

2015 IL App (2d) 150255-U
No. 2-15-0255
Order filed December 11, 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 De Kalb County.
)	
Plaintiff-Appellant,)	
)	
v.)	Nos. 13-DT-475
)	13-TR-14354
)	
JUSTIN TATRO,)	Honorable
)	Robert P. Pilmer,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly granted defendant's petition to rescind and motion to quash and suppress for an invalid traffic stop: the evidence conflicted on whether defendant stopped at a stop line, and the court was entitled to credit defendant's testimony over the arresting officer's.
- ¶ 2 Defendant, Justin Tatro, was charged with disobeying a stop sign (625 ILCS 5/11-1204(b) (West 2012)) and driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2012)). His driving privileges were summarily suspended. Defendant petitioned to rescind the summary suspension and moved to quash his arrest and suppress

evidence. The trial court granted defendant's petition and motion. The State appeals. We affirm.

¶ 3 At the hearing on defendant's petition and motion, he testified on direct examination as follows. On the evening of November 11, 2013, he was driving west on Pleasant Street approaching 11th Street. There was a stop sign at the intersection of Pleasant and 11th. Defendant had been at a friend's house, where he had drunk two glasses of wine, but he did not feel impaired in any way. It was dark, but the intersection was lighted.

¶ 4 Defendant testified that, as he approached the intersection, he stopped at a line parallel to the stop sign before proceeding through the intersection. As he stopped, he saw two police squad cars to his right; one was marked, one was unmarked, and they were facing each other. Defendant then proceeded west on Pleasant. At the hearing, defendant identified a photograph of the stop sign (Defendant's exhibit No. 1) and three other photographs of the intersection (Defendant's exhibit Nos. 2-4). The photographs were taken in the days after the stop. On the second exhibit, defendant drew a red circle around a white car and testified that that was where he stopped. On the third exhibit, he circled the location of the two squad cars.

¶ 5 Defendant testified that, after going through the intersection, he turned south on 10th Street, then saw the lights from one of the squad cars and pulled over. An officer approached and told him that he was pulled over because he had failed to stop at the stop line. The officer asked defendant whether he had consumed any alcohol; defendant said yes. The officer then ordered defendant out of the car to take sobriety tests. At the time, defendant was taking prescription medicines for anxiety and a sleep disorder. At some point, another officer joined the first one at the scene. Defendant told them that he had consumed two glasses of wine earlier. After performing the sobriety tests, he was arrested for DUI.

¶ 6 Defendant testified on cross-examination as follows. He did not tell the officers that he had consumed only one glass of wine. He had difficulty performing one test (one-legged stand) because his medicine made him shaky. He had taken it earlier that evening and, at the time of the stop, he still felt “a little bit” of the side effects. Before being arrested, he told the officers about his medication regimen. He did not recall admitting that he probably should not be drinking alcohol while also taking the medicines.

¶ 7 Defendant next called Joshua Boldt, a De Kalb police officer. He testified on direct examination as follows. On the evening of November 11, 2013, he was parked in the area of Pleasant and 11th, observing the intersection for traffic offenses. Another squad car was present, and Boldt was talking to the officer in it. The weather was clear; Boldt did not recall any snow falling earlier in the day. He testified that he had a “clear observation” of the intersection. Boldt agreed that the circle on defendant’s exhibit No. 3 was where his car had been parked.

¶ 8 Boldt testified that, at approximately 11:55 p.m., he saw a vehicle approach the intersection and come to a slowed stop approximately 1½ lengths, or 15 feet, past the stop line. On defendant’s exhibit No. 1, the white car was approximately where he saw the vehicle stop.

¶ 9 Boldt conceded that, from his point of view, he could not have seen a car approaching westbound until it got to the intersection. Asked whether he “didn’t see immediately whether [defendant’s] car stopped behind [the stop line] and then proceeded or just came through,” Boldt testified, “Well, I believed it came to a complete stop well past the intersection.” Asked whether he had seen what occurred “prior to the intersection,” Boldt testified, “I did not watch it from 14th Street.” Boldt agreed with defendant’s attorney that, as shown in the second photograph, a building “block[ed] that intersection for looking at where the car would have been.”

¶ 10 Boldt testified that, after the car stopped inside the intersection, it went forward, and he followed it. Boldt turned on his lights and sounded his air horn. The car pulled over. Boldt approached. Defendant was alone in the car. Boldt explained that he had pulled him over because he had stopped well past the stop line. Defendant said that he had not seen Boldt's car. Defendant's speech was slurred and he smelled of alcohol. He told Boldt that he was coming from a friend's house, where he had had one glass of wine. Boldt had him exit the car. Officer Burke, also driving a marked squad car, had arrived as backup. At that time, the officers did not ask defendant whether he was taking any prescription medicine. Boldt administered several sobriety tests, which defendant failed. Boldt stopped the one-legged-stand test midway through, as defendant was showing some sort of injury or nervousness, and allowed him to retake it. Defendant explained that he had been taking Valium and trazodone, and he added that he had had two glasses of wine. He said that he was "fine to drive." Boldt arrested defendant for DUI.

¶ 11 Boldt testified on cross-examination as follows. Defendant's vehicle had its headlights on, and the light from them would have preceded his car to some extent. Asked, "So even though the building would have been blocking the actual car, would you have recalled seeing [defendant's] headlights approach?," Boldt testified, "Of course." Asked whether he "ever recall[ed] seeing those headlights come to a stop prior to seeing the vehicle," Boldt testified, "I didn't recall at all." Further, he believed that, had the vehicle stopped behind the stop line, he would have seen the headlights also come to a stop.

¶ 12 Boldt testified that, after he turned his squad car's lights on, defendant drove two blocks down 10th Street. Initially after being stopped, defendant said that he had had just one glass of wine. He stumbled as he got up onto the sidewalk. After the tests, defendant told Boldt and

Burke that he had drunk two glasses of wine. Burke asked defendant whether he should be drinking while being on medication, and defendant admitted that probably he should not.

¶ 13 The parties rested. The trial court granted the petition and motion, on the basis that the initial stop of defendant had lacked probable cause. The State moved to reconsider, arguing in part that the court erred in requiring probable cause, not mere reasonable suspicion. The State also argued that Boldt had been a credible witness and that he had testified that he saw defendant cross over the stop line without stopping. Defendant responded that Boldt's testimony had not been altogether consistent and that he had conceded that the building shown in the photographs had partially blocked his view of the intersection. By contrast, defendant asserted, his testimony had been consistent and supported the court's order. The court agreed with the State that the stop had required only reasonable suspicion but agreed with defendant that this standard had not been met. The court denied the motion to reconsider. The State timely appealed.

¶ 14 On appeal, the State contends that the trial court's order rescinding the summary suspension and quashing defendant's arrest and suppressing evidence was erroneous because the finding on which it was based is against the manifest weight of the evidence. According to the State, Boldt testified clearly and consistently that, from his vantage point near the intersection, he saw without serious obstruction that defendant drove over the stop line without stopping until he was well into the intersection. The State recognizes that defendant testified that he did stop at the stop line, but the State asserts that defendant was not credible. The State notes that, although defendant attempted to argue that Boldt's view of the intersection was blocked by the building, defendant himself testified that he could see both squad cars clearly. Also, the State describes as "unrefuted" Boldt's testimony that defendant admitted to him that he did not see Boldt's squad car until Boldt pulled him over.

¶ 15 We may not disturb the trial court's findings of fact unless they are against the manifest weight of the evidence, but we review *de novo* the trial court's ultimate legal ruling. See *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). The parties disagree over whether Boldt needed probable cause or merely reasonable suspicion to stop defendant. Defendant contends that, under *People v. Hackett*, 2012 IL 11781, the stop required probable cause. Defendant's argument is misplaced. *Hackett* noted that, for a traffic stop, reasonable suspicion "will suffice for purposes of the fourth amendment irrespective of whether the stop is supported by probable cause." *Hackett*, 2012 IL 111781, ¶ 20. In any event, the distinction is not dispositive here.

¶ 16 The two witnesses in this case gave conflicting accounts. Boldt, who might or might not have had an unobstructed view of the intersection, testified that he saw defendant's vehicle, or at least the light from its headlights, proceed through the stop line before slowing down. Defendant, who undoubtedly had had an unobstructed view of the intersection, testified that he stopped at the stop line before starting through the intersection. This conflict was for the trial court to resolve. See *People v. Brown*, 2013 IL 114196, ¶ 48. The court credited defendant. On review, that would seem to end the matter.

¶ 17 The State, nonetheless, contends that we must reject the trial court's credibility decision in defendant's favor. The State argues that, if defendant was able to see Boldt's squad car (as he testified that he did), then Boldt must have had an unobstructed view of his car. Thus, the State concludes that Boldt's testimony that he saw defendant cross the stop line without coming to a stop should have been credited. We disagree.

¶ 18 The State might have had a stronger argument had defendant not testified that he did stop. Then, there would have been no direct clash between the witnesses on the crucial factual issue,

and the trial court might have been compelled to accept Boldt's testimony as uncontradicted and unimpeached. However, that was not what happened at the hearing.

¶ 19 Moreover, even on its own terms, the State's argument is tenuous. The trial court did not need to accept defendant's testimony that he had an unobstructed view of the two squad cars that were sitting near the intersection; the court could credit all, part, or none of defendant's testimony insofar as it conflicted with the other evidence. That neither defendant nor Boldt had a clear view of the space between them was also a plausible inference from the evidence. Boldt conceded that, at the time, he "believed" that defendant's car had come to a complete stop "well past the intersection." Asked whether he had seen "prior to the intersection what occurred," he testified, "I did not watch it from 14th Street." Further, he agreed with defendant's attorney that "there is a building that blocks that intersection for looking at where the car would have been."

¶ 20 Thus, by Boldt's own testimony, which the trial court was free to credit, his view of the intersection had been obstructed. Moreover, the inference that Boldt could have deduced defendant's failure to stop at the stop line merely by observing the light emitted by his headlights was not compelled, even assuming that defendant had not contradicted this inference by testifying that he had stopped at the stop line. The court could have concluded that Boldt saw the light cross the stop line but did not see the car do so. Asked whether he "ever recall[ed] seeing those headlights come to a stop prior to seeing the vehicle—," Boldt answered, "I didn't recall at all." This answer could have been interpreted as showing an incomplete memory. Boldt did not testify that he continuously saw the light from the headlights go through the intersection without stopping until well after the stop line; he testified that he did not recall seeing otherwise.

¶ 21 In any event, the direct clash between defendant's testimony that he stopped at the stop line and Boldt's testimony implying that defendant did not was for the trial court to resolve, and we shall not disturb its judgment merely because the opposite resolution was plausible.

¶ 22 For the foregoing reasons, the order of the circuit court of De Kalb County is affirmed, and the cause is remanded.

¶ 23 Affirmed and cause remanded.