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2015 IL App (3d) 140856-U

Order filed November 24, 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 14th Judicial Circuit, Henry County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0856
)	Circuit Nos. 11-CF-79 and 11-TR-1286
)	
JOSEPH A. FREDRICKSON,)	Honorable Charles H. Stengel and Richard A. Zimmer,
Defendant-Appellant.)	Judges, Presiding.

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

ORDER

¶ 1 *Held:* The officer had probable cause to search the defendant's enclosed truck bed and the suitcases therein.

¶ 2 Following a stipulated bench trial, the defendant, Joseph A. Fredrickson, was convicted of multiple drug offenses. On appeal, the defendant argues that the trial court erred in denying his motion to suppress evidence. Specifically, the defendant argues the officer did not have a

search warrant or consent to enter the defendant's enclosed truck bed or to open the defendant's locked duffle and suitcase. We affirm.

¶ 3

FACTS

¶ 4

On March 11, 2011, the defendant was charged by information with cannabis trafficking (720 ILCS 550/5.1(a) (West 2010)), unlawful possession with intent to deliver cannabis (720 ILCS 550/5(g) (West 2010)), and unlawful possession of cannabis (720 ILCS 550/4(g) (West 2010)). He also received a citation for driving while license suspended.

¶ 5

On September 18, 2012, a hearing was held on the defendant's motion to suppress. The sole witness at the hearing was former Illinois State Police Master Sergeant Floyd Blanks. Sergeant Blanks testified that as of March 11, 2011, he had been a member of the Illinois State Police for 25 years, had over 500 hours of drug interdiction training, and had been involved in several hundred cannabis drug arrests. He said he had smelled the odor of both burnt and raw cannabis on multiple occasions and it was a scent he was familiar with.

¶ 6

On March 11, 2011, Sergeant Blanks was on patrol on Interstate 80. He was driving west and saw a green pickup truck traveling eastbound. He visually observed that the green truck was exceeding the speed limit, and his radar confirmed that the truck was traveling 72 miles per hour in a 65 mile per hour speed zone. Sergeant Blanks turned around, caught up with the truck, and pulled him over.

¶ 7

Once the truck pulled over, Sergeant Blanks approached the truck on the passenger side. As there was a dog in the passenger seat, Sergeant Blanks then went around to the driver's side of the truck. Sergeant Blanks asked the driver for his license and determined that the defendant was driving the truck. After speaking with the defendant, Sergeant Blanks asked the defendant to get out of the vehicle because he "smelled a faint odor of raw cannabis emanating from the vehicle."

Once the defendant and Sergeant Blanks were sitting in the front seat of the squad car, Sergeant Blanks ran a license, registration, and warrant check on the defendant. Upon running this check, Sergeant Blanks discovered that the defendant's driver's license was suspended.

¶ 8 Sergeant Blanks directed the defendant to take his dog out of the truck and to go to the side of the roadway with the dog. The defendant was very cooperative. The defendant had not been placed in handcuffs at that time. The defendant was not given back his license, registration, or insurance as Sergeant Blanks needed it to fill out the written warning for speeding and the citation for driving on a suspended license. Sergeant Blanks then searched the defendant's vehicle based on the odor of cannabis he had smelled earlier. He did not obtain a warrant or ask for the defendant's consent. He said that the policy of the State Police was that, "Once we smell it, we are allowed to search it." Sergeant Blanks did not find any contraband in the cab of the defendant's truck.

¶ 9 He then went around to the bed of the defendant's truck, which was enclosed by a hard shell topper. Sergeant Blanks got up on the tailgate. He noticed that the odor of marijuana was "significantly more pronounced once [he] got to the bed area of the truck." He found a hard suitcase and a duffle bag in the back. Both were locked. He pressed down on the suitcase to see if he could smell contraband and smelled the odor of cannabis. He then opened the suitcase using a knife and found 25 bundles of cannabis with some fabric dryer sheets. Sergeant Blanks used a knife to open the duffle bag and found more cannabis. Upon discovering the cannabis, Sergeant Blanks arrested the defendant, handcuffed him, read him his *Miranda* rights, and put him in the squad car. A video of the stop was played in court.

¶ 10 The court found Sergeant Blanks credible. The court further stated, "Officer Blanks, prior to that time, early on in this case, through the totality of the circumstances, he had probable

cause to search the vehicle based upon the faint odor of the marijuana." However, the court took the case under advisement in order to examine the law as it related to searching locked luggage.

¶ 11 On December 17, 2012, the court denied the defendant's motion to quash arrest and suppress evidence. The court found: (1) there was probable cause to stop the truck for speeding; (2) Sergeant Blanks was credible; and (3) the search of the defendant's vehicle was proper because:

"U.S. versus Ross, *** says that if an officer has probable cause to believe contraband is somewhere in the car, he can search everything and every container that could hold an object of the search.

The officer was searching for cannabis. The containers which the officer opened, which are locked luggage, is a container which could contain cannabis, so the Court finds that the automobile exception does apply and that the officer had probable cause to open the container."

¶ 12 After a stipulated bench trial, the trial court found the defendant guilty on all counts. The defendant filed a "Post-Trial Motion," asking the court to reconsider the denial of the defendant's motion to suppress and to grant the defendant a new trial. After further argument and consideration, the court denied the defendant's motion to reconsider the motion to suppress, but vacated the cannabis trafficking conviction as the evidence was insufficient.

¶ 13 The defendant and the State jointly recommended that the defendant be sentenced to six years' imprisonment on the cannabis possession with intent to deliver conviction, merging the possession and possession with intent to deliver convictions.

¶ 14 ANALYSIS

¶ 15 On appeal, the defendant does not challenge the propriety of the stop of his truck. Rather, the defendant argues that the court erred in denying his motion to suppress evidence as he did not have consent or a search warrant to enter the enclosed bed of the defendant's truck or the locked containers located therein.

¶ 16 "In reviewing a ruling on a motion to suppress, we defer to the trial court's findings of fact, which we must accept unless they are against the manifest weight of the evidence, but we consider *de novo* the ultimate question of whether the search was constitutional." *People v. Smith*, 2012 IL App (2d) 120307, ¶ 10.

¶ 17 The fourth amendment to the United States Constitution protects against unreasonable searches and seizures without a warrant. *People v. James*, 163 Ill. 2d 302, 311 (1994) (citing U.S. Const., amend. IV). The "automobile exception" is a recognized exception to the warrant requirement. *People v. Contreras*, 2014 IL App (1st) 131889, ¶ 28. Under this exception, a police officer may search a vehicle without a warrant if probable cause exists to believe the vehicle contains evidence of criminal activity, such as contraband. *Id.* "[T]he scope of the warrantless search authorized by that exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle *and its contents that may conceal the object of the search.*" (Emphasis added.) *United States v. Ross*, 456 U.S. 798, 825 (1982).

¶ 18 "To establish probable cause to search it must be shown that the totality of the facts and circumstances known to the officer at the time of the search would justify a reasonable person in believing that contraband was present in the automobile." *People v. Smith*, 95 Ill. 2d 412, 419 (1983) (quoting *People v. Clark*, 92 Ill. 2d 96, 100 (1982)). In determining the totality of the

circumstances, we consider the credibility of the officer's testimony, including his background as an officer and his history of investigating drug cases. See *People v. Stout*, 106 Ill. 2d 77, 87 (1985). Recently, we held that "[i]t is well settled that the smell of cannabis emanating from a vehicle is sufficient to give an officer probable cause to search the vehicle." *People v. Litwin*, 2015 IL App (3d) 140429, ¶ 40. This is the case even if the odor is "slight," and applies evenly to raw and burnt cannabis. See *Smith*, 2012 IL App (2d) 120307, ¶¶ 18-19.

¶ 19 Here, Sergeant Blanks testified he had been a member of the Illinois State Police for 25 years, had over 500 hours of drug interdiction training, and had been involved in several hundred cannabis drug arrests. His extensive training and experience in the field made him familiar with the odor of cannabis. On the day of the defendant's arrest, Sergeant Blanks pulled the defendant over for speeding and smelled the odor of cannabis emanating from the vehicle when he talked to the defendant. This odor of cannabis provided probable cause for him to search both the cab and bed of the defendant's truck. See *People v. Weaver*, 2013 IL App (3d) 130054, ¶ 32 (holding the smell of cannabis in the car provided probable cause to search the entire vehicle, including the trunk). It did not matter that the odor of cannabis was "faint." See *id.* When Sergeant Blanks opened and got into the bed of the truck he noticed that the smell of cannabis was more pronounced, which supports his search of the suitcase and duffle bag. This probable cause to search the locked suitcase and duffle was further solidified when Sergeant Blanks pushed down on the suitcase and smelled marijuana. The trial court found Sergeant Blanks credible, and it was not against the manifest weight to do so. Sergeant Blanks' testimony that he smelled the faint odor of cannabis, taken together with his foundation testimony as to his expertise, was sufficient to provide probable cause to search the defendant's vehicle under the automobile exception.

¶ 20 In coming to this conclusion, we reject the arguments made by the defendant. First, the defendant argues that his search was invalid under the search incident to arrest exception to the warrant requirement. Under the search incident to arrest exception, an arrest first occurs, and then a search of the vehicle after that arrest is justified if "(1) the arrestee is unsecured and within reaching distance of the vehicle's passenger compartment at the time of the search; or (2) officers reasonably believe evidence relevant to the crime of arrest may be found in the vehicle." *People v. Bridgewater*, 235 Ill. 2d 85, 94-95 (2009) (citing *Arizona v. Gant*, 556 U.S. 332, 343 (2009)).

¶ 21 There are many factors a court can consider when deciding whether an arrest occurred, including:

"(1) the time, place, length, mood, and mode of the interrogation; (2) the number of police officers present; (3) any indicia of formal arrest or evidence of restraint; (4) the intention of the officers; (5) the extent of the officers' knowledge; (6) the focus of the officers' investigation; (7) the subjective belief of the detainee concerning his arrest status; (8) any statement or nonverbal conduct by the police indicating that the detainee was not free to leave; and (9) whether the detainee was told that he was free to leave or that he was under arrest. [Citation.]

Additionally, an arrest occurs when a person's freedom of movement is restrained by a show of authority or by means of physical force." *People v. Marcella*, 2013 IL App (2d) 120585, ¶ 30.

The use of handcuffs is also indicative of an arrest. *Id.* ¶ 32.

¶ 22 Here, the defendant was not arrested until after the search. There was no evidence that the defendant was restrained or told that he was not free to leave or was under arrest. There was only one officer present, and no force was used. Sergeant Blanks did not handcuff the defendant

or read him his *Miranda* warnings until after he conducted the search. Sergeant Blanks' did not intend to arrest the defendant before the search. When sitting with Sergeant Blanks in the police car, the defendant sat in the front passenger seat, not in the back. Taken as a whole, the defendant was not placed under arrest until he was handcuffed and read his *Miranda* warnings after Sergeant Blanks found cannabis in the truck. See *People v. Stone*, 244 Ill. App. 3d 881, 889 (1993) (defendant was arrested subsequent to the first search of the vehicle where he was not placed under arrest or handcuffed, but merely complied with the police request to sit in the squad car); *People v. Gomez*, 2011 IL App (1st) 092185, ¶ 60 (defendant was not under arrest where he was not handcuffed or restrained, officers did not have their weapons drawn, he accompanied the officers in a police car without a cage, and was never in the presence of an excessive amount of police officers, even though defendant was read his *Miranda* rights and was not told that he was free to leave as the totality of the factors signal that it was not an arrest). As the defendant was not arrested until after probable cause for arrest existed after the search, the search incident to arrest exception does not apply here, and the defendant's arguments based on that exception fail. Even assuming that the defendant is correct that the search was not a valid search incident to arrest, the search would still be valid under the automobile exception. See *Smith*, 95 Ill. 2d at 417 (holding that since the search was permissible under the automobile exception, it was not necessary to determine whether it was permissible as a search incident to arrest).

¶ 23 Second, we disagree with the defendant that "the Art. I, §6 and Fourth Amendment's 'automobile exception' in cases such as that at bar, for all practical purposes, no longer exists in the wake of Gant, Bridgewater, and Cregan." See *Gant*, 556 U.S. 332; *Bridgewater*, 235 Ill. 2d 85; *People v. Cregan*, 2014 IL 113600. Recent case law confirms that the automobile exception still applies. See *Contreras*, 2014 IL App (1st) 131889. Further, the case law that the defendant

cites in support of this contention are all factually distinguishable as they are based on the search incident to arrest exception to the warrant requirement, which is not applicable in the instant case. See *Gant*, 556 U.S. at 335; *Bridgewater*, 235 Ill. 2d at 87; *Cregan*, 2014 IL 113600, ¶ 50.

¶ 24 Third, the defendant argues that Sergeant Blanks should have gotten a warrant before searching the vehicle "because there was 'no compelling need for official action by ISP Blanks, and there clearly was time to secure a warrant.' " As the automobile exception is a well-recognized exception to the warrant requirement, Sergeant Blanks' warrantless search of the vehicle was reasonable as it was based on probable cause. See *Ross*, 456 U.S. at 808-09 (warrantless search of a vehicle is not unreasonable if based on probable cause).

¶ 25 Lastly, the defendant relies on *People v. Bayles*, 82 Ill. 2d 128 (1980), for the proposition that Sergeant Blanks should not have opened the suitcase and duffel without a warrant. However, this case deals with an inventory search, and, as the defendant himself points out, there is no inventory search in this case, as such, the case is not applicable. Sergeant Blanks had probable cause to open the suitcase and the duffel, even absent a warrant.

¶ 26 CONCLUSION

¶ 27 The judgment of the circuit court of Henry County is affirmed

¶ 28 Affirmed.