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2015 IL App (3d) 140482-U

Order filed May 13, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellant,	)	
	)	Appeal No. 3-14-0482
v.	)	Circuit No. 13-CF-1234
	)	
JAMES G. CREEVY,	)	Honorable
	)	Carla Alessio-Policandriotes,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Presiding Justice McDade and Justice Lytton concurred in the judgment.

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**ORDER**

- ¶ 1       *Held:* The trial court did not err by granting defendant's motion to suppress cocaine found during a traffic stop, where the search uncovering the cocaine was conducted after the initial purpose justifying the stop had concluded.
- ¶ 2       During a traffic stop, police searched the vehicle of defendant, James G. Creevy, finding cocaine. The State charged defendant with unlawful possession of a controlled substance (cocaine) (720 ILCS 570/402(c) (West 2012)). Defendant filed a motion to suppress the cocaine, which the court granted. The State appeals, and we affirm.

¶ 3

## FACTS

¶ 4

At the hearing on defendant's motion to suppress, defendant testified that on June 6, 2013, at approximately 11 a.m., he was driving his car in Will County when he received a cell phone call from a colleague. He pulled over to the shoulder to take the call. After the call concluded, he returned to the road and made a right turn at a stop sign. Soon after, he noticed a police squad car with flashing emergency lights behind him. Defendant pulled over in a gas station parking lot. The squad car pulled in behind him.

¶ 5

Defendant testified that an officer approached defendant's vehicle. The officer asked defendant for his identification and explained that defendant failed to signal his turn. Defendant informed the officer that he did not have his driver's license because he had recently switched wallets. However, defendant told the officer his driver's license number, and the officer returned to his squad car to run defendant's information. Defendant testified his license and registration were valid at the time.

¶ 6

According to defendant, after approximately 10 minutes, the officer returned to defendant's car. The officer ordered defendant to exit the car. Defendant complied, believing that he was required to obey the officer's order. The officer did not write defendant a ticket. The officer patted down defendant and asked him for his wallet. Defendant gave his wallet to the officer. Without asking permission, the officer searched through defendant's wallet. The officer then searched defendant's vehicle without asking for permission. Defendant thought the vehicle search took about 20 minutes. In total, defendant estimated the traffic stop took 40 minutes. After the search of defendant's vehicle, the officer arrested defendant.

¶ 7

Joliet police officer Phillip Miller testified that on June 6, 2013, he was on patrol in his squad car. Miller observed a green Mazda Protege parked on the side of a stretch of road in a

high-crime area that did not have any houses directly nearby. After Miller drove past the Mazda, he observed it execute a U-turn and drive off in the opposite direction. Miller turned around and followed the Mazda. At 11:07 a.m., Miller activated his emergency lights and pulled over the vehicle after observing it make a turn without signaling.

¶ 8 Miller approached the vehicle and asked defendant for his driver's license and proof of insurance. Defendant was unable to produce the documents. Miller informed defendant that he failed to signal a turn. Defendant was visibly shaking and would not look at Miller. Defendant told Miller his name and date of birth. Miller returned to his squad car and ran defendant's information, discovering that defendant had a valid driver's license. Miller testified that it took two or three minutes to run defendant's information.

¶ 9 Miller returned to defendant's vehicle and asked defendant to step out of the car. Miller wanted to investigate why defendant appeared nervous and why he had been parked on the side of the road. After defendant exited the vehicle, Miller told defendant that he was free to leave. Miller then asked defendant whether he would answer some questions. Defendant responded that he would. Miller asked for permission to search the vehicle, and defendant granted it. During the search, Miller found a small amount of cocaine in the vehicle's glove compartment. Miller arrested defendant. Miller testified that his investigation of the signal violation ended when he discovered that defendant had a valid driver's license.

¶ 10 The State introduced a dispatcher's report from the Joliet police department. The report stated that: Miller made contact with defendant at 11:07 a.m. on June 6, 2013; Miller ran defendant's information at 11:10 a.m.; and Miller arrested defendant at 11:28 a.m.

¶ 11 The court granted the motion to suppress. It found that the initial purpose of the traffic stop ended when Miller decided not to issue defendant a citation. According to the court, Miller

made that decision while seated in his squad car. Therefore, any additional seizure that occurred—including Miller asking defendant to exit the vehicle—exceeded the scope of the initial stop and required additional suspicion. The court found there was no additional suspicion justifying the continued seizure. It therefore found the search of the vehicle unreasonable and granted defendant's motion to suppress.

¶ 12

## ANALYSIS

¶ 13

The State appeals the court's granting of the motion to suppress.<sup>1</sup> The parties agree that the initial stop of defendant was justified based on defendant's turn signal violation. The issue in contention on appeal is whether the stop extended beyond the scope necessary for the purpose of investigating the signal violation. We hold that the signal investigation concluded and yet the traffic stop continued absent any additional facts justifying the seizure. Thus, we affirm the trial court's decision to suppress the evidence.

¶ 14

In reviewing a trial court's decision on a motion to suppress, we apply a two-tiered standard of review. *People v. Cummings*, 2014 IL 115769, ¶ 13. Factual findings are reviewed for clear error, the court's ultimate decision whether suppression was warranted is reviewed *de novo*. *Id.*

¶ 15

A traffic stop is a seizure and implicates the reasonableness requirement of the fourth amendment. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). As a seizure, a traffic stop is governed by the principles of *Terry v. Ohio*, 392 U.S. 1 (1968). *Cummings*, 2014 IL 115769,

¶ 15. Under *Terry*, a stop must be (1) initially justified by reasonable suspicion; and (2) "reasonably related in scope to the circumstances which justified the interference in the first

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<sup>1</sup> The appeal is brought pursuant to Illinois Supreme Court Rule 604(a)(1) (eff. Feb. 6, 2013).

place." *Terry*, 392 U.S. at 20. A stop may "last no longer than is necessary to effectuate" the initial purpose of the stop. *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion).

¶ 16 We find the case of *People v. Miller*, 345 Ill. App. 3d 836 (2004), instructive on this issue. In *Miller*, police officer Daniel Davis initiated a traffic stop based on the defendant's defective muffler. *Id.* at 838. The defendant gave Davis his driver's license and insurance card, which Davis took back to his squad car. After Davis determined that the defendant's license was valid, Davis issued the defendant a written warning. Prior to returning the defendant's license and insurance card, Davis asked the defendant to step out of the vehicle. *Id.* at 839. The defendant complied, and Davis questioned whether the defendant had any contraband. The defendant responded that he had cannabis and paraphernalia. A search of the defendant and his vehicle uncovered cannabis and a gold smoking pipe. The trial court suppressed the evidence, finding that the purpose of the stop concluded when Davis issued the defendant the written warning. Therefore, Davis's instruction for the defendant to exit the car constituted an unreasonable seizure. *Id.*

¶ 17 This court affirmed the suppression. *Miller*, 345 Ill. App. 3d at 843. We confirmed that when Davis returned to the defendant's vehicle, "he had completed his determination of the motor vehicle offense and verification of defendant's driver's license and insurance information." *Id.* at 842. At that point, there was nothing more for Davis to do than return the defendant's documents. Davis's "direction or request" for the defendant to exit the vehicle therefore exceeded the scope of the initial stop. Because there were no additional facts justifying a continued seizure, the resulting searches of the defendant and his vehicle were unreasonable, and the evidence was properly suppressed. *Id.* at 843.

¶ 18 In the present case, as in *Miller*, the purpose of the stop—investigating the traffic violation—was completed when Officer Miller returned to defendant's vehicle. At that point, Miller had decided to resolve the traffic investigation without issuing defendant a citation. The purpose of the traffic stop had concluded. However, Miller then directed defendant to exit the vehicle, which extended the stop beyond its initial purpose. The resulting search was therefore undertaken during an illegal seizure, and the evidence of that search must be suppressed.

¶ 19 The State argues that ordering defendant out of his vehicle was acceptable under *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (*per curiam*), which allows an officer to order a suspect out of his vehicle under circumstances. But, as the Supreme Court of the United States recently clarified in *Rodriguez v. United States*, No. 13-9972, 2015 WL 1780927, at \*7 (U.S. Apr. 21, 2015), the rule in *Mimms* allowing officers to require a driver to exit his vehicle is grounded in the interest of officer safety and cannot be used merely to further a "general interest in criminal enforcement." In the present case, there is nothing in the record to suggest that Miller's instruction to exit the vehicle was grounded in officer safety interests rather than an interest in investigating crime.

¶ 20 CONCLUSION

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

¶ 22 Affirmed.