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2015 IL App (3d) 130753-U

Order filed October 2, 2015

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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,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-13-0753
	)	Circuit No. 12-CF-2415
	)	
MICHAEL E. LYON,	)	Honorable
	)	Robert P. Livas,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice McDade and Justice O'Brien concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court erred by denying defendant's motion to quash arrest and suppress evidence. The court's ruling is reversed and the matter is remanded for further proceedings.
- ¶ 2 The trial court's determination that there was reasonable suspicion of criminal activity to support a traffic stop was erroneous. The trial court's order denying defendant's motion to quash his arrest and suppress evidence is reversed.

¶ 3 BACKGROUND

¶ 4 On October 18, 2012, the State charged defendant with aggravated driving while license revoked. The indictment alleged defendant drove his vehicle while his license was revoked at a time when he had two prior convictions for violations of driving while license revoked. On December 17, 2012, defendant filed a motion to quash arrest and suppress evidence (motion to suppress) alleging the arresting officer did not have reasonable grounds to stop defendant's vehicle.

¶ 5 On March 19, 2013, the trial court conducted a hearing on defendant's motion to suppress. Deputy Kevin Spencer testified that he was a patrol deputy for the Will County Sheriff's Department and, on January 3, 2012, he worked the 11:00 p.m. to 7:00 a.m. shift. On January 3 at approximately 12:28 a.m., Deputy Spencer was driving a marked patrol car in the Steger Estate subdivision in Crete, Illinois, near the intersection of Norfolk Road and Ashland Avenue when he observed a blue Chevrolet S-10 pickup truck northbound on Ashland Avenue at the intersection.

¶ 6 Deputy Spencer followed the vehicle and, while the deputy was driving behind defendant, he noticed defendant quickly signal and pull into a residential driveway. The deputy passed defendant's vehicle to drive around the block because he thought the vehicle was "suspicious." After passing the vehicle, the deputy observed defendant quickly pull out of the driveway. The deputy ran the license plate number and activated the squad car's video recorder. The deputy testified there had been numerous residential and motor vehicle burglaries in the subdivision. After circling the block, the deputy noticed the vehicle driving on Richton Road. Deputy Spencer said his main concern at that time was whether the registered owner of the vehicle had ties to the residence or the neighborhood.

¶ 7 Deputy Spencer followed defendant's vehicle and observed the vehicle signal to turn right and make a complete stop at the intersection of Ashland Avenue and Craig Court. Deputy Spencer activated his squad lights prior to defendant's vehicle turning right onto Craig Road. The deputy did not observe defendant commit a moving violation at that time.

¶ 8 During his testimony, Deputy Spencer explained he stopped defendant's vehicle "[b]ecause initially when I saw it at the intersection of Norfolk and Ashland, that's when I observed it had something hanging from the rearview mirror, but initially the reason I was concerned with the vehicle is because of the suspicious nature." Deputy Spencer stated "the only basis for pulling [the] vehicle over was a possibly obstructed view."

¶ 9 On cross-examination, Deputy Spencer said he observed an approximately eight-by-eight inch air freshener on defendant's rearview mirror before he activated his overhead lights. Prior to activating his squad lights, Deputy Spencer also noticed that defendant's vehicle did not have side mirrors. During cross examination, Deputy Spencer indicated the two reasons he pulled defendant's vehicle over were the obstruction of the windshield by the air freshener and the lack of side mirrors.

¶ 10 The defense argued that there was no testimony that the eight-by-eight inch air freshener actually obstructed defendant's view. Additionally, the defense contended that the deputy did not include all of the facts in his police report, specifically that defendant turned into the driveway or that the deputy ran defendant's license plate. Further, the defense argued the video recording did not show anything hanging from the rearview mirror and that it was not illegal to drive without side mirrors when the vehicle had a rearview mirror.

¶ 11 The State argued the stop was valid because the deputy saw the air freshener prior to making the traffic stop. The prosecutor argued the air freshener was large enough to materially obstruct the driver's view.

¶ 12 Based on the testimony, the trial court rejected the argument that the air freshener justified the traffic stop, and made no other finding of a traffic violation. The court found, "[W]hat attracted that officer to that car had nothing to do with the hanging object from the rearview mirror." The court determined the stop was based on what that car was doing in that neighborhood at that time. The court further found, "Suspicion is a basis upon which a vehicle can temporarily be stopped by an officer to ascertain whether or not there is credibility to the defendant's explanation and it only has to be a few seconds." Additionally, the trial court found, "There was no unreasonable term of time that the officer had that man stopped. All he did was take his license, go back and run it. The moment he ran it, it turned out to be revoked." The trial court stated, "Based on the reasonableness of \*\*\* the officer's activities in checking out whether or not the defendant belonged in that area, an area of high crime at 12:30 in the morning, having pulled into a driveway and then pulling out after the officer passed, he did have reasonable suspicion to stop the vehicle temporarily to ascertain the nature of why that gentleman was doing what he was doing." The trial court denied defendant's motion to suppress and defendant's subsequent motion to reconsider the trial court's ruling.

¶ 13 Subsequently, on October 1, 2013, defendant waived his right to a jury trial and the parties agreed to proceed to a stipulated bench trial. The parties stipulated to Deputy Spencer's earlier testimony during the motion to suppress hearing. The court again found the deputy had probable cause to stop the vehicle and the evidence showed defendant's driver's license was

revoked on January 3, 2012, at the time of the stop. Based on the facts, the court found defendant guilty of driving with a revoked driver's license.

¶ 14 After finding defendant guilty, the court accepted the parties' agreed disposition for this case. The State *nolle prossed* defendant's two petty traffic charges for driving with an obstructed view and operating an uninsured motor vehicle. For the offense of driving with a revoked driver's license, the court sentenced defendant to 12 months' conditional discharge, fines and costs in the amount of \$500, and 98 days incarceration in the Will County jail with day-for-day credit and credit for 49 days already served. Subsequently, defendant filed a timely notice of appeal.

¶ 15 ANALYSIS

¶ 16 On appeal, defendant argues the trial court erred by denying his motion to suppress because the evidence did not demonstrate that the deputy had a reasonable suspicion to perform a traffic stop. The State contends the court correctly found the stop was lawful based upon the facts known to the officer at the time of the stop.

¶ 17 This court applies a two-part test when reviewing a trial court's ruling on a motion to quash and suppress evidence. *People v. Pulling*, 2015 IL App (3d) 140516, ¶ 13 (citing *People v. Harris*, 228 Ill. 2d 222, 230 (2008)). A trial court's findings of fact will be reversed only if the findings are against the manifest weight of the evidence. *Id.* We review *de novo* the trial court's ultimate ruling regarding whether reasonable suspicion or probable cause exists and whether suppression is warranted. *Id.*

¶ 18 In this case, the parties agree the officer conducted an investigative stop referred to as a *Terry* stop under *Terry v. Ohio*, 392 U.S. 1 (1968). A *Terry* stop allows a police officer to "stop any person in a public place for a reasonable period of time when the officer reasonably infers

from the circumstances that the person is committing, is about to commit or has committed an offense.” 725 ILCS 5/107-14 (West 2012); *Pulling*, 2015 IL App (3d) 140516, ¶ 14. It is well established that “brief investigative detentions, or ‘Terry stops,’ ” must be supported by “a reasonable, articulable suspicion of criminal activity.” *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006) (citing *United States v. Black*, 675 F.2d 129, 133 (7th Cir. 1982); *United States v. Berry*, 670 F.2d 583, 591 (5th Cir. 1982)). Such limited investigative detentions are only permissible upon a reasonable suspicion, based on specific and articulable facts, that the person to be detained has committed, or is currently or about to commit, a crime. *People v. Hyland*, 2012 IL App (1st) 110966, ¶ 30 (citing *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868 (1968)).

¶ 19 Defendant relies primarily on *People v. Leggions*, 382 Ill. App. 3d 1129 (2008). The facts in *Leggions* involved observation of an SUV vehicle parked in front of a house in an area “where gangs, drugs, and murder were rampant.” *Id.* at 1130. When a police sergeant observed two men leave one vehicle and then enter an SUV, the sergeant believed he was watching a drug deal in progress. Multiple officers approached the SUV with weapons drawn. When the officers reached the SUV, an officer observed and seized a brown piece of paper containing a white substance on the floorboard. The white substance later tested positive for cocaine. *Id.* at 1131. The appellate court held that the cocaine should be suppressed because observing two people exiting one vehicle and entering another, even considering the character of the neighborhood, did not create a reasonable suspicion of criminal activity. *Id.* at 1138.

¶ 20 In the instant case, the court found the reason Deputy Spencer stopped defendant’s vehicle was solely due to the “suspicious nature” of defendant’s traffic maneuver in a high crime area. This finding reveals the court was not persuaded by the evidence that the officer decided to stop defendant after seeing an air freshener hanging from the rearview mirror or making any

other observations pertaining to the vehicle. The trial court's finding was supported by the record.

¶ 21 Based on this finding, we conclude, as a matter of law, that pulling into a driveway and then safely backing out of a driveway is a lawful traffic maneuver which is not indicative of suspicious criminal activity simply because the driver was driving his vehicle in a high crime area. Consequently, the officer did not have a reasonable suspicion of criminal activity justifying his decision to effectuate a *Terry* stop in this case.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the circuit court of Will County denying defendant's motion to quash and suppress evidence is reversed, the conviction is vacated, and the matter is remanded for a new trial.

¶ 24 Reversed and remanded.