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2016 IL App (3d) 160032-U

Order filed September 27, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 14th Judicial Circuit,
)	Henry County, Illinois,
Plaintiff-Appellant,)	
)	Appeal No. 3-16-0032
v.)	Circuit No. 15-CF-206
)	
SHAWN L. VANCE,)	Honorable
)	Jeffery W. O'Connor,
Defendant-Appellee.)	Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* The trial court did not err in granting defendant's motion to quash arrest and suppress evidence.
- ¶ 2 Following a traffic stop, defendant, Shawn L. Vance, was charged with driving under the influence. Prior to trial, defendant filed a motion to quash arrest and suppress evidence. The trial court granted defendant's motion, finding the underlying traffic stop was improper. The State appeals, arguing that the officer had sufficient grounds to stop defendant's motorcycle and, therefore, the court erred in granting defendant's motion to suppress. We affirm.

¶ 3

FACTS

¶ 4

On July 26, 2015, defendant was operating his motorcycle with a passenger, Kathy David, seated behind him. A police officer stopped the motorcycle, believing Kathy was not wearing protective safety glasses in violation of section 11-1404 of the Illinois Vehicle Code (625 ILCS 5/11-1404 (West 2014)). During the stop, defendant submitted to a field sobriety test. As a result of the test, the State charged defendant with two counts of aggravated driving under the influence of alcohol (625 ILCS 5/11-501(a)(2), (d)(1)(A), (d)(2)(B), (d)(2)(C) (West 2014)).

¶ 5

At the preliminary hearing, Illinois State Police Trooper Ryan Billingsley testified that on July 26, 2015, he pulled defendant's motorcycle over because "the passenger on the back of the bike or on the motorcycle was not wearing her safety glasses." On cross-examination, defense counsel asked Billingsley if at the time he initiated the traffic stop Billingsley observed defendant commit any other traffic violations. Billingsley answered in the negative, and stated that the only violation he observed was the passenger on the motorcycle had safety glasses on her head, but not covering her eyes. Billingsley did not mention during his testimony the fact that the motorcycle had a windshield. Ultimately, the trial court found probable cause to hold defendant for trial.

¶ 6

Defendant subsequently filed a motion to quash arrest and suppress evidence. The motion alleged that Billingsley lacked reasonable suspicion to believe that Kathy had violated section 11-1404 and, therefore, the traffic stop was improper. Specifically, defendant argued that there could not have been a violation of section 11-1404—even if Kathy failed to wear protective safety glasses—because the motorcycle was equipped with a windshield. The following evidence was adduced at the hearing on the motion to suppress.

¶ 7 First, the video recording from Billingsley's squad car was presented to the trial court. In the video recording, Billingsley pulled over defendant's motorcycle, exited his vehicle, and began a discussion with defendant. Billingsley started the conversation by informing defendant that the reason he pulled defendant over was because the passenger was not wearing safety glasses. The video recording showed that the motorcycle had a windshield attached to the handlebars, but the video did not clearly display the height of the windshield. Billingsley did not discuss the motorcycle's windshield at any point in the video.

¶ 8 Defendant testified that at the time he was pulled over, his motorcycle had a windshield over the handlebars. According to defendant, the windshield was "eye level." On cross-examination, defendant stated that the passenger seat on the motorcycle was at a higher position than the driver's seat. Defendant also stated that the passenger (Kathy) on his motorcycle at the time of the arrest was about the same height as defendant.

¶ 9 Kathy testified that she did not know if the windshield on defendant's motorcycle was eye level with defendant. Kathy thought that if she sat up on the motorcycle, she might be able to see over the windshield. However, if Kathy was close to defendant, Kathy believed that she might have been eye level with the windshield.

¶ 10 Billingsley testified that he observed Kathy not wearing her safety glasses when he first saw the motorcycle stopped at a red light. When the light turned green, the safety glasses remained on top of Kathy's head. Unlike his testimony at the preliminary hearing and his statements during the traffic stop, Billingsley added that he observed Kathy sat at a higher level than defendant, and the windshield did not cover or protect Kathy's eyes in any manner. According to Billingsley, it was his understanding that the law was violated unless the windshield covered the eyes while in a proper riding position. Billingsley acknowledged that he

never mentioned the height of the windshield during the arrest, in his police report, or at the preliminary hearing.

¶ 11 After hearing the evidence, the trial court granted the motion to quash arrest and suppress evidence. The trial court explained its ruling:

“We don’t have to reach the issue of the glasses, although I have a comment to make on that. This is not the basis for my ruling. There is a factual dispute as to whether she took them off and cleaned them or they were on the top of her head and they were still there when they went through the light. Those are two different things.

But what seems glaring to me is, the trooper was dead set on the sunglasses on top of the head from all the way through. That was the reason given for the stop. There was discussion on that, not one word about a windshield or windscreen or transparent shield, as the statute calls it.

And for the purposes of probable cause to make a traffic stop, can you imagine the situation where every Harley-Davidson with a windscreen on it is stopped because the trooper thinks his eyes are above the screen? I mean, you could stop every motorcycle in the world that has a windscreen.

Here’s what the statute says: The operator of a motorcycle, motor-driven cycle, or moped and every passenger thereon shall be protected by glasses, goggles, or a transparent shield.

A transparent shield is defined as a windshield attached to the front of a motorcycle that extends above the eyes when an operator is seated in the normal, upright riding position, made of shatter-resistant material.

part test when reviewing a circuit court's ruling on a motion to suppress evidence. *People v. Gaytan*, 2015 IL 116223, ¶ 18 (citing *Ornelas v. United States*, 517 U.S. 690, 699 (1996)). First, we review the circuit court's factual findings under the manifest weight of the evidence standard. *Id.* Second, we review *de novo* the circuit court's ultimate legal conclusion as to whether suppression is warranted. *Id.*

¶ 15 As to the first part of the test, we note that the parties agree that the motorcycle was equipped with a windshield at the time of the offense. The parties, however, dispute Billingsley's reasoning for pulling over defendant's motorcycle. The trial court found that Billingsley was "dead set on the glasses on top of the head from all the way through." The court noted, "[t]hat was the reason given for the stop. There was a discussion on that, not one word about a windshield or windscreen or transparent shield, as the statute calls it." In other words, the trial court found that Billingsley failed to take into account the motorcycle's windshield when initiating the traffic stop. Based on our review of the record, we do not believe that the trial court's factual findings are against the manifest weight of the evidence.

¶ 16 We note that we accord great deference to the trial court's factual findings, and we will reverse those findings only if they are against the manifest weight of the evidence. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). A trial court's judgment is against the manifest weight of the evidence when its findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.* This deferential standard of review is grounded in the reality that the trial court is in a superior position to determine and weigh the credibility of witnesses, observe the witnesses' demeanor, and resolve conflicts in the witnesses' testimony. *Id.*

¶ 17 Here, when making initial contact with defendant, Billingsley immediately informed defendant that the reason for the traffic stop was Kathy's failure to wear safety glasses. At the

preliminary hearing, Billingsley explicitly testified that the *only* violation he observed was Kathy's failure to wear safety glasses. In light of Billingsley's failure to make any reference to the height of the windshield at any time during the stop, arrest, preliminary hearing, or in his report, the trial court found that the sole reason for the traffic stop was Billingsley's belief that Kathy violated section 11-1404 by failing to wear protective safety glasses without consideration of the transparent windshield. That factual determination is consistent with the manifest weight of the evidence and we defer it.

¶ 18 We now turn to our *de novo* review of the trial court's legal conclusion that the stop was unlawful. The fourth amendment protects all citizens' rights "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. Traffic stops constitute seizures of persons for purposes of the fourth amendment. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). The fourth amendment commands all traffic stops be reasonable. *People v. Johnson*, 384 Ill. App. 3d 409, 412 (2008). For a traffic stop to comport with the reasonableness requirement of the constitutional guarantees, the police officers must have a " 'reasonable, articulable suspicion' that a violation of law has occurred.' " *Gaytan*, 2015 IL 116223, ¶ 20 (quoting *People v. Hackett*, 2012 IL 111781, ¶ 20).

¶ 19 The State argues that the passenger on defendant's motorcycle violated section 11-1404 and this violation provided Billingsley with the lawful justification for the traffic stop. Upon review, we find Billingsley lacked a reasonable, articulable suspicion that a violation of the law occurred because he failed to consider the disjunctive requirement in section 11-1404. We further find that the mistake of law was objectively unreasonable.

¶ 20 In construing a statute, the primary objective is to give effect to the legislature's intent, presuming the legislature did not intend to create absurd, inconvenient or unjust results. *People*

v. Christopherson, 231 Ill. 2d 449, 454 (2008). The best indication of that intent is the statutory language, given its plain and ordinary meaning. *People v. Ramirez*, 214 Ill. 2d 176, 179 (2005). The construction of a statute is a question of law that is reviewed *de novo*. *Id.*

¶ 21 At the time of defendant’s arrest, section 11-1404 provided: “[t]he operator of a motorcycle, motor driven cycle or moped and every passenger thereon shall be protected by glasses, goggles or a transparent shield.” 625 ILCS 5/11-1404(a) (West 2014). The statutory language is clear in that it creates a disjunctive means of protecting the eyes: either the rider is wearing protective eye covering (glasses or goggles) *or* there is a transparent shield on the front of the motorcycle. The failure of a rider to wear glasses or goggles *alone* does not amount to a violation where there is a size-conforming transparent shield. Under section 11-1404, a “ ‘[t]ransparent shield’ means a windshield attached to the front of a motorcycle that extends above the eyes when an *operator* is seated in the normal, upright riding position, made of shatter-resistant material[.]” (Emphasis added.) 625 ILCS 5/11-1404(b) (West 2014).

¶ 22 The facts articulated by Billingsley were that he observed the passenger on defendant’s motorcycle not wearing safety glasses. In his statements on scene, his police report, and his testimony at the preliminary hearing, Billingsley failed to indicate any recognition on his part that the presence of a windshield on defendant’s motorcycle might have significance in assessing whether Kathy may have violated section 11-1404. More specifically, Billingsley failed to articulate any facts establishing that he had any suspicion that the windshield failed to provide Kathy with the protection required in section 11-1404 to excuse the use of glasses or goggles. The mere fact that Kathy failed to wear protective safety glasses was insufficient to vest Billingsley with reasonable suspicion that a violation of section 11-1404 occurred.

¶ 23 The State, however, asks us to rely on Billingsley’s suppression hearing testimony that Kathy was neither wearing safety glasses nor protected by the windshield. Specifically, the State calls our attention to Billingsley’s testimony that he observed Kathy sitting higher than defendant. Relying on the language of section 11-1404 that a rider must be “protected” by either glasses, goggles, or a transparent shield, the State argues that because Kathy was seated above defendant, Kathy’s head must have also been above the windshield. Therefore, the State argues that Kathy was not protected by the windshield as required by section 11-1404. We reject the State’s argument.

¶ 24 In this case, we are not presented with a charged offense alleging that section 11-1404 was violated. The only criminal charge in this case was against defendant for driving his motorcycle under the influence. The sole significance of section 11-1404 and the sole issue for our review is whether Billingsley’s mere observation that Kathy was not wearing glasses or goggles provided a reasonable, articulable basis for him to believe there was a violation of that section and to stop the motorcycle.

¶ 25 Considering that question in light of the statutory language, we note, as did the trial court, that the motorcycle had a windshield in plain view. In order to harbor a reasonable suspicion that the passenger was in violation of the statute, the officer was required by the plain language of the statute to consider *both* the fact that Kathy was not wearing her glasses *and* whether the clearly visible windshield protected her. The trial court, after considering *all* of Billingsley’s testimony, made the factual finding that the windshield played no role in his decision to pull over defendant’s motorcycle. *Supra* ¶ 15. We have already held that that determination is not against the manifest weight of the evidence. *Supra* ¶ 17. That finding is dispositive of the issue before us.

¶ 26 Finally, while not necessary to our disposition, we address the State’s final contention that the stop was still proper because Billingsley’s mistake of law was objectively reasonable. See *c.f. Gaytan*, 2015 IL 116223, ¶ 48 (finding an officer’s mistake of law to be objectively reasonable where the statute was ambiguous and had not yet been addressed by an appellate case). As discussed above, the statute is clear and unambiguous. The statute creates three alternative means for the protection of a rider’s eyes: goggles, glasses, *or* a transparent shield. The height requirements for the transparent shield are clear: a windshield must extend above the eyes of the motorcycle *operator*. Consequently, we find Billingsley’s mistake to be objectively unreasonable.

¶ 27 CONCLUSION

¶ 28 We hold that Billingsley lacked legal justification for initiating the traffic stop and the trial court correctly granted defendant’s motion to quash arrest and to suppress evidence. The judgment of the circuit court of Henry County is affirmed.

¶ 29 Affirmed.