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2014 IL App (3d) 130846-U

Order filed November 4, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois,
Plaintiff-Appellant,)	
v.)	Appeal No. 3-13-0846
AARON CADY,)	Circuit No. 13-CF-650
Defendant-Appellee.)	Honorable Michael F. Meersman, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

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

¶ 2 The State appeals from the trial court's order granting defendant's motion to suppress evidence. On appeal, the State argues the trial court erred in granting defendant's motion to suppress evidence. We affirm.

¶ 3 **FACTS**

¶ 4 Defendant, Aaron Cady, was charged by information with one count each of unlawful

possession with intent to deliver a controlled substance (720 ILCS 570/401(c)(2) (West 2012)), unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2012)), unlawful possession of cannabis (720 ILCS 550/4(c) (West 2012)), and unlawful possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2012)).

¶ 5 Before trial, defendant filed a motion to quash arrest and suppress evidence. At the hearing on defendant's motion, defense counsel stipulated to the foundation for a dash camera video recording of the incident. The State played the recording for the court.

¶ 6 The video recording showed a patrol car parked behind a sport utility vehicle (SUV). The SUV was stopped on the left shoulder of an interstate highway and an individual in a green shirt stood near the vehicle. Illinois State Police Trooper Jeff Graham identified the individual in the green shirt as "Mr. Galloway," and placed him under arrest. Graham directed a second individual, defendant, to "stay right there," sit down, and "keep your hands where I can see them." Thereafter, Graham instructed defendant to stand up and place his hands behind his back. Defendant asked why he was being searched, and Graham responded "I'm just going to pat you down, I'm not searching you." During the pat-down, Graham asked "what's that" and defendant responded "that's my pill case." Defendant explained that the object in question contained his pills. Graham told defendant "before we take off I'm going to let you know what [Galloway's] bond is and everything" and directed defendant to "sit tight."

¶ 7 After a second officer arrived, Graham can be heard on the audio portion of the recording telling the officer that defendant had a pill bottle around his neck. The second officer advised Graham that carrying prescription medication in a nonprescription container constituted a felony offense. The officer told Graham he just wanted him to know that and was not instructing him on how to proceed.

¶ 8 When the conversation with the second officer ended, Graham returned to speak with defendant and asked him to take off the pill bottle. Graham asked defendant if he had a prescription for the contents of the pill container. Defendant initially avoided the questions, but later admitted that he did not have a prescription for the contents. He then added the bottle contained cocaine. Following this conversation, Graham placed defendant under arrest.

¶ 9 Following the publication of the video, the State called Graham to testify. Graham testified that on July 21, 2013, he investigated a stranded vehicle. He discovered the two occupants were waiting for someone to bring them a spare tire so that they could repair the vehicle and resume their travels. Graham directed defendant to sit down while he dealt with the second individual, the driver, Galloway. After asking for the driver's identification, Graham learned Galloway had an outstanding warrant.

¶ 10 After securing Galloway, Graham conducted a pat-down search of defendant for purposes of officer safety. Before the pat-down, Graham told defendant that he was not being detained, but defendant could not walk away because he was on the side of the interstate. Graham initiated the pat-down because a warrant check revealed defendant was known to carry weapons and Graham was the only officer at the scene.

¶ 11 While patting down the outside of defendant's clothing, Graham noticed a tube-like object hanging from defendant's neck. Graham did not think there were weapons inside the object but he knew from his experience that individuals carried drugs from objects hanging from their neck or other body parts. According to Graham, at this point, defendant was no longer free to leave.

¶ 12 Defendant told Graham the object was a pill bottle and it contained his "pills." Graham's supervisor, who had arrived during the pat-down, confirmed Graham's thought that if defendant

claimed the object was a pill bottle, Graham needed to make sure it was a prescription bottle and the pills belonged to defendant. Graham reapproached defendant and asked to see the pill bottle. Defendant did not understand why Graham was asking for the bottle and eventually said it contained cocaine. Defendant gave the bottle to Graham and was placed under arrest. Inside the bottle, Graham discovered a couple of small bags of cocaine and a capsule of heroin.

¶ 13 On cross-examination, Graham indicated he had requested the driver's license and identification from both men when he arrived on the scene. Graham did not return defendant's license after he completed defendant's pat-down. After the pat-down, defendant attempted to move his belongings and asked Graham if he could go over to a car that had pulled up on the other side of the interstate because this was the relative who was bringing the spare tire to the scene. Graham told defendant he could do those things "after we got everything figured out." Graham directed defendant to "keep his hands where [he] could see them," and defendant sat at the side of the road while Graham spoke with his supervisor. Throughout the encounter, the overhead lights were activated on Graham's patrol car.

¶ 14 At the conclusion of Graham's testimony, the trial court ruled the pill bottle did not give rise to suspicion to justify a further search because Graham believed it did not contain any weapons or have an odor consistent with illegal drugs. The trial court granted the motion to suppress as to the search of the pill bottle.

¶ 15 The State filed a motion to reconsider the ruling. After a hearing, the trial court denied the motion. The State appeals.

¶ 16 ANALYSIS

¶ 17 On appeal, the State argues the trial court erred by granting defendant's motion to suppress evidence because defendant was not seized when he volunteered the information about

the contents of the pill bottle. The State argues in the alternative, if defendant was seized, Graham had a reasonable articulable suspicion of criminal activity to support the inquiry.

¶ 18 In reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). We review the trial court's findings of fact for clear error and we will reverse those findings only if they are against the manifest weight of the evidence. *Id.* We review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Id.*

¶ 19 Unreasonable searches and seizures are prohibited under the fourth amendment to the United States Constitution (U.S. Const., amend. IV) and article I, section 6, of the Illinois Constitution (Ill. Const. 1970, art. I, § 6). However, a seizure does not occur because a police officer approaches an individual and asks a few questions. *Florida v. Bostick*, 501 U.S. 429, 434 (1991). If a reasonable person would feel free " 'to disregard the police and go about his business,' " the encounter is consensual and does not trigger the fourth amendment. *Id.* (quoting *California v. Hodari D.*, 499 U.S. 621, 628 (1991)). An individual is seized when an officer " 'by means of physical force or show of authority, has in some way restrained the liberty of a citizen.' " *Bostick*, 501 U.S. at 434 (quoting *Terry v. Ohio*, 392 U.S. 1, 19, n. 16 (1968)). Where an individual's freedom of movement is restrained by a factor independent of police conduct, the appropriate inquiry is " 'whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.' " *People v. Luedemann*, 222 Ill. 2d 530, 550 (2006) (quoting *Bostick*, 501 U.S. at 436). This analysis requires an objective evaluation of the police conduct in question and does not hinge upon the subjective perception of the person involved. *Luedemann*, 222 Ill. 2d at 551.

¶ 20 The State argues defendant was not seized after the pat-down. In *United States v. Mendenhall*, 446 U.S. 544, 554 (1980), the lead opinion listed four factors that are indicative of a seizure: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person of the citizen; and (4) the use of language or tone of voice indicating that compliance with the officer's request might be compelled. See also *Luedemann*, 222 Ill. 2d at 553.

¶ 21 In the instant case, at the conclusion of the pat-down, two uniformed troopers were at the scene, Graham had not returned defendant's identification or advised him he was free to cross the interstate to speak with his relatives. See *Cosby*, 231 Ill. 2d at 276-77 (traffic stop ended when defendant's driver's license and insurance card were returned). Graham's postpat-down interaction with defendant involved Graham's directive for defendant to "sit tight" and keep his hands visible. In light of this evidence, we conclude defendant was seized both at the conclusion of the pat-down search and time when Graham inquired about the contents of the pill bottle.

¶ 22 The State further argues that if defendant was seized after the pat-down search ended, this seizure was reasonable because Graham suspected the pills in the container were prescription medication that were not in their original container. This suspicion was unfounded, since pill bottles can contain vitamins and over the counter medications that do not require prescriptions. Since defendant did not tell the officer the bottle contained prescribed medication, but stated the bottle contained "pills," there was no reason to believe defendant was committing a criminal offense.

¶ 23 Graham's initial questions to defendant about the object and subsequent conversation with his supervisor indicated the object was not immediately recognizable as contraband. Because the object was not a weapon and its incriminating nature was not immediately apparent,

Graham did not have probable cause to question defendant as to its purpose and contents or detain defendant while he discussed the object with his supervisor. As a result, defendant was unlawfully seized at the time he voluntarily stated the bottle contained cocaine. Therefore, we conclude the trial court did not err by granting defendant's motion to suppress evidence.

¶ 24

CONCLUSION

¶ 25

The judgment of the circuit court of Rock Island County is affirmed.

¶ 26

Affirmed.