

**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).

2016 IL App (3d) 150214-U

Order filed September 22, 2016

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellant,	)	
v.	)	Appeal No. 3-15-0214
NICHOLAS DANIELS,	)	Circuit No. 14-DT-1115
Defendant-Appellee.	)	Honorable David M. Carlson, Judge, Presiding.

---

JUSTICE SCHMIDT delivered the judgment of the court.  
Justices McDade and Wright concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court erred in granting defendant's motion to suppress evidence. We reverse the trial court's ruling and remand for further proceedings.
- ¶ 2 The State charged defendant, Nicholas Daniels, with two counts of driving under the influence (DUI). 625 ILCS 5/11-501(a)(1) (West 2014); 625 ILCS 5/11-501(a)(2) (West 2014). Defendant filed a motion to suppress evidence before trial. The trial court granted defendant's motion. The State appeals.

¶ 3 BACKGROUND

¶ 4 In September 2014, Plainfield police responded when an ambulance was dispatched to a fast food restaurant. At approximately 4 a.m., an employee of the restaurant reported an unconscious man behind the wheel of a running vehicle in the drive-thru lane. It is standard protocol in Plainfield for emergency medical services (EMS) personnel to wait for police officers to ensure an area is safe before they enter.

¶ 5 Plainfield police officer Brett Keag responded. He found defendant unconscious behind the wheel of a vehicle with the engine running. Keag received no response when he first attempted to wake defendant. Keag reached into the vehicle through an open window, turned the engine off, and took the keys out of the ignition before continuing his efforts to revive defendant. After waking defendant, Keag immediately observed that defendant's eyes were bloodshot and glassy and that he had an odor of alcohol on his breath.

¶ 6 Keag relayed to EMS personnel that it was safe for them to approach the scene and examine defendant. After evaluating defendant, EMS personnel left, reporting no medical issues. Keag positioned his squad car camera on defendant before proceeding with his DUI investigation. Keag collected overwhelming evidence on video that defendant was intoxicated and, ultimately, arrested defendant for DUI.

¶ 7 The State charged defendant with two counts of DUI. In October 2014, defendant filed a motion to suppress evidence. The trial court began a hearing on defendant's motion in December of that year. The parties initially stipulated to the introduction of Keag's video recording and watched it with the trial judge. Afterward, defendant called Keag to testify. Keag gave a cursory account of the events that transpired during his response to the dispatch. The parties' main focus was the defendant's indicators of impairment Keag observed after EMS

personnel left the scene. The trial court found that Keag’s initial encounter with defendant was under the auspices of community caretaking. The judge further found, however, that Keag withdrew from the initial encounter after smelling the odor of alcohol without “saying that this is a problem.” According to the trial court, allowing EMS personnel to evaluate the defendant changed the entire encounter. It found that Keag’s reapproach of defendant—after EMS personnel left the scene—was an illegal seizure. The court granted defendant’s motion in part, suppressing everything on the video after Keag reapproached defendant.

¶ 8 When the hearing on defendant’s motion continued in February 2015, Keag testified again. He explained the events that transpired after he responded to the dispatch, including his observations that defendant smelled of alcohol and had bloodshot and glassy eyes upon regaining consciousness. When he initially approached defendant’s vehicle and attempted to wake him, Keag turned the vehicle off and pulled the keys out of the ignition. Keag also conceded defendant was not free to leave the scene at that time and that defendant never requested medical attention. The State argued that Keag’s initial contact with defendant was done as a function of community caretaking, which evolved into a *Terry* stop. *Terry v. State of Ohio*, 392 U.S. 1 (1968). Defendant argued there was no sign of criminal activity prior to EMS personnel’s departure and, therefore, no grounds for Keag to legally detain defendant and investigate.

¶ 9 After further argument, in March 2015, the trial court granted defendant’s motion to suppress entirely. The trial court found that Keag’s taking defendant’s keys was a seizure. The trial court ruled that Keag did not have reasonable, articulable suspicion of criminal activity to justify a *Terry* stop at that point. *Id.* The State appeals. We reverse.

¶ 10 ANALYSIS

¶ 11 The State claims Keag had reasonable suspicion that defendant committed the offense of DUI shortly after initial contact. It further argues that EMS personnel’s examination of defendant does not change the fact that Keag had reasonable, articulable suspicion of criminal activity sufficient to detain defendant and conduct a DUI investigation. We agree.

¶ 12 We apply a two-part test when reviewing rulings on a motion to suppress evidence. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009) (citing *People v. Wear*, 229 Ill. 2d 545, 561 (2008)). The trial court’s factual findings are entitled to great deference and will be reversed only if they are against the manifest weight of the evidence. *Id.* Here, the facts are uncontested. We review the trial court’s ultimate ruling on suppression *de novo*. *People v. Jackson*, 232 Ill. 2d 246, 274 (2009).

¶ 13 *Terry* allows law enforcement to conduct a brief investigative detention when the stop is supported by reasonable, articulable suspicion of criminal activity. *Terry*, 392 U.S. at 21; 725 ILCS 5/107-4 (West 2014). Once an officer can point to specific articulable facts, which taken together with rational inferences from those facts, reasonable intrusion is warranted. *People v. Hackett*, 2012 IL 111781, ¶ 20. Keag’s initial observations—before EMS personnel attended to him—indicated defendant was likely intoxicated. This transformed what was initially a community caretaking encounter into a *Terry* stop. See *People v. Robinson*, 368 Ill. App. 3d 963, 973-74 (2006).

¶ 14 Keag responded to a call where a man was reportedly passed out behind the wheel of a car in the drive-thru of a fast food restaurant. When Keag first approached, he saw defendant unconscious behind the wheel of a car with the engine running. He had trouble waking the defendant. Keag seized defendant’s keys and shortly thereafter woke the defendant. Keag then smelled alcohol on defendant’s breath and saw his eyes were glassy. Instead of immediately

proceeding with a DUI investigation, Keag allowed EMS personnel to examine defendant to confirm there was no medical emergency. After EMS personnel confirmed there was no medical emergency, Keag continued his DUI investigation.

¶ 15 Granting defendant's motion to suppress defies both the facts of the case and commonsense. As the trial court acknowledged, it was "prudent" of Keag to take defendant's keys. Until Keag could determine why defendant lost consciousness behind the wheel of a running vehicle, he was justified in seizing the defendant.

¶ 16 The touchstone of fourth amendment analysis is reasonableness. *People v. Jones*, 215 Ill. 2d 261, 268-69 (2005). Keag's actions were absolutely reasonable.

¶ 17 The interruption in Keag's DUI investigation to let EMS personnel examine defendant changes nothing in our analysis. The constitution only prohibits *unreasonable* seizures. *Terry*, 392 U.S. at 9. In order to assess the reasonableness of a seizure, we balance law enforcement's need to seize against the resulting invasion. *Id.* at 21. Whether the duration of a seizure is permissible depends on the purpose of the stop, and we are obligated to apply "common sense and ordinary human experience" in our analysis. *United States v. Sharpe*, 470 U.S. 675, 685 (1985); see also *People v. Cummings*, 2016 IL 115769, ¶ 13.

¶ 18 Allowing EMS personnel to assess someone found unconscious, even if suspected of being highly intoxicated, should not be discouraged. In this instance, EMS personnel's examination did not unreasonably prolong Keag's investigation. Moreover, it supported Keag's ultimate determination that he had probable cause to arrest defendant for DUI.

¶ 19 After reviewing all the evidence, the trial court made the determination that Keag illegally seized defendant. Undisputed evidence at the hearings on defendant's motion to suppress demonstrate that *before* EMS personnel evaluated defendant, Keag found him passed

out behind the wheel of a running vehicle in the drive-thru lane of a fast food restaurant, was difficult to awaken, glassy-eyed, and smelled of alcohol. The trial court suggested that there could be innocent explanations for defendant's condition, even recounting an incident where he fell asleep at the steering wheel of a car after long hours of work. However, possible innocent explanations do not eliminate even probable cause, let alone reasonable, articulable suspicion. *Illinois v. Wardlow*, 528 U.S. 119, 130 n. 4 (2000) (citing *Terry*, 392 U.S. at 30); *People v. Rodriguez-Chavez*, 405 Ill. App. 3d 872, 876 (2010). The officer need not be correct, only reasonable. We find nothing unreasonable about this officer's actions. Furthermore, simple commonsense dictates that EMS findings of no medical emergency iced the cake with respect to the officer's suspicions.

¶ 20

#### CONCLUSION

¶ 21

For the foregoing reasons, we reverse the judgment of the circuit court of Will County and remand the cause for further proceedings.

¶ 22

Reversed and remanded.