

2015 IL App (2d) 140887-U
No. 2-14-0887
Order filed April 21, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 14-DT-518
)	
ADAM DEVINO,)	Honorable
)	Robert J. Morrow,
Defendant-Appellee.)	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted defendant's petition to rescind his summary suspension: especially in light of the video evidence, the court was entitled to credit defendant's testimony over the arresting officer's and find that defendant stopped at a stop sign, such that the officer's traffic stop, and the resulting DUI arrest, were invalid.

¶ 2 Defendant, Adam Devino, was arrested for driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2012)), and his driving privileges were summarily suspended. He petitioned to rescind that suspension, arguing, among other things, that there was no proper basis for the stop. In addition, defendant moved the court to sanction the State for

failing to record defendant performing various field sobriety tests that the arresting officer administered. The trial court granted the motion for sanctions, suppressing any evidence concerning the field sobriety tests. The trial court also granted the petition to rescind, finding that the officer lacked a proper basis for the stop. The State timely appeals. On appeal, the State claims that the trial court (1) abused its discretion when, as a sanction, it suppressed any evidence of the field sobriety tests; and (2) erred in granting the petition to rescind the summary suspension of defendant's driving privileges. For the reasons that follow, we affirm.

¶ 3 The following facts are relevant to resolving the issues raised. At 12:50 a.m. on May 24, 2014, Officer Jeffrey Clark of the East Dundee police department was driving north on River Street when he saw defendant allegedly fail to stop at a stop sign at Barrington Avenue.¹ Clark later clarified that he saw more of a "rolling stop" or a "slowing down to make the stop." Clark then activated his emergency lights and pulled defendant over on Barrington at the intersection of East Third Street, right across from the police department. Clark indicated that Barrington is two lanes, "just one [lane] in each direction," and that there is no shoulder.

¶ 4 Clark parked his squad car partly in the intersection and approached defendant, who was dismounting his motorcycle. Clark saw that defendant's eyes "seemed a little red and glassy," detected on defendant "a faint odor at that time of [an] alcoholic beverage," and noticed a "slurred quality to [defendant's speech.]" Based on these facts, in addition to the fact that

¹ According to the video of the stop, which contains no audio because Clark did not take the portable microphone with him when he approached defendant, defendant signaled a left turn onto Barrington Avenue. Because Clark was a great distance away from defendant at this time, and because the recording is not of great quality and the street curves slightly, it is impossible to tell if defendant stopped at the stop sign.

defendant admitted drinking one beer that night, Clark, who had observed “hundreds, into thousands” of cases of DUI in his professional life and “many” cases of DUI in his personal life, concluded that defendant was DUI.

¶ 5 Soon thereafter, an emergency vehicle drove within five feet of defendant and Clark. Clark escorted defendant to the sidewalk and had him perform several field sobriety tests there, because he believed that it was unsafe for defendant to perform the tests in the street. More specifically, Clark stated that he thought more emergency vehicles would be approaching, and he believed that the street was not level.² When Clark moved defendant to the sidewalk, he did not move his squad car or adjust his squad car’s camera to record the field sobriety tests.³ Clark testified that he typically does not administer field sobriety tests off camera.

¶ 6 Defendant testified that he consumed one pint of an alcoholic root beer at a bar in the area that night. As defendant was driving north on River Street approaching Barrington Avenue, he activated his left-turn signal and stopped at the stop sign, putting his left foot down as he did so. After he turned, defendant noticed the lights on Clark’s squad car and pulled his motorcycle over to the curb. Defendant testified that he had no problem curbing his motorcycle, getting off the motorcycle, or standing near the motorcycle while Clark approached him. Defendant also

² Later in his testimony, Clark agreed that the street was “flat.”

³ At one point, Clark stated that he did not move his squad or adjust the camera because he was alone and he thought that defendant might try to run away if he left him. However, at another point, Clark stated that a backup officer arrived on the scene and that that officer “was there for most of the tests.”

indicated that he did not see any imperfections in the street and did not ask Clark if he could perform the field sobriety tests on the sidewalk.⁴

¶ 7 After the court suppressed evidence of the field sobriety tests, it granted defendant's petition to rescind the summary suspension of his driving privileges. In doing so, the court stated:

“All right. There's two grounds. Is there a basis for the stop, and is there a basis for charging him with DUI?

The stop is—I do see the signal on the video, so I think he had his signal on. Can the officer tell whether he came to a full stop from the distance he was away? He was quite a distance. So I'm going to grant the Defense petition to rescind. I think this is thin, and I'm going to grant the petition.”

¶ 8 Before addressing the merits of this appeal, we observe that defendant has not filed a brief in this court. However, because the record is simple and the issues can be decided without the aid of an appellee's brief, we will decide the merits of this case. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 9 Turning to the merits, although the State raises two issues in this appeal, the dispositive one is whether Clark had a proper basis for the stop. We addressed the same issue in *City of Highland Park v. Kane*, 2013 IL App (2d) 120788. There we observed:

⁴ Although the court allowed defendant to testify at great length about how he performed the field sobriety tests as instructed, and prohibited the State from eliciting testimony from Clark about these tests, the court clarified that it was “not going to consider the field sobriety tests” in determining whether to grant defendant's petition to rescind the suspension of his driving privileges.

“‘[V]ehicle stops are subject to the fourth amendment’s reasonableness requirement.’ [Citation.] Generally, a stop of a vehicle is considered reasonable if the officer has probable cause to believe that a traffic violation was committed. [Citation.] Probable cause is not proof beyond a reasonable doubt that an offense occurred. [Citation.] Rather, probable cause exists when the arresting officer is aware of facts and circumstances that would lead a reasonably cautious person to conclude that the defendant committed a crime. [Citation.] Thus, ‘the existence of probable cause depends upon the totality of the circumstances at the time of the arrest.’ [Citation.]

In reviewing the trial court’s decision on defendant’s petition to rescind, we apply a two-part standard of review. [Citation.] First, we consider the trial court’s factual findings and credibility determinations. [Citations.] ‘[W]e must accord great deference to the trial court’s factual findings and credibility assessments and will reverse those findings only if they are against the manifest weight of the evidence.’ [Citation.] Factual findings or credibility determinations are ‘against the manifest weight of the evidence only if the opposite conclusion is clearly evident.’ [Citation.] Second, we review the trial court’s ultimate legal ruling. [Citation.] In reviewing the trial court’s legal ruling, we are ‘free to undertake [our] own assessment of the facts in relation to the issues and may draw [our] own conclusions when deciding what relief should be granted.’ [Citation.] Accordingly, ‘[the] trial court’s ultimate legal ruling as to whether [rescission] is warranted is subject to *de novo* review.’ [Citation.]” *Id.* ¶¶ 10-11.

¶ 10 With these principles in mind, we turn to the facts presented here. Clark testified that he stopped defendant because he failed to stop at the stop sign. The failure to stop at a stop sign provides an officer with a basis to stop a defendant. See *People v. Cole*, 369 Ill. App. 3d 960,

966 (2007). Although Clark indicated that defendant failed to stop, defendant claimed that he did stop. Faced with this conflicting testimony, the court reviewed the video. As noted, the video does not show whether defendant stopped, as the video is of poor quality and was taken at a great distance on a somewhat curving road. Based on the evidence, the court determined that defendant stopped at the stop sign. That is, the court credited defendant's version of events, *i.e.*, that he stopped at the stop sign, over Clark's. See *People v. Rockey*, 322 Ill. App. 3d 832, 841 (2001) ("Even where several reasonable inferences are possible from the conflicting testimony, we must accept those that support the trial court's orders."). We cannot conclude, based on the facts presented, that crediting defendant's testimony over Clark's was against the manifest weight of the evidence. Accordingly, because we accept the finding that defendant stopped at the stop sign, we determine that Clark lacked a proper basis to stop defendant.

¶ 11 In turn, because we determine that the stop of defendant was improper, we find that Clark had no basis to arrest defendant for DUI, as evidence of that offense came to light only after Clark pulled defendant over for allegedly failing to stop at a stop sign. See *People v. Collins*, 154 Ill. App. 3d 149, 151 (1987) (rescission of the suspension of the defendant's driving privileges was proper if the officer lacked a proper basis to stop the defendant, because "[a]bsent the fruits of the improper stop, there was no probable cause to arrest the defendant for DUI."). Accordingly, we affirm the trial court's order granting defendant's petition to rescind.

¶ 12 In reaching this conclusion, we note that we need not consider whether the trial court abused its discretion when it granted defendant's motion to sanction the State for failing to record the field sobriety tests. That issue concerns only whether defendant was intoxicated, which, as noted, would become relevant here only if the stop was proper.

¶ 13 For these reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 14 Affirmed.