

**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).

2013 IL App (3d) 100914-U

Order filed January 4, 2013

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-10-0914
	)	Circuit No. 09-CF-2248
	)	
CHARONE TAYLOR,	)	Honorable
	)	Daniel J. Rozak,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Carter and Lytton concurred in the judgment.

**ORDER**

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

¶ 2 Defendant, Charone Taylor, was arrested for possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2008)), after police found 85 grams of cocaine hidden inside the air filter of the vehicle defendant was driving. Defendant filed a motion to suppress, which the trial court denied. The court convicted defendant, and sentenced him to 33 years in prison.

¶ 3 Defendant now appeals, arguing that the motion to suppress should have been granted because, although defendant consented to the search of his vehicle, the scope of the search exceeded his consent. We affirm.

¶ 4 **FACTS**

¶ 5 On September 25, 2009, Officer Daryl Morse drove his marked police vehicle through the parking lot of a gas station. Morse noticed a white Buick, with defendant in the driver's seat, parked next to one of the pumps. Defendant saw Morse's vehicle, did a "double take," and abruptly sat up in his seat. Defendant then got out of his vehicle and watched Morse as he continued driving through the parking lot. Defendant's behavior raised Morse's suspicions, and Morse parked on the street about 150 to 200 feet away to observe defendant. Morse watched as defendant got out of his vehicle and moved back and forth between the trunk of his car and the hood. Defendant appeared to be wiping down the engine compartment of his vehicle. After four or five minutes, defendant got back in his car and drove out of the parking lot. Morse followed.

¶ 6 After defendant twice failed to properly use his turn signal, Morse initiated a traffic stop. Defendant gave his identification to Morse, and Morse ran a warrant check. Morse learned that defendant had no outstanding warrants, but that he was on Illinois Mandatory Supervised Release (MSR). Morse returned to defendant's vehicle and asked whether defendant had anything illegal in the car. Defendant replied that he did not. Morse then asked, "Would you mind if I take a look at all?" Defendant's response is inaudible on the audio recording of the stop, but Morse testified, and the trial court found, that defendant had given consent to search.

¶ 7 Morse searched the inside of the vehicle for about five minutes but did not find any contraband. He then popped the vehicle's hood and noticed that the engine compartment looked

as if it had been recently cleaned. Morse's attention was drawn to the air filter, from which a piece of paper was protruding. The air filter was attached by two bolts, which were loose and not covered in any rust, indicating to Morse that they had recently been removed. Morse used a screwdriver found in defendant's trunk to remove the bolts, allowing him to shift the positioning of the air filter and uncover a baggy filled with cocaine. During the search, defendant stood next to Morse's nearby cruiser. The entire search of defendant's vehicle lasted approximately 10 minutes.

¶ 8 Defendant was arrested and charged with unlawful possession of a controlled substance with intent to deliver. Before trial, defendant filed a motion to suppress evidence, arguing that Morse lacked probable cause to initiate the traffic stop. During a hearing on that motion, defendant raised an additional argument, claiming that the search of his vehicle exceeded the scope of his consent when Morse popped the hood and removed the bolts securing the air filter. The court denied the motion, finding that the search was within defendant's scope of consent.

¶ 9 The State noted that had it been asked to prove its case, it would have argued that the search was justified because, at the time of the search, defendant was on MSR subject to an Illinois "Parole or Mandatory Supervised Release Agreement" (MSR agreement). During the hearing, the trial court admitted defendant's MSR agreement and the Illinois Department of Corrections' report into evidence. As required by Illinois law, defendant's MSR agreement contained a clause requiring him to submit to suspicionless searches of his person and property while on MSR. The clause requires that the defendant "consent to a search of his or her person, property, or residence under his or her control." 730 ILCS 5/3-3-7(a)(10) (West 2008). Section 3-3-7(a)(10) was added to the statute effective January 1, 2002. Defendant's MSR began in 2008.

¶ 10 After the trial court denied defendant's motion to suppress, defendant was convicted and sentenced to 33 years in prison. Defendant now appeals the trial court's denial of the motion to suppress, arguing that the search exceeded the scope of consent and was not justified by defendant's status as a parolee.

¶ 11 ANALYSIS

¶ 12 I. Standard of Review

¶ 13 Review of a circuit court's decision on a motion to suppress involves a two-tiered analysis. The circuit court's factual findings are upheld unless they are against the manifest weight of the evidence. *People v. Absher*, 242 Ill. 2d 77 (2011). The appellate court reviews *de novo* the ultimate decision of whether suppression is warranted. *People v. Luedemann*, 222 Ill. 2d 530 (2006).

¶ 14 II. Motion to Suppress

¶ 15 A. Consent

¶ 16 In his written motion to suppress, defendant failed to raise the argument that the search exceeded the scope of consent, although he did orally raise that argument during the hearing on that motion. In addition, defendant did not preserve this argument in a posttrial motion. As a result, defendant's argument has been forfeited, and it will be reviewed under the plain error doctrine. *People v. Bui*, 381 Ill. App. 3d 397 (2008). A reviewing court will consider a forfeited error under the plain-error doctrine when (1) the evidence was so closely balanced that the error alone threatened to tip the scales of justice against the defendant, or (2) the error was so serious that it affected the fairness of defendant's trial and challenged the integrity of the judicial process. *People v. Adams*, 2012 IL 111168. Defendant claims that the second prong of plain error applies

to warrant reversal in this case. Before determining whether the second prong of plain error has been met, we first determine whether any error occurred at all. *People v. Walker*, 232 Ill. 2d 113 (2009); see *People v. White*, 2011 IL 109689.

¶ 17 The fourth amendment of the United States Constitution and article I, section 6 of the Illinois Constitution protect individuals against unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Typically, a reasonable search requires probable cause and a warrant, but there are several exceptions to the warrant requirement. One such exception allows warrantless searches when the defendant consents to the search. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

¶ 18 A defendant's consent is not unlimited. The officers "have no more authority than they have apparently been given by the voluntary consent of the defendant." *People v. Baltazar*, 295 Ill. App. 3d 146, 149 (1998). Typically, a defendant does not explicitly state the specific parameters of his consent. As a result, we must evaluate the interaction between the defendant and the officer and make an objective determination of the expressed consent. *Florida v. Jimeno*, 500 U.S. 248 (1991). That is, "what would the typical reasonable person have understood by the exchange between the officer and the suspect?" *Id.* at 251. Under this analysis, the defendant's subjective intent is not at issue.

¶ 19 In order to objectively determine the scope of defendant's consent, we must consider the context in which the consent was given. The scope of a defendant's consent is limited by the expressed object or purpose of the search. *People v. Kats*, 2012 IL App (3d) 100683 (citing *Jimeno*, 500 U.S. 248 (1991)). Thus, when a defendant explicitly limits his consent to a search for only narcotics, for example, he consents to a search of all areas in which narcotics might

reasonably be located, including small containers or packages hidden from view. *People v. Sesmas*, 227 Ill. App. 3d 1040 (1992) (defendant's consent to search for narcotics authorized officers in moving his vehicle to a gas station, placing it on a hoist, employing a drug dog, and searching a compartment in the gas tank in order to find narcotics). Under such circumstances, the search of an area which could not contain narcotics, such as a defendant's papers, would exceed the scope of the consent. *United States v. Dichiarinte*, 445 F.2d 126 (7th Cir. 1971).

¶ 20 When requesting consent to search, there are no magic words that the officer must use. In *People v. Kelk*, 231 Ill. App. 3d 797, 798 (1992), officers asked the defendant whether they could "look in" his vehicle, and the defendant complied. The court held that the defendant had given the officers general consent to search the vehicle, despite the officers' use of the words "look in" instead of "search." The context of the conversation made it clear to the defendant that the officers were requesting consent to search the vehicle. In that context it was objectively reasonable that the defendant was giving his general consent to search the car and the contents thereof. *Id.*

¶ 21 A defendant's general consent to search a vehicle usually entails the consent to search containers found therein. See, e.g., *Kelk*, 231 Ill. App. 3d 797 (general consent to search included consent to search duffel bag found in vehicle); *People v. Phillips*, 264 Ill. App. 3d 213 (1994) (consent to search motorcycle for narcotics included consent to search pocket of jacket found in motorcycle's trunk). It is not necessary for police to request consent to search each individual item uncovered during the search. *Phillips*, 264 Ill. App. 3d 213. However, a defendant's consent to search would not encompass containers that could not reasonably contain the object of the search.

¶ 22 A defendant may, of course, limit the scope of his consent. For example, in *People v. Vasquez*, 388 Ill. App. 3d 532 (2009), officers gave the defendant a written consent form, listing with specificity the areas of his vehicle that the defendant consented to be searched. Officers later exceeded the scope of the defendant's consent by removing the vehicle's bumper to search for narcotics. Because the defendant's consent had been explicitly limited by the consent form, any search deviating from the form's limitations exceeded the scope of the consent. *Id.*

¶ 23 Another factor to be considered in determining whether a search exceeded the scope of consent is whether the search damaged the vehicle. In *Kats*, the court upheld a search for contraband during which an officer used a screwdriver to pry off a vehicle's door panels because the officer "did not alter or damage the vehicle or remove anything that could not be easily replaced." *Kats*, 2012 IL App (3d) 100683, ¶ 30. The *Kats* court explained that a search does not exceed the scope of consent merely "because [the officer] used tools to enter a closed compartment of the vehicle." *Id.* ¶ 26. In *People v. Roa*, 398 Ill. App. 3d 158 (2010), the scope of defendant's consent included the authority to conduct a 20-minute search of a car's airbag area that included the use of a fiberoptic scope and the disassembling of the airbag compartment. However, a search that causes serious, permanent damage to the defendant's property would not likely fall within the scope of a defendant's general consent. See, e.g., *Jimeno*, 500 U.S. at 251-52 ("It is very likely unreasonable to think that a suspect, by consenting to the search of his trunk, has agreed to the breaking open of a locked briefcase within the trunk \*\*\*.").

¶ 24 In the present case, Officer Morse did not expressly designate a specific object of the search; he questioned if defendant had "anything illegal" in the car before requesting consent to "take a look." From the context of Morse's questions, an objective observer would conclude that

Morse was requesting defendant's consent to search the vehicle for anything illegal. Defendant's affirmative response gave Morse general consent to search the vehicle, as well as any containers found therein that might contain illegal items. See *Kelk*, 231 Ill. App. 3d 797.

¶ 25 Defendant did not expressly limit the scope of his consent. Throughout the entire search, defendant was located outside Morse's cruiser, which was parked nearby. Defendant had the opportunity to object when Morse popped the hood and began searching around the vehicle's engine compartment. The fact that defendant did not object lends support to the finding that the scope of his consent included searching under the hood and removing the vehicle's air filter.

¶ 26 The search was not unreasonably intrusive, and did not result in permanent damage to the vehicle. Opening the hood of the vehicle is comparable to the opening and searching of a vehicle's trunk, as was upheld in *Phillips*, 264 Ill. App. 3d 213. Defendant argues that Morse's use of a screwdriver to remove the air filter was outside the scope of consent. But the use of tools alone does not cause a search to exceed the scope of a defendant's general consent. See *Kats*, 2012 IL App (3d) 100683. Morse merely removed the screws securing the air filter and did not remove the air filter itself. Morse was able to remove the screws and manipulate the air filter without causing permanent or structural damage to the vehicle. The search of the air filter was no more intrusive or damaging than the search of a secret compartment near the airbag in *Roa*, 398 Ill. App. 3d 158, or the removal of the door panels in *Kats*, 2012 IL App (3d) 100683. In addition, the search was not excessive in length, as the entire search lasted only 10 minutes.

¶ 27 The scope of defendant's general consent to search his vehicle for "anything illegal" encompassed the search of all areas of the car in which illegal items could reasonably be found, so long as the length of the search was reasonable and caused no permanent damage to the

vehicle. Such authority justified Morse in opening the vehicle's hood and using a screwdriver to remove the two screws securing the air filter. The search did not exceed the scope of defendant's consent.

¶ 28 The trial court did not err in denying defendant's motion. Without error, there can be no plain error. We must therefore honor defendant's procedural default.

¶ 29 **B. Search of Parolee**

¶ 30 Having found no error in the trial court's finding of consent, we need not address the State's alternate argument in support of the trial court's order.

¶ 31 **CONCLUSION**

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

¶ 33 Affirmed.