2016 IL App (3d) 150747-U

Order filed October 21, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Iroquois County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-15-0747
v.	)	Circuit No. 09-CF-27
	)	
DARRYL L. JORDAN,	)	Honorable Gordon L. Lustfeldt,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in refusing to quash defendant's arrest and dismiss the case.

¶ 2 Defendant, Darryl L. Jordan, appeals from his convictions for unlawful delivery of a controlled substance and unlawful possession of a controlled substance with the intent to deliver arguing that the trial court erred in declining to quash his arrest and dismiss the case. We affirm.

¶ 3 FACTS

¶ 4 Defendant was charged by information with unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2008)), unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(e) (West 2008)), and unlawful possession of cannabis (720 ILCS 550/4(a) (West 2008)). He was subsequently indicted on all three charges.

¶ 5 The case proceeded to a bench trial. Lieutenant Josh King testified that he was a detective with the Watseka police department and had been in investigations for 13 of the 18 years he had been in law enforcement. His duties included setting up undercover buys for narcotics enforcement. On the evening of February 19, 2009, he conducted such a controlled buy. Avery Durflinger, a confidential informant who had worked with the department for "quite a few years," called King earlier that day and told King that he could purchase drugs, particularly crack cocaine, from defendant. King then contacted members of his team, Officer Walver, Officer Brian Garfield, and Sergeant Jeremy Douglas. King and his team met Durflinger in a rural area south of Watseka shortly after 8 p.m. and discussed how they were going to conduct the surveillance. Durflinger was then strip searched by Garfield to make sure there were no narcotics on him. Accompanying Durflinger was Monica Druck, who was strip searched by Sue Ratliff-Thomas, the Watseka police department matron. The vehicle they were driving was searched by Douglas, and no drugs were found. The team decided that King would follow Druck and Durflinger into Watseka. Druck drove, as Durflinger did not have a license. The other members of the team would go directly to the Watseka motel where they were told defendant would be. Druck and Durflinger were to go to room 27 at the Watseka motel and attempt to purchase narcotics.

¶ 6 Garfield, Douglas, and Walver left first to get into position. They were stationed on foot near room 27. They were to watch Durflinger enter the room and then tell King when they were

exiting the motel parking lot. King followed Druck and Durflinger until they drove into the motel parking lot. He watched as their car neared room 27. King then drove to a parking lot next door to the motel and waited to be contacted by the rest of his team.

¶ 7 Approximately three minutes elapsed between King's entry into the parking lot and his next sighting of Durflinger's vehicle. King had received a call from his team informing him that Durflinger was leaving the motel parking lot, and he watched the vehicle drive onto the road from that lot. King followed them to a grocery store about one block from the motel where they had previously agreed to meet after the controlled buy. Durflinger handed King two bags of a rock-like substance and was given $100 for effectuating the controlled buy. King did not search the vehicle. King then called Douglas, who was still at the motel, told him that Durflinger had purchased drugs from defendant, and directed the team to execute an arrest.

¶ 8 King then drove back to the motel. By the time he arrived, defendant was already in handcuffs. King entered the room and observed money lying on the bed, along with another bag of a rock-like substance and a bag of a green leafy substance. Douglas pointed the drugs out to King, and defendant stated, "those are mine to smoke." King examined the money. There was a total of $452. King had previously photocopied the $300 he gave Durflinger to purchase the narcotics, and he was able to match the serial numbers to $300 of the bills found in the room. In other words, $300 of the money found in the room was confirmed to be the $300 King gave to Durflinger for the controlled buy.

¶ 9 Defendant was transported to the sheriff's department, where King and Douglas read him his *Miranda* rights. After King told defendant that he had sold cocaine to an undercover informant, defendant said, "there's not too much to discuss. You already know what happened then." King stated that defendant was very cooperative, commenting numerous times that "he

had fucked up." Douglas asked defendant why he had chosen to sell drugs in Watseka and was told "times are tough and he had to do what he had to do."

¶ 10 King packaged the evidence and sent it to the Illinois State Police crime laboratory in Joliet for analysis. It was then returned to the Watseka police department evidence room. King was shown the bags containing the drugs, which he identified as the drugs purchased by Durflinger and the drugs found in defendant's motel room. He identified the drugs based on the date and time written in his handwriting on the bags.

¶ 11 Durflinger testified that he had worked with King on several cases and had conducted several controlled buys of narcotics. Durflinger said that he told King he could buy cocaine from defendant at the motel. When Durflinger met King he was strip searched. He believed that King strip searched him, but he admitted that it had been awhile since the controlled buy occurred and he could not be certain who searched him. Durflinger said Druck was with him at the time. She went with him because Durflinger did not have a driver's license. He said Druck was also searched by "some lady." Durflinger testified that after he was searched, he purchased the drugs at the Watseka motel. He could not remember the room number, but he remembered where it was located. He gave defendant $300, but did not believe that he actually received $300 worth of drugs. Durflinger and Druck then met King behind a grocery store and gave him the drugs. King then patted Durflinger down to make sure he did not have any other drugs on him and gave him $100. Durflinger believed another officer was there to search Druck.

¶ 12 Druck testified that in February 2009, she helped Durflinger by driving him, as he did not have a license. On the day of the controlled buy, Druck first talked to the police at a secure, rural location south of Watseka where she and Durflinger were strip searched and the vehicle was searched as well. The officers were looking for drugs and confirmed she had none on her person

or in her vehicle. Druck said an officer named Sue searched her. Druck and Durflinger then went to the motel. Druck was not given any money, nor was anything promised to her. Druck testified that once they got to the motel, she stayed in the vehicle and watched Durflinger enter the motel room. She saw defendant look out the motel room window. Durflinger the exited the motel room, got into the vehicle, and they drove to a parking lot behind the grocery store where they met King. Druck, Durflinger, and the vehicle were then searched. Druck had never met defendant.

¶ 13 Susan Ratliff-Thomas testified that at the time of the controlled buy she was employed with the Watseka police department as a secretary and matron. As a matron, she would perform strip searches in drug cases that involved females. She was first taught how to perform strip searches in 1977 and had performed hundreds of them. On the day of the controlled buy, Ratliff-Thomas strip searched Druck behind a trailer in a rural area south of Watseka. She did not find any drugs. She did not remember if Druck had a purse. She did a cavity search and checked inside Druck's mouth.

¶ 14 Officer Brian Garfield testified that he had been employed with the Watseka police department for seven years. At the time of the controlled buy, he had been employed for a little over a year and had been on many controlled buys of narcotics. He said the department has a spot south of Watseka where they usually went to prepare for the controlled buys. He met Durflinger and Druck in that location in February 2009. Once Durflinger arrived, Garfield strip searched him in a trailer on the property. Durflinger did not have any drugs on him or any additional money. Garfield stated that he did not remember if Durflinger had any personal items on him.

¶ 15 Garfield testified that he was part of the team that entered the motel room. After receiving word from King about the controlled buy, one officer hit the motel room door with a battering

ram. Garfield and Walver searched the room and determined that defendant was the only person in the room. Douglas then searched and arrested defendant. Garfield did not remember if they had a search warrant or consent to enter the room, but knew they did not have an arrest warrant.

¶ 16 Allan Greep testified that he had been employed with the Illinois State Police forensic laboratory in Joliet for 16 years. Based on his training and experience, Greep was qualified as an expert in forensic science. He received the three bags of drugs and determined that they contained 2.5 grams of cocaine, 1.4 grams of cocaine, and 0.8 grams of cannabis.

¶ 17 Sergeant Jeremy Douglas testified that he had been a police officer with the Watseka police department for 17 years. In February 2009, he was part of a team that conducted a controlled buy of narcotics. He and his team met Durflinger and Druck at a rural area outside Watseka. They were in their personal vehicle, which Douglas searched. He did not search the engine part of the vehicle or the trunk, but during the entire time he observed the occupants of the vehicle, they never attempted to access an area of the vehicle that he did not search. He did not find any contraband in the vehicle.

¶ 18 After searching the vehicle, Douglas, Garfield, and Walver went to another location to set up an observation point. Douglas dropped two officers off on one side of a building and he went to the other side so that they had constant surveillance of the front door of the motel room. He saw Durflinger's vehicle approach the motel. Douglas then observed Durflinger exit the vehicle and walk inside the motel room, while Druck stayed in the car. A minute later, Douglas saw Durflinger exit the motel room. Douglas called King and told him that Durflinger had exited the room, was back in the car, and the car was getting ready to drive onto the road. Douglas observed King drive out of the adjacent parking lot and follow Durflinger's vehicle.

¶ 19 Douglas remained in his location "until Lieutenant King contacted [him] and stated that [the] narcotic purchase was successful." Garfield, Walver, and another officer used a battering ram to enter the motel room. Defendant was lying on the bed. When they entered, defendant jumped up and fell between the bed and the wall. Walver had defendant at gunpoint. Douglas searched defendant and found money on his person. He also searched the vicinity and found a bag containing three smaller bags of a green leafy substance and another bag that contained an off-white substance. They did not have a search warrant. No one else was in the room. Defendant was then transported to the jail.

¶ 20 After the State rested, defendant filed a motion to dismiss, quash arrest, and suppress evidence, arguing that the officers needed a search warrant to enter defendant's motel room as no exigent circumstances existed to excuse the officer's nonconsensual entrance. Without a warrant, defendant argued, the subsequent search and arrest violated the fourth amendment and required the arrest to be quashed, the case to be dismissed, and any evidence found during the search to be suppressed. The court granted the motion to suppress the evidence found after the officer's entered the motel room, but did not dismiss the case. In doing so the court stated:

> "You've got as I said a no knock entry, which is one issue, and then entering without a search warrant, which is a second issue. I think there obviously would have been probable cause because the informant had just informed the police that a drug deal had gone down in that room. The first concept we get to is the issue of exigency because as you gentlemen know an exigency or emergency will justify a warrantless entry without a search warrant and it may justify no knock entry. ***
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> * * *

So the bottom line in the cases I've read is that there is no exigency just because it's a drug case that if there is going to be an exigency that justifies a warrantless entry or a no knock entry it has to be something specific to the case you are hearing ***. *** I think there was probable cause, but there wasn't a warrant and there was no knock on the warrant, then you have to look for an exigency, and on the case law when you read it there just isn't anything in here to show that exigency. So I'm going to allow the motion to suppress.

Now, that was the second issue that come up. What's the remedy? For any other suppression under the Fourth Amendment or the Fifth Amendment what you suppress is the fruit of the illegality, okay. So for instance if I confess and nobody read me my Miranda, they suppress the confession. And on Fourth Amendment issues like search warrant issues without probable cause they would do the very same thing, you suppress the fruit, okay. In this case the crime was over, the informant had left the room with drugs and came back to the police without any of the marked money. So the only thing that can be suppressed is anything the police came on after they went in the room, which would be the cannabis, alleged cannabis, which is People's Number 3, the [marked] money, which was never put into evidence, and then whatever statements [defendant] made to the police after they went in. And I think there's a couple to kind of summarize I screwed up, times are tough, that's what is suppressed in my view. The whole case isn't thrown out. Dismissal of the case is not the remedy, it's a consequence of the remedy. You hear the case, decide if there was a violation. If there was then the evidence resulting from it is suppressed. Then you have to step

> back and take a look at the case and say what is there left? What's left? Sometimes if you grant the suppression there isn't anything left so as a result the case is dismissed.
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> In this case as a result of the suppression they've got everything up until the moment that the police went in. Now, that may strongly effect the State's case on count–on the marijuana count, but it doesn't call for a dismissal of the whole thing. Suppression is a Fourth and Fifth Amendment remedy that suppresses the fruit of the violation, it doesn't call for dismissal of the whole thing because, I mean, even on identity they got that evidence from Avery Durflinger and that was before the police went in there. So on the face of it that's where we are so that's my ruling."

¶ 21 The defense did not present any evidence. Defendant orally moved for a directed verdict, which was allowed for the unlawful possession of cannabis charge. The court found defendant guilty of unlawful delivery of a controlled substance and unlawful possession of a controlled substance with the intent to deliver. Defendant was sentenced to 10 years solely on the unlawful delivery of a controlled substance conviction. Defendant filed a motion to reconsider, which was denied.

¶ 22 ANALYSIS

¶ 23 On appeal, defendant argues the trial court erred by failing to quash the arrest and dismiss the case. Specifically, defendant surmises that the officers' illegal entry into defendant's motel room requires dismissal of the case as "[i]f [the trial court's] ruling is allowed to stand, there is nothing to stop the police from beating down a door after a controlled buy, as there are little if any consequences to the police if the only suppressed items are the items found after the illegal

entry." Because we find that an illegal arrest does not necessitate dismissal of the case where evidence still exists to convict defendant, we disagree.

¶ 24 The fourth amendment of the United States Constitution and article I, section 6, of the Illinois Constitution protect individuals from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. "It is a basic principle of fourth amendment law that a search or seizure carried out on a suspect's premises without a warrant is *per se* unreasonable unless police can show that it falls within one of the carefully designed set of exceptions based on the presence of 'exigent circumstances.' " *People v. Wimbley*, 314 Ill. App. 3d 18, 24 (2000) (quoting *Payton v. New York*, 445 U.S. 573, 583 (1980)). The "fruit of the poisonous tree" doctrine is a product of this principle. *People v. Henderson*, 2013 IL 114040, ¶ 33. The doctrine provides that a fourth amendment violation is considered the "poisonous tree" and, therefore, any evidence obtained as a result of the violation is the "fruit" of the poisonous tree and is subject to suppression. *Id.*

¶ 25 Here, the trial court found that no exigent circumstances existed to excuse the officers' entrance into defendant's motel room without a warrant, and thus suppressed the evidence found after the entrance. Neither party challenges the court's finding nor suppression of the evidence. Instead, defendant argues that, since the court found that the entrance into the premises was unreasonable, it should have quashed the unlawful arrest and dismissed the case.

¶ 26 Even accepting defendant's argument that his arrest was unlawful, we agree with the trial court that an unlawful arrest does not require dismissal of the case. The Illinois Supreme Court has stated:

> " 'The general rule is that if a defendant is physically present before the court on an accusatory pleading, either because held in custody after arrest or because he

> has appeared in person after giving bail, the invalidity of the original arrest is immaterial, even though seasonably raised, as far as the jurisdiction of the court to proceed with the case is concerned. [Citations.] Due Process of law is satisfied when one present in court is convicted of [a] crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. Accordingly it is held that the power of a court to try a person for [a] crime is not impaired by the fact that he has been brought within the court's jurisdiction by reason of a forcible abduction. [*Frisbie v. Collins*, 342 U.S. 519, 522 (1952); *Ker v. Illinois*, 119 U.S. 436, 444 (1886).] In the *Frisbie* case the Supreme Court stated that there is nothing in the constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will.' See also [*People v. Pardo*, 47 Ill. 2d 420 (1970).]" *People v. Finch*, 47 Ill. 2d 425, 436-37 (1970) (quoting *People v. Bliss*, 44 Ill. 2d 363, 369 (1970)).

¶ 27 We find this reasoning applicable here. Even if defendant's arrest was invalid, he was brought before the court and rightfully convicted. The correct remedy for any fourth amendment violation by the officers was, as the trial court found, suppression of the evidence found and statements made after the violation. Had insufficient evidence existed after the suppression for the State to continue with their case, it may have been proper for the case to be dismissed. Here, however, ample evidence to convict defendant was obtained before the fourth amendment violation. Druck, Durflinger, the three officers, and the police matron all testified about the procedure leading up to the controlled buy and the controlled buy itself. Further, the cocaine Durflinger obtained from defendant through the controlled buy and its subsequent testing were

also still in evidence after the suppression. Therefore, the trial court properly denied the motion to dismiss the case.

¶ 28 In coming to this conclusion, we reject defendant's reliance on *People v. Krinitsky*, 2012 IL App (1st) 120016, for the proposition that defendant's case should be dismissed because his arrest was improper. In *Krinitsky*, the defendant filed a motion to dismiss, quash arrest, and suppress evidence based on the exclusionary rule. *Id.* ¶ 6. The trial court "granted [the] defendant's motion to quash [arrest] and suppress evidence." *Id.* ¶ 16. The State filed a certificate of substantial impairment and appealed (*id.* ¶ 22), arguing that the trial court "erred in granting [the] defendant's motion to quash his arrest and suppress evidence." *Id.* ¶ 24. The appellate court considered whether the entry into the defendant's apartment was valid under the consent once removed doctrine, ultimately determining that it was not. *Id.* ¶¶ 24-37.

¶ 29 There is no language in *Krinitsky* that affirmatively states that if a defendant's arrest is improper the case must be dismissed. *Krinitsky*, 2012 IL App (1st) 120016. The court in *Krinitsky* did not actually consider the issue. *Id.* Further, it is unclear whether the trial court in *Krinitsky* actually granted the defendant's motion to dismiss. We acknowledge the opinion states that the defendant filed a motion to dismiss, quash arrest, and suppress evidence (*id.* ¶ 6) and the appellate court ultimately concluded that the State failed to satisfy its burden and "[t]herefore, the circuit court properly granted [the] defendant's motion to dismiss, quash his arrest, and suppress evidence" (*id.* ¶ 39). However, the facts clearly state that the trial court granted defendant's motion to quash arrest and suppress evidence (*id.* ¶ 16) and that the State filed a certificate of impairment to appeal from that finding (*id.* ¶¶ 22, 24). There is no mention of the trial court's finding regarding the motion to dismiss in the rest of the facts or in the State's argument. See *id.* ¶¶ 3-24.

¶ 30 Lastly, we note that, contrary to the view espoused by defendant, a defendant is not necessarily without a remedy in cases where an illegal arrest occurred. An officer *may* be subject to civil liability should he act without good faith or probable cause in effectuating an illegal arrest if his actions amount to willful and wanton conduct. See *Mercado v. Village of Addison*, 385 Ill. App. 3d 1006 (2008); 745 ILCS 10/2-202 (West 2012).

¶ 31 CONCLUSION

¶ 32 The judgment of the circuit court of Iroquois County is affirmed.

¶ 33 Affirmed.