

No. 1-10-0182

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FIRST DIVISION  
FILED: March 14, 2011

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IN THE APPELLATE COURT OF THE STATE OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF	)	APPEAL FROM THE
ILLINOIS,	)	CIRCUIT COURT OF
	)	COOK COUNTY
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08 CR 16961
	)	
RAMIRO SOTELO,	)	HONORABLE
	)	ROSEMARY GRANT-HIGGINS,
Defendant-Appellant.	)	JUDGE PRESIDING.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Justice Lampkin concurred in the judgment.  
Justice Hall dissented.

**O R D E R**

*Held:* The trial court did not err in denying the defendant's motion to suppress evidence and quash arrest, because the defendant's arrest, and ensuing inventory search, were proper.

The defendant, Ramiro Sotelo, was convicted after a stipulated bench trial of possession of over 5,000 grams of cannabis with intent to deliver. On appeal, he argues that his conviction must be vacated because it was based on evidence presented after the trial court improperly denied his pretrial motion to suppress evidence and quash arrest. For the reasons that follow, we affirm

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the trial court's judgment.

At the initial hearing on the defendant's motion to quash arrest and suppress evidence, Illinois State Trooper Hubert Spain testified that, on August 11, 2009, he was assigned to a routine patrol when he received a tip from another police officer that a particular van on the roadway might contain suspicious currency. The officer told Spain that, if Spain wished to stop the van, he would have to develop his own independent justification for doing so. Spain testified that he located the van, pulled behind it, and noticed that the van's rear license plate was covered by a clear license plate cover. Spain recalled that, despite the presence of the cover, he was able to see the van's registration plate. Spain stopped the car, which was driven by the defendant and carried no other passengers, based on what he perceived to be a license plate cover violation.

When Spain approached the van and asked for the defendant's driver's license, the defendant appeared "extremely nervous and shaky" and tendered a Mexican driver's license. According to Spain, he saw several boxes inside the van, and, when he asked the defendant what the boxes contained, the defendant answered that the boxes contained roofing material. Spain testified that he returned to his own vehicle to run a "name check" on the defendant, and that name check revealed that the defendant's driver's license had

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expired. At that point, Spain recalled, he arrested the defendant, secured the defendant in the back of his Illinois State Trooper vehicle, and commenced an inventory search of the defendant's van. That search revealed the presence of the cannabis that led to the defendant's conviction. Under examination by the State, Spain agreed that he conducted the search "to protect police officers from [claims of] lost or stolen or vandalized property" and to "guard the police from danger \*\*\* in the event there [were] weapons or anything of that sort within the vehicle."

At the conclusion of Spain's testimony, the defense introduced a copy of the defendant's driving abstract, which the parties agreed indicated that the defendant had no valid license, not that his license was expired. The trial court then suggested that Illinois law allows "a grace period where the foreign licenses are valid," and the defense recalled Spain to the witness stand for further testimony. In that further testimony, Spain indicated that he did not know when the defendant's Mexican driver's license expired. During the parties' later argument on the motion, the trial court noted that the defendant's driving abstract indicated that he had resided in Illinois since at least 1994, well over a decade before Spain stopped him. The trial court then invited written briefing on the motion.

The trial court later allowed the defense to re-open the

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proofs and recall Spain as a witness. In this testimony, Spain elaborated on the circumstances of his search of the van. He said that, after securing the defendant, he opened the rear doors of the van and detected a strong cannabis odor, opened a box, and saw cannabis. At that point, he said, he notified his supervisor, as well as another police agency that specialized in drug crimes, of his discovery and ceased his inventory. Thus, he did not inventory any items in the van, nor did he complete a tow report for the van; he testified that a drug agent completed those tasks. Spain agreed that, in his prior grand jury testimony, he stated that he performed a custodial search of the van and did not mention the idea of an inventory search. He also agreed that, on the roadway on which he stopped the defendant, abandoned cars may be left on the shoulder for up to two hours and that he did not offer the defendant an opportunity to contact someone to pick up the van to avoid police impoundment.

After hearing argument from the parties, the trial court ruled on the defendant's motion to quash and suppress as follows, in pertinent part:

"Number one, I found Trooper Spain credible and believable. \*\*\*

\* \* \*

The plain meaning of the statute \*\*\* is that \*\*\* [it is]

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illegal for a vehicle to operate with any registration plate cover at all. And I find that the \*\*\* officer had probable cause to make a stop of that vehicle.

Now he goes up to the car and asks for a license. The defendant does not have \*\*\* a driver's license. It is expired at that time. That is probable cause to make an arrest.

The defendant is arrested and placed into a locked squad car. \*\*\*

\* \* \*

\*\*\* I agree with the defense [that the search of the van could not be justified as a search incident to arrest].

However, the law provides another exception, and that second exception would be an inventory search.

\* \* \*

I do not find that Trooper Spain was [acting] on a pretextual basis. \*\*\*

\* \* \*

The trooper and his fellow troopers, \*\*\* any one of whom could have completed that search \*\*\*. \*\*\*

\* \* \*

\*\*\* I find that Trooper Spain and his fellow troopers inventoried the items in that vehicle."

The trial court thus denied the defendant's motion to quash

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and suppress. The cause proceeded to a bench trial at which the parties stipulated to the content of the witnesses' testimony. Based on the stipulated evidence, the trial court found the defendant guilty of possession of cannabis with intent to deliver, and it subsequently sentenced him to eight years' imprisonment. The defendant now timely appeals.

On appeal, the defendant challenges the trial court's decision to deny his motion to quash arrest and suppress evidence. In reviewing a trial court's ruling on a motion to suppress evidence, a reviewing court must apply the two-part standard of review adopted by the Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Luedemann*, 222 Ill. 2d 530, 542, 857 N.E.2d 187 (2006) (motion to suppress); *People v. Moore*, 378 Ill. App 3d 41, 46, 880 N.E.2d 229 (2007) (motion to quash arrest). Under this standard, we give 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. *Luedemann*, 222 Ill. 2d at 542. A reviewing court, however, remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted. *Luedemann*, 222 Ill. 2d at 542. Accordingly, we review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Luedemann*, 222 Ill. 2d at 542.

The defendant argues that Trooper Spain's search of his vehicle was improper because Spain lacked justification to seize him and because, even if he was lawfully seized, because Spain lacked grounds to search his vehicle after the arrest. We begin with the first contention.

The fourth amendment to the United States Constitution provides "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches [and] seizures." U.S. Const., amend. IV. Similarly, the Illinois Constitution provides citizens with "the right to be secure in their persons, houses, papers, and other possessions against unreasonable searches and seizures." Ill. Const.1970, art. I, § 6. Reasonableness, under these provisions, requires that an officer without an arrest warrant have probable cause to support an arrest (*People v. Jackson*, 232 Ill.2d 246, 274-75, 903 N.E.2d 388 (2009)) or reasonable suspicion to support a more limited stop (*Terry v. Ohio*, 392 U.S. 1, 22 (1968)). The State argues here that the initial seizure of the defendant was justified by his violation of section 12-610.5 of the Motor Vehicle Code (Code) (625 ILCS 5/12-610.5) (West 2008)), and that his subsequent arrest was justified both by that violation and by Spain's discovery that he did not have a valid driver's license. The defendant most strongly contests the justification for the initial seizure.

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Section 12-610.5 of the Code declares that "[i]t shall be unlawful to operate any motor vehicle that is equipped with registration plate covers" (625 ILCS 5/12-610.5(b) (West 2008)), and it defines the term "registration plate covers" as follows:

"(a) In this Section, 'registration plate cover' means any tinted, colored, painted, marked, clear, or illuminated object that is designed to:

- (1) cover any of the characters of a motor vehicle's registration plate; or
- (2) distort a recorded image of any of the characters of a motor vehicle's registration plate recorded by an automated traffic law enforcement system \*\*\* or recorded by an automated traffic control system \*\*\*." 625 ILCS 5/12-610.5(a) (West 2008).

The defendant asserts that he did not violate the Code because his transparent registration plate cover was legal under the above provisions. He thus asks us to interpret the above statute to determine whether it prohibits the use of a clear registration plate cover.

The fundamental rule of statutory interpretation is to give effect to the intent of the legislature, and the best indication of that intent is a statute's language, given its plain and ordinary



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meaning. *People v. McCarty*, 223 Ill. 2d 109, 124, 858 N.E.2d 15 (2006). Where the language is clear and unambiguous, a court must give it effect without resorting to further aids of construction. *McCarty*, 223 Ill. 2d at 124.

Here, the language of section 12-610.5 of the Code is quite unambiguous. Among the registration plate covers it forbids is any "clear \*\*\* object that is designed to" "cover any of the characters of a motor vehicle's registration plate." 625 ILCS 5/12-610.5 (West 2008). This language explicitly includes transparent registration plate covers, and it directly refutes the defendant's argument that the legislature did not intend to prohibit clear registration plate covers that do not obscure the registration plate.

The defendant argues emphatically that we should deviate from this language because it compels what he deems the absurd result of rendering illegal nearly all registration plate covers. See *McCarty*, 223 Ill 2d at 126 (in interpreting statutes, courts should presume that the legislature did not intend absurd results). The defendant bases this argument on the premise that "virtually every vehicle has a license plate cover, whether from the dealership \*\*\* or \*\*\* advocating the driver's support for a charity, university, sports team, etc." The defendant urges that we take judicial notice of this "fact" and reframe the question accordingly, to ask

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whether the legislature intended to declare "virtually every driver" a violator of the Code. However, to the extent this could be a proper matter for judicial notice, and to the extent we could use that fact to depart from the unambiguous statutory language we quote above, we agree with the State that the defendant confuses registration plate frames with registration plate covers. Accordingly, we reject the defendant's argument, and we agree with the trial court that the defendant's violation of the Code constituted sufficient basis for his initial seizure. That violation, coupled with the evidence Spain saw to indicate that the defendant did not hold a valid driver's license, was sufficient to justify the defendant's arrest.

The defendant next argues that, even if his arrest was proper, the ensuing search of his vehicle was not. The defendant begins this argument by pointing out that the search could not be justified as a search incident to arrest under the test articulated in *Arizona v. Gant*, 129 S.Ct. 1710 (2009). However, the State concedes, and the trial court ruled, that the search here could not be justified as a search incident to arrest. The trial court instead based its denial of the defendant's motion to quash and suppress on the idea that the search of the defendant's vehicle was justified as an inventory search.

"An inventory search of a lawfully impounded vehicle is a

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judicially created exception to the warrant requirement of the fourth amendment." *People v. Gipson*, 203 Ill. 2d 298, 304, 786 N.E.2d 540 (2003). "Three requirements must be satisfied for a valid warrantless inventory search of a vehicle: (1) the original impoundment of the vehicle must be lawful [citation]; (2) the purpose of the inventory search must be to protect the owner's property and to protect the police from claims of lost, stolen, or vandalized property and to guard the police from danger [citation]; and (3) the inventory search must be conducted in good faith pursuant to reasonable standardized police procedures and not as a pretext for an investigatory search [citation]." *People v. Hundley*, 156 Ill. 2d 135, 138, 619 N.E.2d 744 (1993).

For his position that the first prerequisite for an inventory search was not present here, the defendant argues that the original impoundment of his vehicle was illegal because there was no evidence that the police had grounds to move his vehicle after his arrest. According to the defendant, even if his detention prevented him from moving his car from the shoulder of the road, there was no evidence that it was illegal for the defendant's car to remain parked there, at least long enough for him to summon someone else to move his car. However, while it is true that the fact that a defendant's vehicle would be left unattended after his arrest is not normally a valid basis for police impoundment, the

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defendant's leaving his vehicle in that situation becomes a valid basis for impoundment where the defendant's car would be illegally parked. *People v. Ursini*, 245 Ill. App. 3d 480, 483, 614 N.E.2d 869 (1993) ("The fact that the arrestee's car would be left unattended is not a sufficient reason for impoundment [citations] unless the vehicle would be illegally parked"); see also *South Dakota v. Opperman*, 428 U.S. 364, 368-69 (1976) ("Police will also frequently remove and impound automobiles which violate parking ordinances and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic.[] The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge"). For his argument here, the defendant relies on the idea that his car could be parked legally on the highway shoulder for up to two hours. Illinois law, however, prohibited his parking or leaving his car on the shoulder for any amount of time. See 625 ILCS 5/4-201(a) (West 2008) ("The abandonment of a vehicle or any part thereof on any highway in this State is unlawful"); 625 ILCS 5/11-1303(a) (no person shall park a vehicle on any controlled access highway); *People v. Braasch*, 122 Ill. App. 3d 747, 753, 461 N.E.2d 651 (1984) (interpreting a previous version of section 11-1303 of the Code as prohibiting the defendant's leaving his car after being stopped and arrested on a highway). Because

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defendant's van would have been illegally parked or abandoned had police not moved it, the police were legally authorized to move the van.

On the second and third prerequisites to an inventory search, the defendant argues that there was ample evidence to prove that the purpose of Spain's initial search of his vehicle was not to protect his property or maintain officer safety, but instead to investigate wrongdoing. The defendant cites evidence that, *inter alia*, Spain's initial contact with the defendant was precipitated by a communication from another law enforcement official who suspected the defendant of a crime, Spain testified before a grand jury that his search was justified as a search incident to arrest, and Spain did not prepare a tow report or an inventory. However, as the State observes, the trial court also heard sufficient evidence to overcome any implication that Spain's search was not an inventory search. Spain himself testified that he began the search as an inventory search, and he also explained that he did not prepare a tow report or inventory because those tasks were completed by drug specialists. In finding Spain's testimony credible, and further finding that the inventory search was not pretextual, the trial court apparently credited this evidence over the evidence the defendant cites. We owe deference to the trial court's resolution of this type of factual dispute, and we cannot

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say that the trial court's resolution here was against the manifest weight of the evidence.

To urge the opposite result, the defendant relies on the decision in *People v. Atwelt*, 217 Ill. App. 3d 578, 577 N.E.2d 809 (1991). In *Atwelt*, as here, the defendant was arrested for a violation of the Code, and police impounded his car without asking whether he had some other means of moving the car. *Atwelt*, 217 Ill. App. 3d at 579. The trial court granted the defendant's motion to suppress the evidence found in the ensuing inventory search, on the ground that the inventory search was actually pretextual to an investigatory motive. *Atwelt*, 217 Ill. App. 3d at 579-80. Citing the evidence supporting the trial court's finding, including its finding that the searching officer's testimony was not credible, and evidence that the searching officer did not follow intra-departmental regulations, the court on appeal concluded that the trial court's decision "was not against the manifest weight of the evidence." *Atwelt*, 217 Ill. App. 3d at 811. The crucial difference between this case and *Atwelt* is that, here, the trial court found that the inventory search was not pretextual to an investigatory motive. Thus, the same deference to the trial court that compelled suppression of evidence in *Atwelt* compels denial of the defendant's motion to suppress in this case.

For the foregoing reasons, we affirm the judgment of the

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circuit court.

Affirmed.

PRESIDING JUSTICE HALL dissenting:

I respectfully dissent. I believe that the inventory search of defendant's vehicle was pretextual and therefore carried out in derogation of his rights 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), both of which protect individuals from unreasonable searches and seizures. See, e.g., *People v. Reincke*, 84 Ill. App. 3d 222, 224-25, 405 N.E.2d 430 (1980) ("[t]he constitutional proscription of unreasonable searches and seizures in the Fourth Amendment is coextensive with the scope of Article I, section 6 of the Illinois Constitution").

An "inventory search" is a judicially created exception to the warrant requirement of the fourth amendment. *People v. Hundley*, 156 Ill. 2d 135, 138, 619 N.E.2d 744 (1993). In order for an inventory search to be constitutionally valid, it must be reasonable. *People v. Ursini*, 245 Ill. App. 3d 480, 484, 614 N.E.2d 869 (1993); *People v. Bayles*, 82 Ill. 2d 128, 135, 411 N.E.2d 1346 (1980).

The reasonableness of a purported inventory search is dependent upon it being a true good-faith inventory search and not a pretext for an investigatory search. *Hundley*, 156 Ill. 2d at 138

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("the inventory search must be conducted in good faith pursuant to reasonable standardized police procedures and not as a pretext for an investigatory search").

In this case, Illinois State Police Trooper Hubert Spain essentially admitted that the inventory search of defendant's vehicle was used as a pretext for an investigatory search. At the evidentiary hearing on the motion to suppress, the trooper testified that he was on routine patrol on the Kennedy Expressway when he received a tip from Alsip Police Officer Gutierrez that a particular van was traveling southbound on the expressway and was carrying an unknown amount of United States currency. Officer Gutierrez explained that the van was part of an investigation.

Officer Gutierrez told Trooper Spain that if he wished to stop the van, he would need to develop his own independent probable cause for doing so. Later that day, the trooper spotted the target van. A clear plastic cover over the van's rear license plate provided the trooper with probable cause to conduct a traffic stop -- even though the trooper candidly admitted he was able to read the license plate number and that the cover did not "distort or obscure the numbers in any way."

The inventory search of a vehicle is constitutionally reasonable when conducted pursuant to standardized police procedures administered in good faith and not for the sole purpose



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of investigation. *Colorado v. Bertine*, 479 U.S. 367, 372-74, 107 S. Ct. 738, 741-43, 93 L. Ed. 2d 739, \_\_\_\_ (1987).

Trooper Spain's testimony clearly shows that the inventory search of defendant's vehicle was not conducted in good faith because the sole purpose of the search was to facilitate a criminal investigation.

I would grant defendant's motion to suppress the cannabis seized from his vehicle and reverse his conviction and sentence. Accordingly, I respectfully dissent.