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2016 IL App (3d) 150661-U

Order filed April 19, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellant,)	
v.)	Appeal No. 3-15-0661
BRANDON WATT,)	Circuit No. 15-CF-10
Defendant-Appellee.)	Honorable Sarah F. Jones, Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's failure to issue findings of fact in compliance with section 114-12(e) of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-12(e) (West 2014)) necessitates *vacatur* and remand for such factual findings.

¶ 2 The State appeals from the trial court's order suppressing evidence seized against defendant. We vacate the trial court's order and remand the matter so that the trial court may enter a judgment accompanied by factual findings in compliance with section 114-12(e) of the

Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/114-12(e) (West 2014)), which are necessary to our resolution of the case.

¶ 3

FACTS

¶ 4

Defendant, Brandon Watt, was charged by indictment with armed habitual criminal (720 ILCS 5/24-1.7(a)(2) (West 2014)), aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5) (West 2014)), and two counts of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)). Defendant subsequently filed a motion to suppress the evidence seized from him during a police encounter. A hearing on defendant's motion was held on August 5, 2015.

¶ 5

At the hearing, Officer James Kilgore of the Joliet police department testified that he was on a stationary patrol in the area of 4th Street and Chicago Street on the morning of January 1, 2015. He and Officer Gruber¹ were stationed there as a result of a homicide that had taken place in that area one or two days earlier. Kilgore first observed defendant walking westbound on 5th Avenue, toward the gas station at 4th and Chicago Streets. The officers drove the squad car to defendant's vicinity and parked without blocking defendant. The squad car was unmarked. Kilgore and Gruber wore plain clothes, with a black outer vest. The vest contained the logo of a badge on the front and police markings on the back; the officers' actual badges were visible on the fronts of their belts. The officers announced their presence and asked to speak to defendant.

¶ 6

Kilgore testified that defendant had not committed an ordinance violation in the time that the officers were observing him. He testified that "[t]echnically speaking, he was walking in the center of the roadway when there were sidewalks." They had observed defendant walking in the street for three or four minutes before approaching him. Kilgore was suspicious of defendant

¹Officer Gruber's first name is not provided in the record.

because defendant was walking with his hand on his hip. Kilgore reiterated that he had not observed defendant commit any misdemeanors or felonies.

¶ 7 In approaching defendant, Kilgore said: "Joliet Police, may we speak with you[?]" Kilgore testified that defendant responded by telling Kilgore that he was "just heading home." Defendant then pointed to Dennis Court and told Kilgore that Dennis Court was his parole address.² Based on defendant's admission to being on parole, as well as defendant's presence in a high-crime area and his holding onto his waistband, Kilgore patted defendant down for weapons. The pat-down uncovered a .22-caliber handgun in the front of defendant's waistband.

¶ 8 On cross-examination, Kilgore testified that the officers did not activate the emergency lights or sirens before exiting the car. They did not draw their weapons or take out their handcuffs before asking to speak with defendant. They did not utilize their flashlights or impede defendant's path in any way.

¶ 9 Defendant testified that he was walking down Chicago Street toward Eastern Avenue on the date and time in question. He testified that two officers pulled up to him in a car, exited the vehicle, and "cornered [him] at the corner." Defendant asked the officers what was happening, but they ignored him. The officers asked defendant his name. He told the officers his name, at which point the officers turned him around, got behind him, and searched him. Defendant testified that he told the officers he was on parole after they had searched and handcuffed him. He did not recall grasping his waistband, but allowed that he may have had to pull his pants up, because they were sagging.

²Though parole in Illinois is officially termed mandatory supervised release (MSR), because defendant, Kilgore, and the trial court—as well as many of the opinions cited *infra*—refer more generally to "parole," we will do the same throughout this order.

¶ 10 On cross-examination, defendant testified that he was walking on the sidewalk on 5th Avenue. He had crossed the street, but was not walking in the street. He denied having his hand on his waistband. The State introduced defendant's MSR agreement without objection.

¶ 11 The suppression hearing resumed on September 2, 2015. The State called Kilgore, whose testimony was substantially similar to that provided earlier. Kilgore added that sidewalks were available on each side of 5th Avenue. He testified that he began the pat-down search by searching defendant's waistband because defendant had been holding that area while walking and continued to hold that area during the encounter. In response to questioning from the trial court, Kilgore testified that senior officers had requested a police presence in that area because there had been a recent homicide. He did not recall the date of the homicide, but believed it had been within the week before his encounter with defendant.

¶ 12 In closing, the State argued that defendant's parole status rendered the search lawful. Alternatively, the State argued that the search was a lawful "stop and frisk." The State did not argue that walking in the middle of the street was an offense from which probable cause would be derived.

¶ 13 On September 11, 2015, the trial court granted defendant's motion to suppress. In its brief oral remarks, the court stated: "I do not find even a scintilla of even a *Terry* stop in this police officer's approaching of [defendant] who was unable [to] articulate *** this was a high crime area so we're on higher patrol. I couldn't even articulate a probable cause for that approaching of [defendant]." The court further found that defendant's parole status was of no consequence, stating: "[T]he parole agent consent applied to parole agent, not to police department."

¶ 14 ANALYSIS

¶ 15 On appeal, the State argues that the officers' warrantless search of defendant was not conducted in a manner offensive to the United States or Illinois Constitutions. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Specifically, the State articulates two theories upon which the search was lawful. First, the State contends that neither probable cause nor reasonable, articulable suspicion is needed to search a person who is on parole. Second, the State contends that the officers had probable cause to stop defendant when they observed him walking in the middle of the street, a criminal offense under 11-1007(a) of the Illinois Vehicle Code (Vehicle Code). 625 ILCS 5/11-1007(a) (West 2014). Because defendant's suppression motion required the trial court to make credibility determinations and, in turn, factual findings, we vacate the trial court's order and remand the matter so that the trial court may enter a judgment accompanied by factual findings in compliance with section 114-12(e) of the Code.

¶ 16 The procedures governing a defendant's motion to suppress evidence illegally seized are set out in section 114-12 of the Code. 725 ILCS 5/114-12 (West 2014). Subsection (e) of that section mandates that "[t]he order or judgment granting or denying the motion shall state the findings of facts and conclusions of law upon which the order or judgment is based." 725 ILCS 5/114-12(e) (West 2014). The requirement that the trial court explicitly set forth its factual findings "serves the salutary purpose of enlightening the appellate court as to the evidence and reasoning relied upon below, and thereby facilitates review." *People v. Olivarez*, 279 Ill. App. 3d 90, 94 (1996). On review, the appellate court defers to the trial court's findings of fact, and will only reverse those findings where they are contrary to the manifest weight of the evidence. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006).

¶ 17 At the outset, we note that Kilgore's testimony, when viewed in isolation, supports the conclusion that the officers' search of defendant was lawful under either of the State's theories.

Our supreme court has held that " 'the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee.' " *People v. Wilson*, 228 Ill. 2d 35, 52 (2008) (quoting *Samson v. California*, 547 U.S. 843, 857 (2006)). Further, section 11-1007(a) of the Vehicle Code provides that "where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway." 625 ILCS 5/11-1007(a) (West 2014). Accordingly, if Kilgore observed defendant committing this offense, the officers had probable cause to stop defendant. See, e.g., *People v. Robinson*, 62 Ill. 2d 273, 276 (1976) ("There is probable cause when the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a man of reasonable caution in believing that an offense has been committed and that the person arrested has committed the offense.").

¶ 18 Kilgore's testimony, however, was affirmatively rebutted by defendant's own testimony on a number of key points. For example, defendant testified that he did not inform the officers of his status as a parolee until after he had been searched and handcuffed. Because the parolee exception applies only where officers *know* a defendant to be on parole at the time of the search or seizure (see *People v. Coleman*, 2013 IL App (1st) 130030, ¶ 21 ("[A]n unlawful search of a vehicle cannot subsequently be justified because, unbeknownst to the police, the owner or operator of the vehicle happened to be on parole."), this testimony would defeat the State's first theory. Additionally, defendant testified that he was walking on the sidewalk, and that the only time he walked in the street was to cross from one side to the other. This testimony would defeat the State's theory of probable cause based upon an infraction of the Vehicle Code.

¶ 19 Proper disposition of defendant's motion thus turned on the trial court's determination of credibility and, in turn, its findings of facts. Those pertinent facts were: (1) at what point in the encounter did defendant inform the officers of his being on parole; and (2) was defendant

walking in the middle of the road in violation of section 11-1007(a) of the Vehicle Code. 625 ILCS 5/11-1007(a) (West 2014).

¶ 20 The trial court did not expressly address either of these pivotal factual questions in issuing its ruling on defendant's motion. Thus, there are no factual findings to which this court may defer. See *Luedemann*, 222 Ill. 2d at 542. Proper resolution of the State's appeal, then, would require us to determine who was more credible, defendant or Kilgore. Such a determination, however, is within the exclusive purview of the trial court as trier of fact. See *People v. Evans*, 209 Ill. 2d 194, 211 (2004) ("It is the function of the trier of fact to assess the credibility of the witnesses, to determine the appropriate weight of the testimony, and to resolve conflicts or inconsistencies in the evidence."). A court of review should not rule on such matters "because the trial court was in a position to observe the witnesses, assess their demeanor, and make credibility judgments based on a firsthand encounter with the witnesses." *People v. Roa*, 398 Ill. App. 3d 158, 166 (2010). Accordingly, we find the most prudent course to be remand to the trial court so that it may enter a judgment accompanied by those factual findings necessary to disposition on review, in compliance with section 114-12(e) of the Code (725 ILCS 5/114-12(e) (West 2014)).

¶ 21 In coming to this conclusion, we acknowledge that the absence of factual findings does not necessarily preclude a reviewing court from affirming a trial court's ruling on a suppression motion. *E.g.*, *People v. Townsend*, 6 Ill. App. 3d 873, 878 (1972). Where only one witness testifies at a suppression hearing, for example, it may be presumed that the trial court found that witness credible. *People v. O'Neal*, 176 Ill. App. 3d 823, 829 (1988). A trial court's factual findings, though not set forth explicitly, may frequently be inferred from the ruling. See, *e.g.*, *People v. Byrd*, 408 Ill. App. 3d 71, 76 (2011) (holding that the trial court's "legal conclusion

sufficiently informs us of the supporting inferences the trial judge may have drawn to reach his decision.)

¶ 22 In the case at hand, however, the trial court's brief comments upon issuing its ruling prevent us from drawing any factual inferences from the ruling itself. The trial court rejected the argument that, because of defendant's parole status, the officers' search was lawful. It rejected this argument on the grounds that only parole agents may conduct suspicionless searches of parolees, not police officers. This legal conclusion was erroneous. See *Wilson*, 228 Ill. 2d at 52 (citing *Samson*, 547 U.S. at 857). Nevertheless, because the trial court ruled upon the State's argument on a purely legal basis, it had no occasion to consider the factual question of whether defendant informed the officers of his parole status before or after the search. Indeed, if the court's legal conclusion had been correct, the timing of the officers' knowledge of defendant's parole status would be irrelevant. Because the court's ruling was purely a legal one, it provides no implication as to whether the court found defendant or Kilgore more credible as to this factual issue. Accordingly, it is impossible for this court to logically deduce any implicit factual finding by the trial court. See Black's Law Dictionary 897 (10th ed. 2014) (defining inference as "[a] conclusion reached by considering other facts and deducing a logical consequence from them").

¶ 23 The trial court's remarks also prevent us from drawing any factual inferences in relation to the State's probable cause theory.³ The trial court stated that it did "not find even a scintilla of even a *Terry* stop" in the officers' actions. The court also stated that it "couldn't even articulate a

³Of course, the State need only prevail on one theory to avoid suppression of evidence. Consequently, the unresolved factual questions regarding the State's parole-based theory are sufficient to require remand. However, we write further to illustrate the factual questions attendant to the State's probable cause theory.

probable cause for that approaching of [defendant]." These comments clearly demonstrate that the trial court was unaware that walking in the middle of a street is a criminal offense.

Apparently, Kilgore was also unaware, as he testified that despite observing such behavior from defendant, he did not observe defendant commit any ordinance, misdemeanor, or felony violations. The State, at the trial level, failed to argue that walking in the street was a violation of the Vehicle Code, and that the officers' observations of such behavior would give rise to probable cause. Because of the resulting misapprehension of the law, the trial court's ruling did not imply a factual finding as to whether defendant was or was not walking in the middle of the street. Accordingly, we are unable to make any such inference.

¶ 24 In summary, the State's case for the lawfulness of the officers' actions in the present case turns on two separate factual questions, namely: (1) at what point in the encounter did defendant inform the officers of his being on parole; and (2) was defendant walking in the middle of the road or on the sidewalk. Kilgore and defendant each testified to conflicting answers to these questions. Thus, our resolution of the case would essentially turn on the trial court's credibility determination. However, because of separate misapprehensions of the law, the trial court did not make such a determination, and did not make any comments from which we might infer such a determination. Accordingly, we must remand the matter so that the trial court may decide those factual questions, pursuant to section 114-12(e) of the Code (725 ILCS 5/114-12(e) (West 2014)). Because we recognize that the trial court's ultimate ruling hinges upon these factual questions, we also vacate the court's original order so that it may enter a new order based on its factual findings, whatever those findings may be. We express no opinion as to which party was more credible or what our interpretation of the facts might be. Nor do we mean to insinuate that the trial court's ultimate ruling was erroneous. The trial court must simply issue formal findings

of fact to which we may defer on subsequent review, and enter a judgment based upon those facts

¶ 25

CONCLUSION

¶ 26

The judgment of the circuit court of Will County is vacated, and the matter is remanded for further proceedings.

¶ 27

Vacated and remanded.