2016 IL App (1st) 152554-U

SECOND DIVISION
September 6, 2016

No. 1-15-2554

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. YB 239-171-174
	)	
	)	
CHRISTOPHER CULKIN,	)	Honorable
	)	Ramon Ocasio III,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in granting defendant's motion to quash his arrest and suppress evidence.

¶ 2 The State appeals from the trial court's order granting defendant, Christopher Culkin's, motion to quash his arrest and suppress evidence. The State argues that the trial court improperly granted defendant's motion to quash his arrest and suppress evidence where the officer conducted a proper stop pursuant to *Terry v. Ohio*, 392 U.S. 1, 21 (1968)) that led to sufficient probable

cause to arrest defendant. The State argues, in the alternative, that because the officer acted reasonably, the exclusionary rule should not apply. For the following reasons, we find that the court erred in granting defendant's motion to quash and suppress and remand this cause for further proceedings.

¶ 3 Defendant was given several traffic tickets and was charged with two counts of driving under the influence of alcohol (DUI). Prior to trial, defendant filed a motion to quash his arrest and suppress evidence arguing that Sergeant Hahn violated his fourth amendment right to be free from unreasonable search and seizure (U.S. Const., amend. IV) where he lacked authority, reasonable articulable suspicion and probable cause to effectuate a stop of defendant.

¶ 4 Sergeant Nicholas Hahn of the Brookfield police department testified at the hearing on defendant's motion to quash and suppress. Sergeant Hahn testified that on March 13, 2015, at approximately 3:30 a.m., he was parked on the north side of the 8900 block of Ogden when he heard a loud grinding noise coming from the east. As he turned northbound on Prairie Avenue, he saw defendant's vehicle, which was about 50 yards away, driving down the street with sparks emanating from the rear driver's side. Sergeant Hahn followed the vehicle for approximately two more blocks. He then saw defendant park the vehicle on the north side of Prairie Avenue and exit the vehicle, walking toward the sidewalk. Sergeant Hahn pulled up behind defendant's vehicle where it was parked and activated his emergency lights. Sergeant Hahn could see that defendant's vehicle was missing the driver's side rear tire.

¶ 5 After he activated his lights, he called out to defendant to return to the vehicle. Sergeant Hahn testified that defendant was detained at this point and not free to leave. Sergeant Hahn testified that he was not aware that defendant engaged in any criminal activity but asked

defendant about the missing tire. Defendant stated that he "must have hit a pot hole or something." Sergeant Hahn testified that while he was talking to defendant, he noticed an overwhelming odor of alcohol on defendant's breath and defendant's speech was slurred. When asked, defendant admitted that he drank "a few beers and shots a few hours prior to driving." Defendant showed indicators of impairment following a field sobriety test and the result of his portable breath test was .131. Sergeant Hahn then transported defendant to the police station where he was administered another breath test that showed he was over the legal limit for driving.

¶ 6 Following Sergeant Hahn's testimony, defendant rested on his written motion. The State moved for a directed finding arguing that Sergeant Hahn had probable cause to approach defendant because he saw defendant driving his vehicle with sparks emanating from the rear and only then did Sergeant Hahn activate his emergency lights and place defendant under his control. The court denied the State's motion. The court then granted defendant's motion to quash his arrest and suppress evidence finding that Sergeant Hahn did not testify to any basis that would indicate that any criminal activity had occurred. The court stated:

> "I believe that when the lights were activated and he commanded defendant to come back, that the Fourth Amendment was in play, that he could not or at least did not testify to any basis that criminal activity had occurred. So this was a stop where the Fourth Amendment was implicated. Therefore, I am going to grant defense counsel's motion to quash arrest and suppress evidence."

¶ 7 The State filed a motion to reconsider and argued that Sergeant Hahn had reasonable articulable suspicion to believe that defendant violated a law, specifically that he committed an

Illinois Vehicle Code violation, when Sergeant Hahn saw sparks emanating from defendant's vehicle. The State further argued that Sergeant Hahn was not required to know the actual reason why defendant's vehicle was emanating sparks, but that the sparks gave him reasonable suspicion to suspect that defendant was operating an unsafe vehicle. The court denied the motion finding that the State had failed to present any law indicating that "a spark would be enough for a cop to pull over a car."

¶ 8 The State filed a certificate of substantial impairment (see Ill. S. Ct. R. 604(a)(1) (eff. Dec. 11, 2014)) and a timely notice of appeal.

¶ 9 ANALYSIS

¶ 10 The State argues that the trial court’s decision to grant defendant's motion to quash the arrest and suppress evidence should be reversed because Sergeant Hahn conducted a proper *Terry* stop that led to sufficient probable cause to arrest defendant.

¶ 11 The standard of review applicable to a ruling on a motion to quash an arrest and suppress evidence is twofold. The trial court's factual findings and credibility determinations are upheld unless they are against the manifest weight of the evidence. *People v. Jones*, 215 Ill. 2d 261, 267–68 (2005). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *People v. Luedemann*, 357 Ill. App. 3d 411, 417 (2005), *appeal allowed*, 216 Ill. 2d 713 (2005). After the trial court's factual findings are reviewed, the court's ultimate legal rulings are reviewed *de novo*. *Jones*, 215 Ill. 2d at 268.

¶ 12 The issue presented for review is: whether a police officer, after hearing a loud grinding noise and observing sparks emanating from a vehicle traveling on a public way, may question the driver of the vehicle after the driver stops voluntarily and exits the vehicle?

¶ 13 A *Terry* stop is a type of police-citizen encounter, which allows for a brief investigative detention, but must be supported by a reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21 (1968); 725 ILCS 5/107-4 (West 2010). "An officer may make an investigatory stop of a vehicle if he or she reasonably infers from the circumstances that an offense has been committed or is about to be committed." *People v. Henderson*, 266 Ill. App. 3d 882, 885 (1994). The question is whether the facts available to the officer warrant a person of reasonable caution to believe that the action which the officer took was appropriate. *People v. Houlihan*, 167 Ill. App. 3d 638, 642 (1988). An evaluation of a *Terry* stop necessarily entails balancing the need for the seizure against the invasion that the seizure entails. *Terry*, 392 U.S. at 21.

¶ 14 The State argues that the *Terry* stop was appropriate given what Officer Hahn witnessed and analogizes the facts of the instant case to those of *Houlihan*, 167 Ill. App. 3d at 638. In *Houlihan*, an officer was patrolling a residential area in the early morning when he heard a loud noise coming from a truck driven by the defendant and could tell there was something stuck under the truck. *Id.* at 639. Although the officer did not observe the defendant break any laws, he effectuated a stop of defendant's vehicle. *Id*. at 639-40. It was later discovered that defendant had been driving with a garbage can under his vehicle. It was also discovered that defendant was driving under the influence. He was arrested and charged with DUI. *Id*. Defendant moved to quash his arrest and suppress the evidence in the trial court, arguing that the officer lacked a proper basis for the stop, which the trial court granted. *Id*. at 639.

¶ 15 We reversed noting that although the officer did not indicate that he stopped the defendant because of the noise emanating from the defendant's truck, the noise suggested that the

defendant was driving his truck with an equipment violation and the officer was justified in stopping the defendant for that reason. *Id*. at 643-44. We observed that “an officer need not actually witness a violation in order to establish reasonable ground for a traffic stop.” *Id*. at 644. Instead, because the legal standard for an arrest is “purely objective;” that is, a stop is justified if a reasonable person would believe that a violation of the law was committed. (Internal quotations omitted). *Id*. at 645. "No actual suspicion by the officer [needs to be] shown,” especially because the State was able to subsequently specify statutes which were possibly violated by defendant's conduct. (Internal quotations omitted.) *Id*.

¶ 16 Here, similar to *Houlihan*, defendant was driving in the middle of the night and his vehicle was making a loud grinding noise and emitting sparks. Like the officer in *Houlihan*, it was entirely reasonable for Sergeant Hahn to locate the source of the noise and then follow defendant's vehicle. Even though defendant had already exited the vehicle and even though at that time he did not know the direct cause of the noise and the sparks, it was reasonable for Sergeant Hahn to call defendant back to the vehicle and inquire about the condition of the vehicle. Vehicles do not normally make grinding noises and emit sparks while being driven unless there is an equipment malfunction or violation. In this case, Sergeant Hahn saw that defendant was driving without a tire, causing sparks to emit from the wheel. The State in this case was able to classify defendant's driving without a tire as a violation of section 12-101 of the Illinois Vehicle Code that makes it "unlawful for any person to drive * * * any vehicle * * * which is in such unsafe condition as to endanger any person or property” (625 ILCS 5/12-101(a) (West 2014)), as an equipment malfunction that would warrant the officer's further investigation.

¶ 17 The combination of the noise and the sparks was certainly enough to form the authority for an investigatory detention. Similar to the court in *Houlihan*, we believe that Officer Hahn would be expected to act, "if for no other reason than the safety of the driver and others on the street." *Houlihan*, 167 Ill. App. 3d at 643. We therefore find that the detention was proper under *Terry* and the trial court erred in granting defendant's motion to quash his arrest and suppress evidence.

¶ 18 CONCLUSION

¶ 19 In light of the foregoing, we reverse the trial court's order granting the defendant's motion to quash the search warrant, and remand for further proceedings consistent with this order.

¶ 20 Reversed; remanded for further proceedings.