

SIXTH DIVISION
June 5, 2015

No. 1-13-2571

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

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	01 CR 8580(02)
)	
CORDELLUS MCMURTRY,)	Honorable
)	Thomas J. O'Hara,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

Held: We affirm the trial court's order suppressing evidence of codefendant Tiawan Parker's identity.

¶ 1 This case returns to us by way of the State's interlocutory appeal under Illinois Supreme Court Rule 604(a)(1) (Ill. S. Ct. R. 604(a)(1) (eff. July 1, 2006)) of a trial court order suppressing

certain evidence found to be the fruit of an illegal vehicle stop.¹ For the reasons that follow, we affirm.

¶ 2 Following a bench trial, defendant Cordellus McMurtry was found guilty of first-degree murder in the shooting death of Omoteji Barnes and guilty of the attempted murder of Robert White. Defendant was sentenced to consecutive prison terms of 45 years for first-degree murder and 30 years for attempt murder. Defendant appealed.

¶ 3 Defendant argued on appeal that: (1) his sixth amendment right to counsel was violated when the State obtained incriminating statements from him in the absence of counsel through a hidden recording device worn by a confidential informant and then introduced the tapes against him at trial; (2) trial counsel was ineffective for failing to file a motion to suppress the audio recordings; (3) trial counsel's ineffectiveness in this regard prevented him from making a knowing waiver of his right to a jury trial; and (4) trial counsel rendered ineffective assistance by failing to file a motion to suppress the identification of codefendant, Taiwan Parker, who was riding with defendant in his car shortly after the shooting.

¹ "The 'fruit of the poisonous tree' doctrine is a rule that prohibits admission of evidence derived from unlawful means in a criminal prosecution. The U.S. Supreme Court in *Weeks v. United States*, 232 U.S. 383 (1914) first enunciated the rule. In *Mapp v. Ohio*, 367 U.S. 643 (1961), the Court held that the exclusionary rule was also applicable to the states. The Court adopted the phrase 'fruit of the poisonous tree' in *Nardone v. United States*, 308 U.S. 338 (1939). The standard for determining whether evidence is fruit of the poisonous tree is set forth in *Wong Sun v. United States*, 371 U.S. 471 (1963)." Sejal H. Patel, *Sorry, That's Classified: Post-9/11 Surveillance Powers, The Sixth Amendment, And Niebuhrian Ethics*, 23 B.U. Pub. Int. L.J. 287, 311 fn.16 (2014).

¶ 4 On review, we rejected all of defendant's arguments except his contentions regarding the audio tapes. We determined that admission of secretly recorded audio tapes of defendant soliciting a confidential informant to kill two witnesses scheduled to testify against defendant at trial violated his sixth amendment right to counsel and that the trial court committed non-harmless, reversible error in admitting this evidence. *People v. McMurtry*, No. 1-06-2657 (September 21, 2009) (unpublished order under Supreme Court Rule 23). As a result, we reversed and remanded for a new trial on the first-degree murder charge. *Id.* However, we affirmed defendant's conviction and sentence for attempt murder after we held there was sufficient admissible evidence to support this conviction and there was no indication the conviction was based on the same inadmissible evidence the trial court relied upon in convicting defendant of first-degree murder. *Id.*

¶ 5 On remand, defense counsel filed a pretrial motion seeking to suppress evidence relating to a police officer's testimony identifying Taiwan Parker as a passenger in defendant's vehicle shortly after the shooting. The trial court heard argument on the motion on June 19, 2013. Defense counsel argued the officer's testimony should be suppressed because the officer's discovery of Parker's identity resulted directly from the illegal stop of defendant's vehicle. In support of the motion, counsel pointed to the results of a suppression hearing in Parker's case conducted by Judge Frank G. Zelezinski on March 14, 2003.

¶ 6 Defense counsel argued that even though Judge Zelezinski ruled that Parker could not suppress his own identification or physical presence in defendant's vehicle, defendant should nevertheless be allowed to proceed with his own motion to suppress the officer's testimony regarding Parker's identifying information such as his name, address, and date of birth, because there had never been a ruling in defendant's case as to whether this evidence resulted from the

illegal stop of his vehicle. Counsel claimed that under these circumstances, the doctrine of the law of the case did not apply to prevent the trial court from considering the issue. Counsel argued the officer's testimony identifying Parker as a passenger in defendant's vehicle should be suppressed as the fruit of an illegal vehicle stop.

¶ 7 The State countered that the doctrine of the law of the case precluded the trial court from relitigating the rulings made by Judge Zelezinski in Parker's case. The State further contended that since Parker put himself in public view in defendant's vehicle on a public way, his identity should not be suppressed in defendant's case.

¶ 8 The trial court disagreed with the State. The court determined that although the doctrine of the law of the case applied to Judge Zelezinski's rulings that the stop of defendant's vehicle was illegal and that Parker's identity could not be suppressed in Parker's case, the court found that Judge Zelezinski never specifically ruled on whether Parker's identity should be suppressed in defendant's case. The trial court then determined that in defendant's case, the officers could testify they viewed Parker in defendant's vehicle prior to the stop, but since the trial court agreed with Judge Zelezinski's ruling that the vehicle stop was illegal, the court held the officers could not testify as to any observations or statements made to them after the stop. The trial court subsequently denied the State's motion to reconsider.

¶ 9 The State then filed a certificate of substantial impairment pursuant to Supreme Court Rule 604(a)(1) (Ill. S. Ct. R. 604(a)(1) (eff. July 1, 2006)) and brought this interlocutory appeal challenging the trial court's ruling. We affirm.

¶ 10 ANALYSIS

¶ 11 In this appeal we are asked to determine if the doctrine of law of the case precludes the trial court on remand from considering whether a police officer's testimony concerning Parker's

identity should be suppressed as the fruit of the alleged illegal stop of defendant's vehicle. We hold it does not.

¶ 12 The law of the case doctrine bars relitigation of an issue of fact or law previously decided in the same case. *People v. Tenner*, 206 Ill. 2d 381, 395 (2003); *People v. Patterson*, 154 Ill. 2d 414, 468 (1992). The purpose of the doctrine is to protect settled expectations of the parties, ensure uniformity of decisions, maintain consistency during the course of a single case, effectuate proper administration of justice, and bring litigation to an end. *People v. McDonald*, 366 Ill. App. 3d 243, 247 (2006). We review a trial court's decision to apply the law of the case doctrine for abuse of discretion. *People v. Enis*, 163 Ill. 2d 367, 387 (1994). A trial court abuses its discretion only where its decision is arbitrary, unreasonable, or fanciful or where no reasonable person would take the view adopted by the trial court. *People v. Coleman*, 2014 IL App (5th) 110274, ¶ 123.

¶ 13 With these principles in mind we find the trial court did not abuse its discretion in declining to apply the law of the case doctrine to Judge Zelezinski's rulings regarding Parker's motion to quash arrest and suppress evidence. At the hearing on the motion conducted on March 14, 2003, Judge Zelezinski surmised that "[t]he objects seeking to be suppressed by the defense would be the officer's observations, since nothing was taken." After hearing testimony from the police officer who initiated the traffic stop of defendant's vehicle as well as arguments from counsel, the judge determined the traffic stop was illegal because it was not supported by probable cause where the officer testified she stopped the vehicle on a hunch based on her knowledge of defendant's criminal history. The judge consequently barred the officers' testimony relating to items they observed in the front passenger floorboard area of the vehicle after the stop (balled up red jacket with blue writing across the front, black knit skull cap, and a

white towel with a reddish-orange substance on it). However, Judge Zelezinski held the officers could testify that they observed Parker seated in defendant's vehicle. The State did not appeal these rulings.

¶ 14 Approximately two years later, on March 29, 2005, immediately prior to opening statements in defendant's bench trial, the parties informed Judge Zelezinski they had agreed that the judge's prior rulings in regard to Parker's motion to suppress would be applied in defendant's case, as shown by the following colloquy between Judge Zelezinski and counsel:

"THE COURT: Defense, any pre-trial motions?

[Defense Counsel]: No, your honor. We did discuss this before you came out, and both sides are of the understanding that this Court made certain rulings with respect to evidence in the Parker matter. And both sides agree that those rulings would apply to this matter, also, as well.

THE COURT: That's correct.

[Assistant State's Attorney]: I think I put on the record just to be clear, *res adjudicata* [sic], the officer is going to testify as to observations of who's inside the vehicle, and that's the line the Court has drawn. There's a motion to reconsider that's filed; however, we're not going to litigate that as to [defense counsel's] clients. We still have that on file for Taiwan Parker, but we will follow the court's ruling on that.

[Defense Counsel]: The defense would adopt all objections and motions made by co-counsel on that record.

THE COURT: Noted. I made my ruling as to the limitations regarding that. With that, any opening statements."

¶ 15 Under these circumstances, Judge Zelezinski's ruling barring the police officers' testimony relating to items they observed in the vehicle after the stop, became the law of the case and was not subject to further review. In addition, the judge's holding that police officers could testify they observed Parker seated in defendant's vehicle also became the law of the case and could not be disturbed by a subsequent trial judge.

¶ 16 However, Judge Zelezinski never made a ruling as to whether the police officers obtained Parker's identifying information as a result of the alleged unlawful traffic stop. The lack of such a ruling by Judge Zelezinski is probably due to the fact that he determined that "[n]othing was taken" during the traffic stop. But a review of the record shows that something was taken during the traffic stop, where the police obtained various identifying information from Parker, including his name, address, date of birth, and social security number. In any event, the doctrine of the law of the case did not preclude the trial court on remand from considering whether the police officer's testimony concerning Parker's identity should be suppressed as the fruit of the alleged illegal stop of defendant's vehicle.

¶ 17 The temporary detention of individuals during a traffic stop constitutes a seizure of persons within the meaning of the fourth amendment. *Whren v. United States*, 517 U.S. 806, 809-10 (1996); *United States v. Hensley*, 469 U.S. 221, 226 (1985) ("stopping a car and detaining its occupants constitute a seizure within the meaning of the Fourth Amendment"); *People v. Kunath*, 99 Ill. App. 3d 201, 205 (1981) (same). A vehicle stop is analyzed under the same principles set forth in *Terry v. Ohio*, 392 U.S. 1 (1968). *People v. Henderson*, 2013 IL 114040, ¶ 25. "Evidence discovered as a result of an unconstitutional *Terry* stop must generally be excluded." *People v. Keys*, 375 Ill. App. 3d 459, 461 (2007).

¶ 18 "[T]he 'prime purpose' of the exclusionary rule 'is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures.'" *Illinois v. Krull*, 480 U.S. 340, 347 (1987) (quoting *United States v. Calandra*, 414 U.S. 338, 347 (1974)). In *United States v. Leon*, 468 U.S. 897, 919-23 (1984), the Supreme Court established a good faith exception to the exclusionary rule when law enforcement conduct a search with the objectively reasonable belief that the search is supported by a valid warrant.

¶ 19 The State contends we should apply the good faith exception to the exclusionary rule and reverse the trial court's order suppressing the identification of Parker. The State maintains that in this case, application of the exclusionary rule would serve no remedial purpose. The State claims that suppression would only serve to deter objectively reasonable law enforcement activity where the police officer who stopped defendant's vehicle was acting in good faith where she stopped the vehicle after receiving a call of shots fired and there were no other vehicles in the area, she was familiar with defendant's criminal history, and she knew defendant had a suspended license.

¶ 20 We must disagree. We find the good faith exception to the exclusionary rule does not apply in this case where the officer who stopped defendant's vehicle testified she stopped the vehicle on a hunch based on her knowledge of defendant's criminal history. "A mere suspicion or a hunch on the officer's part is insufficient to justify a *Terry* stop." *People v. Dionesotes*, 235 Ill. App. 3d 967, 969 (1992).

¶ 21 For the foregoing reasons, we affirm the trial court's order suppressing evidence of Parker's identity.

¶ 22 Affirmed.