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2014 IL App (3d) 130182-U

Order filed April 23, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court,
OF ILLINOIS,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,)	
	)	Appeal No. 3-13-0182
	)	Circuit No. 10-DT-1485
v.)	
	)	Honorable
	)	Joseph C. Polito,
CHRISTOPHER MURPHY,	)	Robert P. Livas,
	)	Bennett J. Braun,
Defendant-Appellant.	)	Judges, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justice Wright concurred in the judgment.
Justice Carter dissented.

ORDER

¶ 1 *Held:* Trial court's finding that officer had reasonable suspicion to stop defendant was against the manifest weight of the evidence and trial court erred when it denied defendant's motion to suppress.

¶ 2 Defendant Christopher Murphy was found guilty by the trial court of two counts of driving while under the influence and sentenced to 12 months' court supervision. He

appealed, arguing the trial court erred when it denied his motion to suppress. We reverse and remand.

¶ 3

FACTS

¶ 4

Defendant Christopher Murphy was charged with two counts of driving while under the influence. 625 ILCS 5/11-501(a)(1), (2) (West 2012). Prior to trial, Murphy moved to quash the stop and his arrest and to suppress the evidence. He argued the police lacked reasonable suspicion or probable cause to stop him. At the hearing on his motion, Murphy presented the testimony of Mark Brunzie, the arresting officer, and a video from Brunzie's squad car camera was presented by agreement of the parties.

¶ 5

Brunzie testified that he was on routine patrol driving southbound on State Street when he noticed Murphy's pickup truck at a gas station at 314 South State. He recognized the pickup truck from previous traffic stops and encounters with Murphy and Murphy's brother. Brunzie observed Murphy's vehicle exiting the gas station parking lot, heading northbound on State. Brunzie turned his squad car around in an effort to begin following Murphy. Brunzie testified that he observed the Murphy vehicle straddle the two northbound lanes in the 200 block of State for one-quarter to one-half block. Half of Murphy's truck was in one lane and the other half was in the other lane.

¶ 6

Brunzie acknowledged that during the summary suspension hearing, he said the violation was captured on the video but admitted, "[o]bserving it today, I don't believe so." He pursued Murphy when he turned right on Thornton and left on Jefferson. About halfway down the block on Jefferson, Murphy turned into a driveway at which time Brunzie activated his MARS lights and effectuated a traffic stop. Brunzie testified he stopped Murphy for improper lane usage, "lane straddling on State Street."

¶ 7 Brunzie activated the squad car video as he was turning around to follow the Murphy vehicle. The video was recording during the entire time Brunzie was driving from the gas station where he first saw the Murphy vehicle to the driveway on Jefferson, where he effected the traffic stop. During Brunzie’s testimony, the squad car video was played several times for the trial court. Brunzie used the video to narrate the chronology of events. When asked by the trial court to point out Murphy’s lane violation, Brunzie identified a vehicle in the right-hand lane and stated he could “see the violation from there.”

¶ 8 More than a half dozen times during his narration, Brunzie pointed to a particular vehicle in the video as Murphy. He identified Murphy’s vehicle in the northbound curb lane and when it turned on Thornton. The trial court, however, disagreed with Brunzie’s testimony, observing that Murphy did not turn on Thornton. After Brunzie said Murphy turned on Thornton, the trial court responded, “No, it didn’t,” and stated, “I saw that car turn on that green light” at Second Street. On cross-examination, Brunzie stated that he was 100% sure that the vehicle in the video straddling the lanes was Murphy’s vehicle. The trial court agreed that the vehicle straddled the lanes, but made two additional conclusions from the video: first, that the vehicle Brunzie referenced in his narration turned on Second Street, and second, the vehicle depicted in the video was not Murphy.

¶ 9 Following Brunzie’s testimony, the State moved for a directed verdict. The trial court denied the State’s motion for a directed verdict on whether Brunzie had reasonable grounds for the traffic stop, finding that Murphy had presented a *prima facie* case that Brunzie lacked reasonable grounds to stop Murphy.

¶ 10 To rebut Murphy’s *prima facie* case, the State presented the additional testimony of another officer, Dave McDaniel, who corroborated that Murphy straddled the

northbound lanes, with half his vehicle in one lane and half in the other lane. McDaniel was stopped on Thornton at the intersection of State, and saw Murphy straddle the lanes in the 200 block of State before Murphy turned on Thornton. He first saw Murphy when Murphy's vehicle was right in front of him, coming down State Street from the 200 block.

¶ 11 The trial court again reviewed the video. It observed that one car visible in the video turned right on Second Street and the vehicle ahead of it continued northbound on State and did not turn on Thornton. The trial court observed:

“I see two cars going – I see the car from a distance making what appears to be a right turn on Second Avenue where there is a light and then there is only one more car in front of it. There is another set of lights in front of it, and that car keeps on going. *** Keeps on going north on State Street. That car does not turn on Thornton. I only see one car make a right hand turn. You know, I presume that's Murphy. I don't know.”

¶ 12 It appeared to the trial court “in that video that [Murphy] wasn't driving on State Street between Second and [Thornton].” The trial court noted that the evidence consisted of the testimony of the two officers and the video. It stated it was conflicted by the video, which appeared to show that Murphy turned on Second. Nevertheless, because the video showed Murphy on Thornton before the first cross street, the trial court concluded that Murphy had to have turned on Thornton. The trial court denied Murphy's motion to suppress the stop.

¶ 13

Murphy filed a motion to reconsider. At the hearing on that motion, Murphy submitted that if he turned on Second, the officers could not have seen him straddle the lanes in the next block of State as they testified. Murphy further submitted that if he turned on Thornton Street, as the officers testified, the video did not show the vehicle in the right-hand lane straddle the other northbound lane. The trial court again viewed the video. It agreed with defense counsel that “it appears from the video – now that’s a little ways away – that that car does not appear – that car appears to be in the right-hand lane.” The trial court noted its unease about the vehicle that is shown in the video turning right, stating:

“But I was convinced; and I’m still convinced today that that car turned right on Second Street. But I – I’m convinced that that’s not Murphy’s car. I mean, that’s not Murphy’s car. Murphy’s car; you can’t see it. I mean, if you look at the – it’s hard to see. But, if you look at that thing over and over and over again, it appears that the tail lights of that car are different than Murphy’s. Murphy’s – the tail lights of that car appear to be a passenger car. It’s hard to see. The car that turned right; it appears that that car is turning right on the second street. I, you know; I’m – I don’t know how many times I have watched that. I can’t be convinced that that’s Murphy’s car. *** [I]t appears to be a passenger vehicle. *** It appears different. I’m convinced that – that that car turning right is not Murphy’s car; and it turned right on Second Street. I mean, you can’t convince me that that – that that’s – that’s Thornton. I mean, you see the car. And then you

see – you just – they didn’t pick up Murphy’s car. That video did not pick up Murphy’s car. So I’m left with the testimony of Brunzie and McDaniel.”

¶ 14 Based on the officers’ testimonies, the trial court found Brunzie had reasonable suspicion to stop Murphy’s vehicle based on improper lane usage. The trial court denied the motion to reconsider. The cause continued to a bench trial, after which Murphy was found guilty and sentenced to 12 months’ court supervision. He appealed.

¶ 15 ANALYSIS

¶ 16 The issue on appeal is whether the trial court erred when it denied Murphy’s motion to suppress. Murphy argues that the trial court should have granted his motion to suppress, asserting that the arresting officer did not have probable cause or reasonable suspicion to stop him. According to Murphy, the squad video does not establish a traffic violation and the State cannot establish probable cause or reasonable suspicion sufficient to justify the stop.

¶ 17 Reasonable suspicion is sufficient for an investigatory stop where an officer observes lane deviations without apparent reason. *People v. Hackett*, 2012 IL 111781, ¶ 28. An officer may make a brief investigatory stop when “the officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.” *Hackett*, 2012 IL 111781, ¶ 20. The stop of a vehicle is also reasonable where the police have probable cause to believe that a traffic violation has occurred. *People v. McDonough*, 239 Ill. 2d 260, 267 (2010), quoting *Whren v. United States*, 517 U.S. 806, 810 (1996). In reviewing the trial court's denial of a motion to suppress, we uphold its factual findings unless they are against the manifest

weight of the evidence and review *de novo* the ultimate question of whether the evidence should be suppressed. *McDonough*, 239 Ill. 2d at 266.

¶ 18 At the hearing on Murphy's motion to suppress, the parties presented the video and the testimony of Brunzie and McDaniel. Both officers testified that they saw Murphy straddle the northbound lanes for one-half to one-quarter of a block in the 200 block of State Street. They each stated that Murphy's vehicle was half in one northbound lane and half in the other northbound lane. Brunzie testified both that the violation was visible and not visible on the video. The trial court determined that the vehicle Brunzie identified as Murphy's vehicle turned on Second Street. Under this scenario, Brunzie and McDaniel could not have seen Murphy straddle the northbound lanes on State between Second and Thornton, an assessment the trial court itself makes. Despite this belief, the trial court denied Murphy's motion to suppress.

¶ 19 At the hearing on Murphy's motion to reconsider, the trial court again expressed its belief that the video indicated Murphy turned on Second Street and its difficulty with the vehicle in the right-hand lane traveling beyond Thornton. It also noted that the video showed that the vehicle in the right-hand lane remained within the lane and did not commit any lane violations. At the trial court's insistence, the video was replayed. The trial court reiterated it was convinced some vehicle turned on Second Street but it was not Murphy's vehicle. The trial court found that the video did not depict Murphy's vehicle but denied the motion to reconsider.

¶ 20 On these facts, we determine that the trial court's findings are inconsistent and not supported by the evidence. Brunzie testified at the summary suspension hearing that the video showed Murphy straddling the northbound lanes but admitted at the motion to suppress hearing that the alleged violation was not visible on the video. Later during the

same motion hearing, he pointed out apparent lane violations by a vehicle that the trial court found was not Murphy's vehicle. At the hearing on Murphy's motion to reconsider, the trial court again expressed its belief that the video showed a vehicle turned on Second but it was not Murphy's vehicle. The trial court also identified another vehicle in the video that continued straight on State past Thornton. The State conceded at oral argument that the video does not establish where Murphy's vehicle was when traveling on State. It pointed to the time of night, the lack of illumination, the nature of videotaping, and the skewed spatial distance perspective as factors negating the evidentiary value of the video.

¶ 21 In addition to the video, trial court relied on the testimony of Brunzie and the corroborative testimony of McDaniel in denying Murphy's motion to suppress. While narrating the video during his testimony, Brunzie identified Murphy's vehicle, the lane violation, and right turn onto Thornton. The trial court agreed with defense counsel that the video portrayed that the vehicle that Brunzie identified as Murphy remained in the right-hand lane and did not commit a lane violation. The trial court also reiterated that it was convinced a vehicle turned on Second Street, but that it was not Murphy's vehicle. Significantly, and in marked contrast to Brunzie's testimony, the trial court determined that the video did not show Murphy's vehicle at all. After concluding that Murphy's car could not be seen in the video, the trial court noted it was left with the officers' testimony, including Brunzie, who stated that Murphy's vehicle and the lane violations were visible in the video.

¶ 22 Even after expressing doubt that Murphy's vehicle turned right on Thornton and concluding that Murphy's vehicle was not visible on the video, the trial court found there was reasonable suspicion for the stop based on the lane violations. The trial court found

that Murphy's vehicle and the lane violation were not visible in the video but then accepted Brunzie's identification of Murphy's vehicle and the lane violation in the same video. The two opposite findings cannot stand. Accordingly, we find that the trial court's findings were against the manifest weight of the evidence and that it erred when it denied Murphy's motion to suppress.

¶ 23 For the foregoing reasons, the judgment of the circuit court of Will County is reversed and the cause remanded.

¶ 24 Reversed and remanded.

¶ 25 JUSTICE CARTER, dissenting.

¶ 26 I respectfully dissent from the majority's order in the present case. Based upon a review of the record and the squad car video, I would find that the trial court's assessment of credibility and factual determinations at the suppression hearing were not against the manifest weight of the evidence. Giving the appropriate deference to those factual findings and credibility assessment as required by the standard of review, I would go on to conclude that the trial court properly found that defendant failed in his burden to show that the police lacked reasonable suspicion to stop defendant's vehicle. I would, therefore, affirm the trial court's ruling denying defendant's motion to suppress evidence.

¶ 27 My disagreement with the majority's analysis and conclusion in this case is based upon three grounds. First, I do not agree with the significance the majority places on the squad car video. In my opinion, the video is of little to no evidentiary value because it cannot be determined from the video whether defendant crossed over the lane line, as testified to by the police officers, or whether defendant did not cross over the lane line, as argued by defense counsel. Unfortunately, in the video there is not enough lighting and defendant's vehicle is too far away from the camera for any type of determination to be

made. With the value of the video discounted, the only evidence left for the trial court to rely on was the testimony of the two police officers.

¶ 28 Unlike the video, that testimony was conclusive. Although both officers were located in different places when they observed defendant's vehicle, they both testified unequivocally that they saw it cross over the lane line and straddle the two lanes of traffic. During their testimony, both officers were thoroughly questioned by defense counsel as to the observations they had made, and any alleged inconsistencies were explored. The trial court had an ample opportunity to observe the testimony and demeanor of each officer first hand and was in a far better position than this court to determine if that testimony was credible. See *McDonough*, 239 Ill. 2d at 266. Any inconsistencies in the testimony or between the testimony and the squad car video were for the trial court to resolve as trier of fact. See *id.* I see nothing in the record that would allow this court on appeal to substitute its judgment for that of the trial court on the issue of the credibility of the officers. See *People v. Sims*, 358 Ill. App. 3d 627, 634 (2005) (when testimony on a motion to suppress is merely contradictory, the appellate court will not substitute its assessment of the credibility of the witnesses for that of the trial court). I cannot assume, as the majority does, that what the squad car's camera captured is exactly what the officers saw in the moments leading up to the traffic stop.

¶ 29 Second, I do not agree with the majority's conclusion that the trial court's findings were inconsistent, nor do I believe that the trial court was confused in this case. Rather, in my opinion, the record shows that the trial court was troubled by the squad car video and that the trial court found it very difficult, or even impossible, to make any type of conclusive factual determination from the video. Indeed, as the trial court noted and as

this court has observed from its own review of the video, it is very difficult to even determine from the video on which street defendant's vehicle turned.

¶ 30 Third, I do not agree with certain findings that the majority has attributed to the trial court regarding what can be seen on the squad car video. In my opinion, the trial court's various individual statements were not findings that the trial court was making at the time but, rather, were merely indications of the thought process that the trial court was going through as it tried to resolve the issues before it and tried to determine if anything of substance could be taken from the video. The trial court ultimately found, although somewhat implicitly, that the video was unclear and that the officers' testimony was credible. Those findings are not against the manifest weight of the evidence and must be affirmed on appeal. See *McDonough*, 239 Ill. 2d at 266.

¶ 31 For the reasons stated, I respectfully dissent from the majority's order in the present case. I would affirm the trial court's order denying defendant's motion to suppress evidence.