2015 IL App (3d) 130061-U

Order filed March 20, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-13-0061
v.	)	Circuit No. 12-CF-820
	)	
DUNCAN JOHNSON,	)	Honorable Gerald R. Kinney,
Defendant-Appellant.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: Police officers conducted a valid inventory search of defendant's vehicle prior to towing it from private property where officer testified that the vehicle posed a danger to the public. The State proved defendant guilty beyond a reasonable doubt of unlawful possession of a controlled substance where officers found cocaine in vehicle defendant owned and was driving.

¶ 2 Defendant was charged with unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2012)) and unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2012)) after cocaine was found in his vehicle. Defendant filed a motion to quash his arrest and suppress the evidence against him. The trial

court denied the motion, and the case proceeded to a jury trial. The jury found defendant guilty of possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2012)). The trial court sentenced defendant to 180 days in jail and 48 months' probation. On appeal, defendant argues that (1) the trial court erred in denying his motion to suppress, and (2) the State failed to prove him guilty beyond a reasonable doubt of possession of a controlled substance. We affirm.

¶ 3 In April 2012, defendant Duncan Johnson was arrested and charged with unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2012)) and unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2012)) for possessing between 15 and 100 grams of a substance containing cocaine. He filed a motion to quash arrest and suppress evidence.

¶ 4 At the hearing on defendant's motion, Michelle Losciavo, a dispatcher, testified that she received a phone call from Kathy, an employee at the Pilot Truck Stop in Monee, on April 10, 2012, at approximately 10:07 p.m. Kathy told Losciavo that there were two "highly intoxicated" black males at the truck stop in a white vehicle. According to Kathy, one of the men, whose last name was "Johnson," got out of the car to buy coffee and pay for his gas before pumping it. It was Losciavo's impression that Johnson was driving the vehicle.

¶ 5 Losciavo dispatched the police. Losciavo told the police that the license plates on the vehicle were registered to defendant and that defendant had at least one outstanding warrant and no valid driver's license. Losciavo thought that defendant was a registered owner of the vehicle.

¶ 6 Teresa Cancialosi, a police officer with the Monee police department, was dispatched to the Pilot Truck Stop in Monee at approximately 10:07 p.m. on April 10, 2012, for "two intoxicated subjects *** in a white vehicle." The dispatcher indicated that one of the men was inside the truck stop, and one was sitting in the car. Cancialosi believed that the dispatcher stated that the man inside the truck stop, named Johnson, was the driver of the vehicle.

¶ 7 When Cancialosi arrived at the truck stop, she saw one black male pumping gas and another sitting in the passenger seat of a white vehicle. Cancialosi approached defendant, who was pumping gas, to determine if he was intoxicated. After she spoke to defendant, she observed that he was unsteady and appeared to be intoxicated. She also smelled a "strong odor" of "an alcoholic beverage coming off his breath." Cancialosi asked defendant and the passenger of the vehicle for identification. Defendant gave her a Tennessee ID card. After running defendant's name, she learned that defendant had his driver's license revoked in Illinois and two outstanding active warrants. The passenger of the vehicle, Ricky Polk, did not have a valid driver's license.

¶ 8 Cancialosi placed defendant under arrest. Cancialosi and another officer, John Bosse, then conducted an inventory search of the vehicle, pursuant to Monee police department policy, after determining that the vehicle would be towed. The officers found a small bottle containing approximately 20 orange pills inside the pocket of a jacket lying on the back seat of the vehicle. They also found a white powdery substance in an unlocked compartment inside the dashboard, which was tested and determined to be cocaine. Cancialosi testified that she never observed defendant inside the vehicle or driving the vehicle.

¶ 9 Cancialosi testified that Officer Bosse searched defendant and found keys to the vehicle in his pocket. Defendant was also a registered owner of the vehicle. Cancialosi testified that it is unsafe to leave an unattended vehicle next to a gas pump because of the possibility of "[t]oo many accidents." She explained that a vehicle next to a gas pump "could present a problem with somebody having an accident trying to squeeze through to get to a gas pump." She noted that the vehicle in this case seemed particularly close to the gas pump. The owner of the gas station did not ask her to move the vehicle but had done so on prior occasions with respect to other vehicles. She testified that it is the policy of the Monee police department to not "leave vehicles unattended anywhere."

¶ 10 The trial court denied defendant's motion to quash arrest and suppress evidence, finding that the officers had an articulable reason for approaching defendant to ensure that he was not drunk and planning to drive. The court further found that because defendant was arrested and the passenger did not have a valid driver's license, the officers' search of the vehicle was a valid inventory search prior to towing. The court rejected defendant's argument that the vehicle should not have been towed because it was on private property, stating: "[I]t's private property but public, open to the public for business. And the officer testified it was impeding *** the ingress and egress to that particular pump. And I think it would interfere with the convenience of the owners."

¶ 11 Defendant's case proceeded to a jury trial. At trial, John Bosse, a police officer for the Village of Monee, testified that he was dispatched to the Pilot gas station in Monee on April 10, 2012, at approximately 10:07 p.m. When he arrived, Theresa Cancialosi was already there. Bosse observed defendant pumping gas into a white Chevy Malibu. Bosse and Cancialosi spoke to defendant. After obtaining defendant's name and date of birth, the officers ran defendant "through the LEADS computers" and found that he was the subject of two outstanding warrants. The officers then placed defendant under arrest. Bosse searched defendant and found keys to the vehicle inside his pocket.

¶ 12 The passenger of the vehicle did not possess a valid driver's license, so the officers decided to tow the vehicle pursuant to police department policy. Before having the vehicle towed, the officers search the vehicle pursuant to department policy. In a compartment above the AM/FM radio, Bosse found a "tin foil balled article." Based on his experience, he thought it might be an illicit substance.

¶ 13 Cancialosi testified to the same events as she did at the hearing on defendant's motion to quash arrest and suppress evidence. She further testified that she arrived at the Pilot station

approximately five minutes before Bosse and approached defendant. While she was talking to defendant, Bosse arrived. After arresting defendant, Cancialosi called to have defendant's vehicle towed, and she and Bosse began searching it. In the vehicle, Bosse found "a partially balled tin foil containing a plastic bag which contained a white powdery substance inside." Based on her training and experience, the white powdery substance appeared to be cocaine.

¶ 14 Bosse transported defendant to the police station and placed him in a holding cell. Later, she checked in on him. When she did so, defendant asked her if "Ricky" was going to be charged with anything. She responded, "Yes." Defendant then said, "The drugs aren't his." Cancialosi asked defendant if he wanted to talk. He said, "Yes," so she brought him out of his cell and into an interview room. As Cancialosi gave defendant his *Miranda* warnings, defendant said under his breath, "I am going to go away for a long time." After that, he refused to speak to her.

¶ 15 Debra Magolan, a forensic scientist who works at the Illinois State police laboratory, testified that the "white chunky powder" contained in the "foil wrapped plastic bag" found in the vehicle defendant was driving contained 49.2 grams of a substance containing cocaine.

¶ 16 Brett Schaeffer, of the Will County Sheriff's Department, testified as an expert in narcotics investigations. Based on his training and experience, 50 grams of cocaine would not typically be for personal use but would be consistent with an intent to sell and deliver.

¶ 17 The jury found defendant guilty of possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2012)) and not guilty of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2012)). The trial court sentenced defendant to 180 days in jail, and 48 months of TASC probation.

¶ 18 ANALYSIS

¶ 19 I

¶ 20 Defendant first argues that the trial court should have granted his motion to suppress because Officers Cancialosi and Bosse had no right to search his vehicle, which was parked on private property.

¶ 21 In reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). We review the trial court's findings of fact for clear error, and we will reverse those findings only if they are against the manifest weight of the evidence. *Id.* We review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Id.*

¶ 22 The burden of proof is on the defendant at a hearing on a motion to suppress evidence. *People v. Gipson*, 203 Ill. 2d 298, 306 (2003). A defendant must make a *prima facie* case that the evidence was obtained by an illegal search or seizure. *Id*. at 306-07. If a defendant makes a *prima facie* case, the State has the burden of going forward with evidence to counter the defendant's *prima facie* case. *Id*. at 307. However, the ultimate burden of proof remains with the defendant. *Id*.

¶ 23 The fourth amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const., amend. IV. The fourth amendment prohibits searches conducted outside the judicial process, without prior approval by a judge or magistrate, subject to a few well-delineated exceptions. *People v. Clark*, 394 Ill. App. 3d 344, 347 (2009). One such exception is an inventory search of a lawfully impounded vehicle. *Id*.

¶ 24 "An inventory search is a judicially created exception to the warrant requirement of the fourth amendment." *People v. Hundley*, 156 Ill. 2d 135, 138 (1993). Three criteria must be met for a valid warrantless inventory search of a vehicle: (1) the impoundment of the vehicle must be lawful; (2) the purpose of the inventory search must be to protect the police from claims of lost,

stolen, or vandalized property, and to guard the police from danger; and (3) the inventory search must be conducted in good faith pursuant to reasonable standardized police procedures and not as a pretext for an investigatory search. *Id*.; *People v. Nash*, 409 Ill. App. 3d 342, 348 (2011).

¶ 25 The threshold issue in considering whether the police have conducted a valid inventory search incident to a tow is whether the impoundment of the vehicle was proper, since the need and justification for the inventory search arise from the impoundment. *People v. Spencer*, 408 Ill. App. 3d 1, 8 (2011). Pursuant to their community-caretaking function, police have authority to seize and remove vehicles impeding traffic or threatening public safety and convenience. *Id*.; *Nash*, 409 Ill. App. 3d at 348. However, the mere fact that an arrestee's car would be left unattended is insufficient to justify impoundment. *Spencer*, 408 Ill. App. 3d at 9.

¶ 26 Here, defendant made a *prima facie* case by showing that the officers searched his car without a warrant. The State, however, met its burden of establishing that defendant's vehicle was searched as part of a routine inventory procedure prior to being towed. Cancialosi testified that defendant's vehicle needed to be towed because it posed a danger to the public since it was parked very close to a gas pump and would hinder the flow of traffic in the gas station. Based on these facts, the officers had authority, pursuant to their community-caretaking function, to impound defendant's vehicle. See *Spencer*, 408 Ill. App. 3d at 8; *Nash*, 409 Ill. App. 3d at 348.

¶ 27 Defendant, however, contends that the officers had no right to impound his vehicle because it was on private property, relying on *Spencer*. In that case, the Second District ruled that the State failed to establish that officers lawfully impounded the defendant's vehicle when it was parked in a school parking lot. *Spencer*, 408 Ill. App. 3d at 10. However, *Spencer* is distinguishable because "the State did not present any evidence showing that defendant's vehicle was impeding traffic or threatening public safety." *Id*. at 10-11.

¶ 28 Here, Cancialosi testified at the hearing on defendant's motion that it would have been unsafe to leave defendant's vehicle parked next to the gas pump. She explained that leaving the car in such a location could lead to accidents as drivers tried to "squeeze" by defendant's vehicle to get to another gas pump. Because the State presented evidence showing that defendant's vehicle could threaten the safety of the public, the impoundment was lawful. See *Nash*, 409 Ill. App. 3d at 348.

¶ 29 II

¶ 30 Defendant also argues that the State failed to prove him guilty beyond a reasonable doubt of possessing a controlled substance because the officers never saw him inside the vehicle where the cocaine was found.

¶ 31 The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). A reviewing court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 32 To convict a defendant of unlawful possession of a controlled substance, the State must prove beyond a reasonable doubt that defendant (1) had knowledge of the presence of the controlled substance, and (2) had immediate and exclusive possession or control of the substance. *People v. Woods*, 214 Ill. 2d 455, 466 (2005). The element of knowledge is rarely

susceptible to direct proof and is usually established by circumstantial evidence. *People v. Sanchez*, 375 Ill. App. 3d 299, 301 (2007). Knowledge may be established by evidence of acts, statements or conduct of the defendant, as well as the surrounding circumstances, which supports the inference that he knew of the existence of narcotics at the place they were found. *Id.*

¶ 33 Possession may be actual or constructive. *People v. Givens*, 237 Ill. 2d 311, 335 (2010). "Actual possession is the exercise by the defendant of present personal dominion over the illicit material and exists when a person exercises immediate and exclusive dominion or control over the illicit material, but does not require present personal touching of the illicit material." *Id.* "Constructive possession exists without actual personal present dominion over a controlled substance, but with an intent and capability to maintain control and dominion." *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992).

¶ 34 When drugs are found on premises under the defendant's control, it may be inferred that the defendant had both knowledge and control of the drugs. *People v. Davis*, 33 Ill. 2d 134, 139 (1965). The driver of an automobile with a lone passenger has immediate and exclusive control of the inside of the automobile. *People v. Milam*, 224 Ill. App. 3d 642, 647 (1992); *People v. McNeely*, 99 Ill. App. 3d 1021, 1024 (1981). There is sufficient evidence of knowledge and control to sustain a conviction for possession of a controlled substance against a driver where drugs are found in the automobile he is driving. See *Davis*, 33 Ill. 2d at 139; *Milam*, 224 Ill. App. 3d at 647; *People v. Bowman*, 164 Ill. App. 3d 498, 502 (1988); *People v. House*, 141 Ill. App. 3d 298, 303 (1986); *People v. Bolden*, 53 Ill. App. 3d 848, 854 (1977); *People v. Pagliara*, 47 Ill. App. 3d 708, 715 (1977).

¶ 35 Here, police found cocaine in an unlocked compartment located on the dashboard of the vehicle. Defendant was a registered owner of the vehicle. He had exclusive possession of the keys to the vehicle and was seen driving it just before officers searched it. Later, while in

custody, defendant told Cancialosi that "the drugs" did not belong to Polk, his passenger. Viewed in the light most favorable to the State, this evidence was sufficient for the trier of fact to reasonably infer that defendant had knowledge and possession of the cocaine. See *House*, 141 Ill. App. 3d at 303 (State proved defendant guilty beyond a reasonable doubt of possession of controlled substance where drugs were found in vehicle defendant was driving and defendant's statements indicated that he knew they were there).

¶ 36 The judgment of the circuit court of Will County is affirmed.

¶ 37 Affirmed.