2015 IL App (5th) 120408-U

NO. 5-12-0408

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT



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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Fayette County. |
| | ) | |
| v. | ) | No. 11-CF-24 |
| | ) | |
| LUIS M. DIAZ-GUILLEN, | ) | Honorable |
| | ) | S. Gene Schwarm, |
| Defendant-Appellant. | ) | Judge, presiding. |

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PRESIDING JUSTICE CATES delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

**ORDER**

¶ 1 *Held*: Trial court did not err in denying the defendant's motion to suppress evidence.

¶ 2 The defendant, Luis M. Diaz-Guillen, also known as Luis M. Diaz, was convicted after a jury trial of cannabis trafficking and possession of cannabis with intent to deliver, and was sentenced by the circuit court of Fayette County to 18 years' imprisonment. The defendant appeals contending that because the police failed to obtain a warrant to search his vehicle, the circuit court erred in denying his motion to suppress. He therefore asserts that his conviction should be reversed. We affirm.

¶ 3 On the morning of February 4, 2011, the defendant was driving a commercial tractor-trailer across Illinois on Interstate I-70. He stopped at a weigh station whereupon Trooper Pappas of the Illinois State Police directed the defendant to pull his truck around to the back of the scales for a routine motor carrier vehicle safety inspection. After noting three violations, Pappas requested the defendant to bring his paperwork to the scale house. While this was occurring, another police officer, Trooper Flack, was conducting a routine walk-around inspection of a different truck with his trained and certified drug-sniffing dog. As they were walking around the other truck, the dog pulled Flack over to the defendant's truck and signaled that he alerted to the odor of narcotics near the passenger side sleeper berth. Trooper Flack walked the dog around the entirety of the defendant's truck, and the dog alerted to the same location a second time.

¶ 4 Prior to walking into the scale house, the defendant had locked his truck cab and taken the keys with him. After the dog alerted to the truck, the officers asked the defendant for the keys and consent to search the truck. The defendant denied that there was anything illegal in the truck and refused consent to search the cab of the truck. The defendant also denied the officers' request for the keys to the locked tractor. One of the officers reached for the keys and the defendant resisted. Three officers put the defendant in arm bars and handcuffed him. One of the officers then took the keys to the truck from the defendant's shirt pocket. Inside the sleeper berth in the back of the truck cab, the police found nine bales of cannabis weighing approximately 231.5 pounds.

¶ 5 The defendant filed a motion to suppress the evidence contending that because the truck was locked and parked in the weigh station parking lot in the middle of nowhere

during normal business hours, and because he was detained inside the scale house, there were no exigent circumstances justifying a warrantless search. The circuit court denied the motion to suppress after determining that the dog sniff established probable cause for the presence of contraband in the truck. At trial, the jury found the defendant guilty of unlawful cannabis trafficking and possession of cannabis with intent to deliver. The circuit court sentenced the defendant to a prison term of 18 years for unlawful trafficking and merged the second conviction into the first.

¶ 6 In reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Luedemann*, 222 Ill. 2d 530, 542, 857 N.E.2d 187, 195 (2006). Under this standard, we review the trial court's factual findings for clear error and reverse the court's findings only if they are against the manifest weight of the evidence. *Luedemann*, 222 Ill. 2d at 542, 857 N.E.2d at 195. We review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Luedemann*, 222 Ill. 2d at 542-43, 857 N.E.2d at 195.

¶ 7 The defendant concedes on appeal that the regulatory stop and safety inspection he was subjected to were not improper. Rather, the defendant focuses solely on the search of the cab of the truck. He argues that the police should have obtained a warrant to search the truck cab after the drug-sniffing dog alerted to the presence of narcotics during a routine investigation. The defendant points out that the truck was locked, the truck was parked at a government weigh station in a remote area, the police controlled the keys to the truck, and the defendant, who was driving alone, had been secured indoors in

handcuffs. According to the defendant, there were no exigent circumstances sufficient to justify a warrantless search of his truck.

¶ 8 The fourth amendment guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. There are, of course, exceptions to the general rule that a warrant must be secured before a search is undertaken; one is the so-called "automobile exception." The automobile exception is justified both by the exigency created by the inherent and ready mobility of vehicles and also by the lesser expectation of privacy that people have in their vehicles as opposed to their homes. *California v. Carney*, 471 U.S. 386, 390-91 (1985). Consequently, the use of a trained drug-sniffing dog by the police to determine the presence of contraband, by detecting vapors emanating out of a vehicle during a lawful traffic stop, is not a search that triggers the protections of the fourth amendment, because it "generally does not implicate legitimate privacy interests." *Illinois v. Caballes*, 543 U.S. 405, 409 (2005). Once a drug-sniffing dog alerts to the presence of narcotics, probable cause to search a vehicle then exists. See *People v. Neuberger*, 2011 IL App (2d) 100379, ¶ 9, 959 N.E.2d 195. For constitutional purposes, there is no difference between seizing the vehicle until a warrant can be obtained and searching it without a warrant. *Chambers v. Maroney*, 399 U.S. 42, 50-52 (1970). The United States Supreme Court therefore has held that if there is probable cause for a vehicle search, then police officers may execute a warrantless search, even if they could theoretically obtain a warrant first. *Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (*per curiam*). The applicability of the exception does not turn on whether the vehicle's

occupant has been taken into custody, whether the vehicle has been secured by the police, or whether there is an immediate risk that the vehicle will be driven away. The automobile exception has no separate exigency requirement. *Dyson*, 527 U.S. at 466. Again, it is the ready mobility of the vehicle that creates the exigency, not any additional circumstance suggesting that the particular vehicle is actually in danger of being moved or tampered with. See *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (*per curiam*); *Carney*, 471 U.S. at 391-92. In this instance, there was probable cause to search the truck cab after the drug-sniffing dog alerted to the sleeper berth of the cab. Accordingly, the court did not err in denying the defendant's motion to suppress evidence for lack of a search warrant.

¶ 9 Given that the defendant's claim on appeal has no merit, defendant's plain error argument fails because the first step in plain error review is to determine if error occurred. *People v. Cosby*, 231 Ill. 2d 262, 273, 898 N.E.2d 603, 610 (2008). Similarly, the defendant's trial counsel was not ineffective for failing to include a meritless issue in a posttrial motion. And, once it is concluded that the search of the truck was valid, none of the evidence against the defendant, including his inculpatory statements made to the police subsequent to the search of his vehicle and his arrest, needed to be suppressed as fruits of the poisonous tree.

¶ 10 For the foregoing reasons, we affirm the judgment of the circuit court of Fayette County.

¶ 11 Affirmed.