the facts observed by the arresting officer did not create a reasonable, articulable suspicion justifying a traffic stop.

¶ 2 On July 8, 2012, defendant, Josephus Seybold, was charged with driving with a materially obstructed windshield (625 ILCS 5/12-503(c) (West 2012)) and driving while license revoked (625 ILCS 5/6-303 (West 2012)). Defendant filed a motion to quash arrest and suppress evidence, which the trial court granted. The State appealed. We affirm the trial court's order quashing defendant's arrest and suppressing evidence.

FACTS

¶ 3

¶ 4 Following charges of driving on a revoked license and driving with a materially obstructed windshield, defendant filed a motion to quash arrest. At the hearing on the motion, the arresting officer, Officer Nicholas Clementz, testified. A video of the traffic stop was played.

¶ 5 Clementz testified that at 1:19 a.m., on July 8, 2012, he initiated a traffic stop of defendant's vehicle based on "[defendant's] view [being] materially obstructed because of an object hanging from his mirror." Prior to stopping defendant, Clementz was initially driving behind defendant. He then moved into the lane next to defendant's vehicle, at which time he observed "a[n] object suspended from [the] rear-view mirror, swinging in a side-to-side motion." At that point, Clementz decided to initiate a traffic stop. Clementz testified that he believed the object, an air freshener, was a "material obstruction as to the Defendant's viewpoint[.]"

¶ 6 The video shows that Clementz followed defendant's red Chevy Silverado 1500 pickup truck for approximately two minutes and thirty seconds before initiating the traffic stop. Initially, Clementz followed directly behind defendant in the right lane before moving into the left lane. Once in the left lane, Clementz pulled up next to the bed of the truck, at which time the video largely shows the left lane. The windshield of defendant's truck cannot be seen. Clementz then returned to the right lane, and defendant's truck returned to the center of the view of the video camera.

¶ 7 After defendant stopped his vehicle and the police car's oscillating lights and spotlight illuminated defendant's vehicle, a swinging object could be seen hanging from the rearview mirror. Clementz informed defendant that the reason for the stop was because "you're not supposed to have anything hanging from your rearview mirror" and that to do so was "illegal in the State of Illinois." Clementz asked for defendant's license and proof of insurance. Defendant informed Clementz that his driver's license was revoked. Upon returning to his squad car,

Clementz asked a fellow officer, "They can't have anything at all hanging from the rearview mirror, correct?" The accompanying officer replied, "right."

¶ 8 The trial court found that there was not a material obstruction that impeded the driver's viewpoint "even in light of what the officer *saw or didn't see*." (emphasis ours). The trial court ruled that defendant made a *prima facie* showing that the seizure was unlawful and the State failed to show that there was a legal justification for the traffic stop. See *People v. Price*, 2011 IL App (4th) 110272 (once defendant makes a *prima facie* showing of an illegal search and seizure, the burden shifts to the State to produce evidence justifying the intrusion).

¶ 9 The trial court granted defendant's motion to quash arrest.

¶ 10 ANALYSIS

¶ 11 On appeal, the State argues that the trial court erred in granting defendant's motion to quash arrest and suppress evidence because the officer had reasonable suspicion to initiate the traffic stop. We review a trial court's ruling on a motion to suppress evidence pursuant to a two-part test. *People v. Hackett*, 2012 IL 111781. First, we will grant great deference to the court's finding of facts, reversing only when those findings are against the manifest weight of the evidence. *Id.* Second, we undertake our own assessment of those facts in relation to the legal issues presented, reviewing the ultimate legal question of whether suppression is warranted under the *de novo* standard. *Id.*

¶ 12 The federal and state constitutions protect citizens from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Stopping an automobile and detaining its occupants constitutes a seizure and is subject to the fourth amendment's reasonableness requirement. *Brendlin v. California*, 551 U.S. 249 (2007); *Hackett*, 2012 IL 111781. To be constitutionally permissible, an investigatory stop must be justified at its inception. *Price*, 2011 IL App (4th) 110272. A traffic stop is justified when there is a

reasonable suspicion that a driver is committing a traffic violation. *Hackett*, 2012 IL 111781. The police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. *Id.*

¶ 13 In this case, evidence established that the officer stopped defendant's vehicle because he observed something hanging from defendant's rearview mirror, which was later discovered to be an air freshener. Section 12-503(c) of the Illinois Vehicle Code prohibits any person from "driv[ing] a motor vehicle with any objects placed or suspended between the driver and the front windshield *** which materially obstructs the driver's view." 625 ILCS 5/12-503(c) (West 2012).

¶ 14 Here, the video showed that the air freshener, even when swinging, hung well below defendant's line of sight and was relatively small in relation to the large windshield of defendant's pickup truck. Therefore, the video contradicts Clementz's testimony that the air freshener was a material obstruction to defendant's view. Also, the trial court could have found that Clementz was not credible in light of his mistaken belief that *any* object hanging from a rearview mirror would have justified a stop. Clementz did not articulate any specific facts, such as defendant's sitting position or the relationship between the air freshener and defendant's eye level, in support of his conclusion that the air freshener was a material obstruction. Therefore, it was not against the manifest weight of the evidence for the trial court to find that the air freshener was not a material obstruction.

¶ 15 Based on this record, it appears that the facts observed by Clementz would not have provided him with a reasonable, articulable suspicion justifying an investigatory stop. Therefore, the circuit court did not err in granting defendant's motion to quash arrest and suppress evidence.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Tazewell County is affirmed.

¶ 18

Affirmed.