2012 IL App (1st) 102755-U

SECOND DIVISION
June 26, 2012

No. 1-10-2755

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 7047
	)	
DALE SEALEY,	)	The Honorable
	)	Rosemary Grant Higgins,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Quinn and Justice Cunningham concurred in the judgment.

O R D E R

¶ 1 *Held:* A Chicago police officer was justified in conducting a *Terry* stop of a vehicle that had an unsecured trunk which was bouncing up and down while the vehicle traveled on the streets of Chicago during the evening.

¶ 2 Following the denial of defendant's motion to suppress, a stipulated bench trial was held and defendant Dale Sealey was found guilty of possession of a controlled substance (heroin) and

was sentenced to a three-year prison term. On appeal, defendant contends that the trial court should have granted his motion to suppress because the police had no reasonable articulable suspicion to stop his vehicle given that there was no law against driving a vehicle with an unsecured trunk that bounced up and down.

¶ 3 At the suppression hearing, Chicago police officer Jose Pedraza was the sole witness, and he testified as follows. Pedraza had been a Chicago police officer for approximately 11 years. While on routine patrol at approximately 8 p.m. on March 14, 2010, Pedraza encountered defendant in the area of 3327 West Monroe Street. Defendant was sitting in the rear passenger seat of a vehicle traveling northbound on Homan Avenue. There were two people in the front seat of the vehicle. Pedraza first saw the vehicle from approximately two car lengths away. When asked why he pulled the vehicle over, Pedraza testified:

> "The trunk of the vehicle was unsecured so we pulled him over for unsafe vehicle."

¶ 4 Pedraza first noticed that the trunk was unsecured when he was on Homan Avenue because "[i]t was bouncing up and down." Pedraza understood that he needed probable cause to pull a car over. He also understood that it was important to include all of the details about the arrest in his police report relating to why he had pulled someone over, but he did not indicate that the trunk was bouncing up and down; he only indicated in his police report that a traffic violation had been committed because the vehicle was unsafe.

¶ 5 After Pedraza pulled the vehicle over, he approached the passenger side, illuminated the vehicle with his flashlight, and saw defendant "place his hands in his lap and motion in that

area." Defendant then used his right hand to place an object in his mouth, but Pedraza could not see what the object was at that time because defendant's mouth was closed. Pedraza ordered defendant out of the vehicle, illuminated defendant's mouth with his flashlight, and saw a bulge, which defendant was trying to ingest. Defendant's mouth was open at that time and Pedraza could see that the item was a clear plastic Baggie. Pedraza did not have a conversation with defendant. When Pedraza went to place defendant into custody, defendant pulled away, and Pedraza struggled with him a little. Pedraza's partner, Officer Chism, then used a Taser on defendant. Afterward, defendant complied and was handcuffed. Pedraza continued to instruct defendant to spit out whatever he had in his mouth, but when defendant opened his mouth, "There was nothing there anymore." Defendant was then placed into custody and transported to the station. Pedraza ultimately obtained evidence at the station as a result of arresting defendant. That evidence was heroin.

¶ 6 During cross-examination by the assistant State's Attorney, Pedraza testified that defendant was the sole occupant of the rear passenger seat of the vehicle that was stopped. The windows of the vehicle were not tinted, Pedraza illuminated the vehicle with his flashlight, and there also was streetlighting at that location. When asked to describe exactly what defendant did, Pedraza testified:

> "There was motion around the waistband area with his right hand and then a motion to his mouth area."

¶ 7 During redirect examination by defense counsel, Pedraza testified that he did not see a gun around defendant's waist but that, "I didn't know what he had."

¶ 8 After the parties rested, the court remarked that, except for the motion to suppress, there was nothing about narcotics ever having been recovered. The court then conceded that defense counsel did ask if heroin had been recovered. The assistant State's Attorney agreed that it had been recovered at the police station after a custodial search. Defense counsel argued that there was no evidence proving how a trunk bouncing up and down created an unsafe vehicle.

¶ 9 The court observed that Pedraza was a credible witness, that he had made a traffic stop for an unsafe vehicle, and that he had referred to the open trunk that was bouncing up and down as unsafe. Pedraza saw defendant in the rear of the vehicle do something with his waist and appear to place something in his mouth. Pedraza ordered defendant out of the car and performed a protective patdown. Pedraza saw the bulge in defendant's mouth and believed that suspected narcotics were in defendant's mouth but defendant was still not in custody at that time. Defendant was asked to spit out the items, but he did not comply. Instead, defendant pulled away from the officers and at that point when he was flailing his arms he was in custody for resisting arrest. After defendant was placed into custody, any narcotics recovered at the police station would be legal and appropriate. The court then denied the motion to suppress.

¶ 10 The parties stipulated to the testimony at the suppression hearing for purposes of the bench trial. The parties stipulated further that one bag tested positive for heroin in an amount of .2 gram, and that 27 bags tested positive for heroin in the amount of 5.4 grams. They further stipulated to the chain of custody foundation for the contraband and the chemical composition of the recovered substance.

¶ 11 On appeal, defendant contends that the police had no reasonable articulable suspicion to

stop his vehicle because there was no law against driving a vehicle with an unsecured trunk that bounced up and down. He argues that there was no evidence proving how high the trunk bounced, nor was there evidence proving that the bouncing trunk blocked his view or blocked the mirrors. He argues further that there was no evidence that the trunk latch was broken. He asks this court to reverse his conviction, or to reverse the ruling on the motion to suppress and remand for further proceedings.

¶ 12 The State responds that the stop was justified pursuant to the community caretaking exception to the warrant requirement, and possibly pursuant to the driver's violation of section 12-101 of the Vehicle Code by driving with an open trunk that bounced up and down. The State maintains that the officers had a reasonable and articulable suspicion that a crime had been committed, namely, violation of the law requiring safe vehicles.

¶ 13 Defendant replies that the State has waived the community caretaking argument, and that the community caretaking concept is not applicable because the officers were engaged in standard law enforcement and the intrusion was not reasonable. He observes that the State did not specify what property, if any, was at risk. He observes further that the State did not prove the height of the trunk or what, if anything, it blocked. Defendant suggests that even if the trunk blocked the entire rear windshield, it was no more dangerous than a van, which has no rear windshield. He maintains that the officers consequently were not acting to protect property or to avoid an accident, and that the community caretaking issue should not be addressed for the first time on appeal. He maintains that an unlatched trunk is not an equipment defect and therefore is not regulated by section 12-101, and that there was no reasonable articulable suspicion for the

stop.

¶ 14 Generally, the trial court's factual findings and credibility determinations on a motion to suppress will be reversed only if manifestly erroneous, and the legal determination whether the facts warrant suppression is reviewed *de novo*. See *People v. Jones*, 215 Ill. 2d 261, 268 (2005); see also *Ornelas v. United States*, 517 U.S. 690, 699 (1996).

¶ 15 Pedraza testified that the vehicle was unsafe. Defendant disputes that testimony. Therefore, a factual dispute exists in addition to the legal dispute concerning the validity of the stop. However, the trial court resolved the factual dispute for purposes of defendant's motion because the trial court accepted Pedraza's testimony as credible. At issue here is the trial court's legal conclusion that the bouncing trunk justified an investigative stop. Therefore, we shall apply *de novo* review to this appeal.

¶ 16 A traffic stop is more analogous to an investigative stop than to a formal arrest, and courts therefore usually apply *Terry* (*Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)) principles, rather than probable cause to arrest, to challenges to traffic stops (*Jones*, 215 Ill. 2d at 270). Pursuant to *Terry*, a police officer may in appropriate circumstances and in an appropriate manner stop a person for investigative purposes if the officer has specific and articulable facts, which, together with the inferences therefrom, reasonably warrant the investigative stop. See *Terry*, 392 U.S. at 21-22; *People v. Love*, 199 Ill. 2d 269, 275 (2002); *People v. Scott*, 148 Ill. 2d 479, 503 (1992); 725 ILCS 5/107-14 (West 2010). A traffic violation warrants a *Terry* stop. *People v. Hood*, 265 Ill. App. 3d 232, 241 (1994).

¶ 17 Pursuant to section 3-833 of the Illinois Vehicle Code:

> "It shall be unlawful for any person to own or operate a vehicle on the public highways of this State without complying with this Act." 625 ILCS 5/3-833 (West 2010).

¶ 18 Pursuant to section 5/12-101 of the Illinois Vehicle Code:

> "It is unlawful for any person to drive *** or knowingly permit to be driven *** on any highway any vehicle *** which is in such unsafe condition as to endanger any person or property ***." 625 ILCS 5/12-101(a) (West 2010).[1]

¶ 19 Thus, the traffic violation that warrants an investigative *Terry* stop may relate to the condition of the vehicle. See *People v. Driggers*, 222 Ill. 2d 65, 67-68 (2006) (cracked windshield); *People v. Houlihan*, 167 Ill. App. 3d 638, 639 (1988) (loud noise and object underneath truck).

¶ 20 In *People v. LaGrone*, 124 Ill. App. 3d 301 (1984), which was cited by defendant, the trial court erred in denying the defendant's motion to suppress a gun. There, an officer stopped a vehicle at approximately 10 a.m. because it had an open trunk lid. In plain view inside the trunk were two chairs and a television set, which the court described as "household items." *LaGrone*, 124 Ill. App. 3d at 303. The officer patted down the driver and the defendant passenger, and then searched the entire vehicle and found a loaded gun wedged in the front passenger seat. The court expressed that it was not unusual to transport household items in such a way and that it provided no basis to stop the car. The court also observed that the open trunk lid provided no basis for the

[1] Highways include publicly maintained ways. 625 ILCS 5/1-126 (West 2010).

stop because rear view mirrors could help the driver and there was no evidence that they were not available to the driver of that particular vehicle. Therefore, neither the open trunk lid nor section 12-503(e) of the Illinois Vehicle Code (concerning side mirrors and the driver's view of the front, sides, and rear) provided a basis for the stop.

¶ 21 Turning to the present case, Pedraza had specific and articulable facts to create a reasonable suspicion that would warrant an investigative stop of defendant: Pedraza saw defendant riding in a vehicle that had a trunk which was bouncing up and down. The motion and the sound of the lid certainly could have been a distraction to the driver of the same vehicle and to drivers of other vehicles. A reasonable person in Pedraza's position would have believed that defendant had violated the safety section of the Vehicle Code. Therefore, Pedraza's *Terry* stop of the vehicle was warranted. Our conclusion that Pedraza had a reasonable articulable basis for stopping the vehicle obviates the need to address the State's alternative argument that the officers were properly acting as community caretakers when they stopped the vehicle. We express no opinion concerning the community caretaking issue.

¶ 22 The cases cited by defendant are distinguishable. For example, in *Sears v. Kois Brothers Equipment, Inc.*, 110 Ill. App. 3d 884, 891 (1982), there was no evidence that a truck was in an unsafe condition even though "dump bodies" had fallen from the truck and other vehicles had collided with the "dump bodies." There was evidence instead that the "dump bodies" had been negligently affixed to the truck. *Id.* at 887. In *LaGrone*, the circumstances suggested that the vehicle was being used to facilitate a mid-morning move of household goods such as furniture and television sets, which were in plain view. In the present case, however, no furniture,

television sets, or other household goods were visible inside the unsecured trunk, and the vehicle was traveling during the evening. *LaGrone* involved section 12-503(e) of the Vehicle Code, not sections 3-833 and 12-101, which are involved in the present case. Moreover, the trunk lid in the present case was bouncing up and down and could have distracted other drivers as well as the driver of the same vehicle.

¶ 23 We have considered, and rejected, defendant's arguments on appeal.

¶ 24 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 25 Affirmed.