

No. 1-10-3381

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellant, |) | Cook County. |
| |) | |
| v. |) | No. TM 354 379 |
| |) | |
| FRANCISCO GUZMAN, |) | Honorable |
| |) | Raymond Mitchell, |
| Defendant-Appellee. |) | Judge Presiding. |

JUSTICE HALL delivered the judgment of the court.
Presiding Justice HOFFMAN and Justice ROCHFORD concurred in the judgment.

ORDER

¶ 1 *Held:* Where the police had probable cause to arrest defendant for driving under the influence of alcohol and committing traffic violations, the trial court's order granting defendant's motion to quash arrest and suppress evidence was reversed.

¶ 2 The State appeals from an order of the circuit court granting defendant Francisco Guzman's motion to quash the arrest and suppress the evidence which resulted therefrom. Ill. S. Ct. R. 604(a)(1) (eff. July 1, 2006). The State contends that the trial court erred in granting defendant's motion because police had probable cause to arrest defendant. We reverse and remand for further proceedings.

¶ 3 At about 6:50 p.m. on January 4, 2007, defendant crashed into a police car at the intersection of 47th Street and California Avenue in Chicago. Defendant was arrested and later charged with driving under the influence of alcohol, driving with a blood alcohol content of .08 or greater, reckless driving, driving on the wrong side of the road, and negligent driving. Defendant filed a motion to quash arrest and suppress evidence, alleging that his conduct prior to his arrest could not reasonably be interpreted by the arresting officers as constituting probable cause that he committed, was committing, or was about to commit a crime. Defendant maintained that after the arrest, police administered field sobriety tests and a breathalyzer test, and acquired certain evidence therefrom that was the fruit of the unlawful arrest. Defendant specifically moved the trial court to suppress physical evidence discovered as a result of the arrest, statements made by defendant during his detention, witnesses and all other knowledge and the fruits thereof. Officers Cortes, Shaughnessy, and Tomaso testified at the hearing on the motion to suppress.

¶ 4 Officer Carlos Cortes testified that he was a police officer for 10 years and encountered over 500 people who were under the influence of alcohol. At about 6:49 p.m. on January 4, 2007, Cortes was driving a marked police vehicle with his partner Officer Brady Rule in the passenger seat. The officers were stopped at a stop light in the left turn lane at the intersection of 47th Street and California Avenue. When the light turned green, Cortes looked forward and a pickup truck, driven by defendant, struck his police vehicle head on. The police vehicle had not moved from its stopped position when it was struck by defendant. Following the crash, Cortes, who had to kick his car door open because he was stuck inside, walked over to defendant's car, opened defendant's door, grabbed him, and placed him in handcuffs. Cortes testified that he detained defendant because he smelled a strong odor of alcohol emanating from the passenger side of the pickup truck when he opened defendant's door. He also observed that defendant's face

was red. Both officers went to the hospital shortly after the incident.

¶ 5 Officer Shaughnessy testified that he was summoned to the accident scene at about 7:10 p.m. on January 4. Shaughnessy saw the end result of the car accident, noted that it was raining, and observed that defendant was arrested upon his arrival for what Shaughnessy believed was driving under the influence. Officers Cortes and Rule told Shaughnessy that they were waiting for the light to turn green, and, as soon as it did, defendant struck their police car head on before they could enter the intersection. Shaughnessy did not administer, nor did he observe, any other police officer conduct a field sobriety test on defendant at the scene. Shaughnessy and his partner took defendant to the police station.

¶ 6 Officer Tomaso testified similarly to Officer Shaughnessy. He also testified that he and Officer Rosales had a conversation with defendant at the scene of the accident, and defendant admitted to drinking six or seven beers. At the time defendant made this statement, he was handcuffed. Tomaso administered field sobriety tests and a breathalyzer test to defendant at the police station after defendant was in custody for driving under the influence. Tomaso indicated that the field sobriety tests were performed at the station because it was raining outside.

¶ 7 Following closing arguments, the court granted defendant's motion to quash arrest and suppress evidence. In doing so, the court held that defendant was placed under arrest for driving under the influence, even though the arresting officer had a minimal opportunity to make observations of defendant, did not have a conversation with him, and did not ask him any questions regarding whether he was drinking. The court also stated that Officer Cortes' observation that he could smell an odor of alcohol when he removed defendant was insufficient to establish probable cause to arrest him.

¶ 8 The State filed a motion to reconsider, arguing that police have the authority under the fourth amendment to arrest individuals for committing a crime in their presence, even if that

crime is punishable only by a fine. Therefore, because defendant committed several offenses in the presence of police, the State maintained that police did not violate defendant's constitutional rights when they arrested him. The trial court denied the State's motion to reconsider, finding that its initial decision was a credibility determination, which the court declined to revisit.

¶ 9 The State filed a certificate of substantial impairment pursuant to Rule 604(a)(1) (eff. July 1, 2006), and now appeals from the trial court's ruling.

¶ 10 The State contends that the trial court erred in granting defendant's motion to quash arrest and suppress evidence because the police had probable cause to arrest defendant. The State advances two reasons to justify defendant's arrest. First, the State maintains that given Officer Cortes' observations, there was probable cause to arrest defendant for driving under the influence, or, at least, a reasonable suspicion to investigate defendant for driving under the influence. Second, the State asserts that there was probable cause to arrest defendant for several infractions committed in the presence of Officer Cortes, even if those infractions were punishable by fine only. We agree with the State that it was reasonable for Officer Cortes to conclude that defendant committed the offense of driving under the influence, and that Cortes had probable cause to arrest defendant for traffic infractions, even if the violations were minor.

¶ 11 Review of a trial court's ruling on a motion to quash arrest and suppress evidence involves mixed questions of law and fact. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). The court's factual findings will be upheld unless against the manifest weight of the evidence, but we review the ultimate legal determination *de novo*. *People v. Walter*, 374 Ill. App. 3d 763, 765 (2007).

¶ 12 The fourth amendment guarantees a person's right against unreasonable searches and seizures. U.S. Const., amend. IV. A warrantless arrest requires proof of probable cause. *People v. Chapman*, 194 Ill. 2d 186, 216-217 (2000). Probable cause consists of sufficient facts and

circumstances within the arresting officer's knowledge which would warrant a reasonable person's belief that the individual who was arrested committed a crime. *People v. Robinson*, 368 Ill. App. 3d 963, 970-71 (2006). The existence of probable cause depends upon the totality of the circumstances known to the officer at the time of the arrest. *People v. Jackson*, 232 Ill. 2d 246, 275 (2009). In determining whether probable cause exists, we are governed by common sense considerations that are factual and practical, and not by technical legal rules. As such, a police officer's practical knowledge, based on prior law enforcement experience, is relevant in determining whether probable cause exists. *People v. Bradford*, 187 Ill. App. 3d 903, 920 (1989).

¶ 13 Here, we find that the trial court's conclusion that the State failed to show defendant was driving under the influence of alcohol was against the manifest weight of the evidence. The testimony at the hearing on the motion to quash and suppress revealed that the objective facts and reasonable inferences known to police at the time defendant was arrested would lead them to believe that defendant was driving under the influence of alcohol. Defendant crashed head on into Officers Cortes and Rule's police vehicle while they were stopped in the left turn lane. After the crash, Cortes, who had been a police officer for 10 years and encountered hundreds of people who were under the influence of alcohol, walked over to defendant's vehicle. When Cortes opened defendant's door, he smelled a strong odor of alcohol emanating from the passenger side of the vehicle, and observed that defendant's face was red. Therefore, the facts known to Cortes at the time of the arrest were sufficient to lead a reasonable person to believe that defendant was driving under the influence. See *People v. Brodeur*, 189 Ill. App. 3d 936, 941 (1989) (finding that bloodshot eyes, slurred speech, and the strong odor of alcohol on the defendant's breath, combined with a motor vehicle accident, would have caused a reasonable person to conclude that the defendant was driving under the influence); *People v. Wingren*, 167 Ill. App. 3d 313, 322

(1988) (finding that police had probable cause to arrest the defendant for driving under the influence where the officer observed her pushing her car out of a ditch, the strong odor of alcohol, slurred speech, and red glassy eyes). Because we conclude that Cortes had probable cause to arrest defendant for driving under the influence, we need not address the State's alternative argument that Cortes had at least a reasonable articulable suspicion that defendant had been driving under the influence of alcohol.

¶ 14 Moreover, even if the State failed to demonstrate that police had probable cause to arrest defendant for driving under the influence, the minor traffic offenses he committed were sufficient, and the State could still charge him with driving under the influence of alcohol. See *People v. Johnson*, 408 Ill. App. 3d 107, 126 (2010). In *Johnson*, this court upheld the defendant's arrest as valid by finding that the State established the police had probable cause to arrest the defendant for obstructing a peace officer even though the defendant was never charged with that offense but, rather, was charged for aggravated unlawful use of a weapon. *Johnson*, 408 Ill. App. 3d at 108-09, 126 (reversed the quashing of the defendant's arrest and suppression of the evidence). The particular basis for probable cause to take someone into custody does not have to be the subject of a charge and does not preclude other charges. Additionally, "[u]ltterior motives do not invalidate police conduct that is justifiable on the basis of probable cause to believe a violation of the law has occurred." *People v. Thompson*, 283 Ill. App. 3d 796, 798 (1996), relying on *Whren v. United States*, 517 U.S. 806, 812 (1996). We thus find that Officer Cortes had probable cause to execute an arrest based on the traffic violations, even if his motive was to arrest defendant for driving under the influence. Therefore, his motion to quash arrest and suppress evidence should have been denied.

¶ 15 We find *People v. Taylor*, 388 Ill. App. 3d 169 (2009), relied on by the State, instructive to the case at bar. In *Taylor*, the defendant contended on appeal that the trial court erred in

denying his motion to quash his arrest and suppress evidence where a police officer arrested and searched him after being stopped for violating two municipal ordinances regarding bicycle use, *i.e.*, operating his bicycle without a headlamp and riding it on the sidewalk. The defendant specifically asserted that although police may have had reasonable suspicion to stop him because of his purported violations of two municipal traffic ordinances, they had no authority to arrest and search him because they lacked probable cause that he committed an offense more substantial than a traffic violation. This court rejected the defendant's argument that the arrest and search were a violation of his constitutional rights. *Taylor*, 388 Ill. App. 3d at 175.

¶ 16 In doing so, the *Taylor* court relied on *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001), which held that the fourth amendment does not prohibit a warrantless arrest for minor traffic violations that are punishable by only a fine. We also noted that, in Illinois, police have additional authority to place a defendant under custodial arrest for committing a traffic infraction that is punishable only by a fine. See 725 ILCS 5/107-2(1)(c) (West 2006) (providing that a police officer may arrest someone when he has reasonable grounds to believe that the person is committing or has committed an offense); 625 ILCS 5/16-102(a) (West 2006) (providing that the police shall patrol the highways and make arrests for violation of the provisions of the Illinois Vehicle Code). In light of this authority, the court in *Taylor* held that the defendant's violation of the two municipal traffic ordinances provided a lawful basis for police to arrest defendant and search him incident to that arrest. *Taylor*, 388 Ill. App. 3d at 178; see also *People v. Fitzpatrick*, 2011 IL App (2d) 100463, ¶¶7-8, *appeal allowed*, No. 113449 (January 2012) (following *Taylor* and finding that our state constitution does not forbid arrests for minor traffic violations).

¶ 17 Here, besides the two driving under the influence charges, defendant was also charged with reckless driving and driving in the wrong lane in violation of the Illinois Vehicle Code (625 ILCS 5/11-503, 11-701 (West 2006)), and, similarly to *Taylor*, he was also charged with one

municipal violation, *i.e.*, negligent driving (Chicago Municipal Code § 9-40-140 (amended April 26, 2006)). Because defendant crashed into Officer Cortes' police vehicle, Cortes had probable cause to arrest him. See *Virginia v. Moore*, 553 U.S. 164, 171 (2008) (holding that an arrest is constitutionally reasonable where an officer has probable cause to believe the defendant committed a minor crime in his presence). Therefore, the traffic violations alone justified defendant's arrest, and the subsequent evidence gathered by police, namely the results of defendant's field sobriety tests, breathalyzer test, and defendant's admission to drinking six or seven beers, was based on a lawful detention.

¶ 18 For the foregoing reasons, we reverse the judgment of the circuit court and remand for further proceedings.

¶ 19 Reversed; cause remanded.