

2012 IL App (2d) 100973-U
No. 2-10-0973
Order filed February 27, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of McHenry County.
)	
Plaintiff-Appellee,)	
)	
v.)	Nos. 09-CF-1366
)	09-DT-1388
)	
ROBERT J. RAYCRAFT,)	Honorable
)	Sharon L. Prather,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: The trial court properly denied defendant's motion to quash and suppress: the court was entitled to credit the officer's testimony over defendant's, and defendant's snow-obscured license plate gave the officer a basis to stop him.

¶ 1 Following a jury trial, defendant, Robert J. Raycraft, was found guilty of resisting a peace officer (720 ILCS 5/31-1(a-7) (West 2008)) and driving under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2008)). He was sentenced to 180 days' imprisonment for driving under the influence of alcohol and 2 years' imprisonment for resisting a peace officer. Defendant appeals,

contending that the trial court erred in denying his motion to quash his arrest and suppress evidence.

For the reasons that follow, we affirm.

¶ 2

BACKGROUND

¶ 3 At the hearing on defendant's motion to quash and suppress, defendant testified as follows.

In the early morning hours of December 28, 2009, he drove to his friend Jamie's house. Defendant was driving a Dodge Dakota pickup with a plow attachment on the front. The plow was up while he was driving and was not dragging on the ground. While at Jamie's, defendant checked the lights on his vehicle to make sure they were in working order. He also checked to make sure that his license plate was not obstructed by anything. It was not snowing that day and it had not snowed since December 26, so there was no snow on his license plate.

¶ 4 Defendant then left Jamie's house and proceeded to the house of his friend Patrick's mother. When defendant pulled into the driveway of Patrick's mother's house, he attempted to get out of his vehicle but was stopped by Officer Kelly Ducak of the McHenry police department, who told defendant to remain in his vehicle. Defendant complied. After his interaction with Ducak, defendant was placed under arrest.

¶ 5 Ducak gave the following testimony. In the early morning hours of December 28, 2009, she was patrolling when she observed a vehicle traveling east on Elm Street with continuous sparks coming from the front of the vehicle. Ducak turned around and began to follow the vehicle. At this point, she was approximately four to five car lengths behind the vehicle. She followed the vehicle as it made several turns. When it pulled into a driveway, she drove past the vehicle, turned onto another street, and turned around. As she approached the intersection, she observed the vehicle again, this time heading north on the street she was on. She again turned around and began to follow

the vehicle. While she had been following the vehicle, Ducak was unable to see the rear license plate because she was too far away, continuing to travel four or five car lengths behind the vehicle. She attempted to speed up, but was unable to get close enough to the vehicle to see the rear license plate, because each time that she would try to get close, the vehicle would turn onto another street. Finally, after the vehicle turned onto Flower Street, Ducak noticed that the rear license plate was obstructed by snow. She then activated her overhead lights. After approximately 30 seconds of having her overhead lights on, the vehicle pulled into a driveway. Ducak parked in the street behind the vehicle, got out of her squad car, and approached the vehicle. Defendant was attempting to exit the vehicle, but Ducak told him to get back into it. As she approached the vehicle, she stopped to remove the snow from the license plate so that she could read it. When she got to the front of the vehicle, she could see that the left side of the plow attachment was sitting on the ground, although the right side was off the ground.

¶ 6 Finding that “the issue of credibility rests heavily with the officer and not with defendant,” the trial court concluded that Ducak had reasonable articulable suspicion to stop defendant for operating a vehicle with unsafe equipment and an obscured license plate. Accordingly, the trial court denied defendant’s motion to quash and suppress. After his conviction, defendant appealed.

¶ 7 ANALYSIS

¶ 8 On appeal, defendant contends that the trial court erred in denying his motion, because (1) Ducak lacked reasonable, articulable suspicion to stop him, because his actions were not prohibited by the Illinois Vehicle Code and (2) Ducak was not credible. In reviewing a trial court’s decision on a motion to suppress, we apply a two-part standard of review. First, the trial court’s factual findings are given great deference and will be disturbed only if they are against the manifest weight

of the evidence. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Second, the ultimate legal conclusion as to whether suppression is warranted is reviewed *de novo*. *Luedemann*, 222 Ill. 2d at 542.

¶ 9 Defendant has forfeited his first contention on appeal for failure to raise it in the trial court. See *People v. Haywood*, 407 Ill. App. 3d 540, 551 (2011) (“Generally, a party forfeits its right to raise an issue on appeal by having failed to raise the issue in the trial court.”). Further, defendant’s contention that Ducak’s testimony was manifestly incredible is without merit. According to defendant, it is unbelievable that Ducak was unable to get close enough to see defendant’s license plate while she followed him. “A trial judge’s evaluation of the weight and credibility of witnesses should not be substituted on appeal.” *People v. Miller*, 242 Ill. App. 3d 423, 436 (1993). Ducak’s inability to get close enough to see defendant’s license plate was explained by her testimony that, each time she tried to get closer to defendant’s vehicle, he would turn onto another street, preventing her from getting within four to five car lengths. Based on this testimony, the trial court’s superior position for assessing the credibility of the witnesses, and the deference afforded to the trial court in making credibility determinations, we will not disturb the trial court’s conclusion that Ducak’s testimony was entitled to more weight than defendant’s.

¶ 10 As previously stated, defendant forfeited his contention that Ducak lacked reasonable suspicion to stop him because his actions were not prohibited by law. Defendant did not argue in the trial court that his actions were not prohibited. Rather, he argued only that Ducak’s testimony that the plow was emitting sparks and that defendant’s license plate was obscured by snow was not credible. Even if we were to put forfeiture aside, however, the trial court did not err in denying

defendant's motion, because Ducak had reason to stop defendant for driving with an obscured license plate.

¶ 11 The fourth amendment to the United States Constitution guarantees the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const., amend. IV. Generally, a warrant is necessary to satisfy the reasonableness requirement of the fourth amendment. *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001). Under *Terry v. Ohio*, 392 U.S. 1 (1968), however, a police officer may effect a limited investigatory stop without a warrant where there exists a reasonable suspicion, based upon specific and articulable facts, that the person detained has committed or is about to commit a crime. *Terry*, 392 U.S. at 21-22. “A traffic violation generally provides a sufficient basis for a traffic stop.” *People v. Cole*, 369 Ill. App. 3d 960, 966 (2007).

¶ 12 Section 3-413(b) of the Illinois Vehicle Code (625 ILCS 5/3-413(b) (West 2008)) provides in relevant part: “Every registration plate *** shall be maintained in a condition to be clearly legible, free from any materials that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers.” According to defendant, this statute does not prohibit the obstruction of a license plate by the accumulation of snow because it governs only how a vehicle is equipped and seeks to prohibit only permanent obstructions of the license plate. Defendant does not explain why a violation of a statute governing how a vehicle is equipped cannot serve as a basis for a traffic stop. In addition, defendant ignores the clear language of the statute, which prohibits the obstruction of the license plate by “*any* materials that would obstruct the visibility of the plate.” (Emphasis added). 625 ILCS 5/3-413(b) (West 2008). Certainly, snow is a material that could obstruct the visibility of a license plate. Moreover, the obstruction of a license plate has been held

to be sufficient grounds for conducting a traffic stop. See *Miller*, 242 Ill. App. 3d at 435 (license plate that was partially obstructed by a trailer ball hitch provided grounds for conducting traffic stop); *People v. Bradi*, 107 Ill. App. 3d 594, 599 (1982) (license plate that was so dirty that the police officer thought the plate was missing was grounds for conducting traffic stop); see also *People v. Adams*, 225 Ill. App. 3d 815, 818 (1992) (missing license plate was grounds for traffic stop); *People v. Perry*, 204 Ill. App. 3d 782, 786 (1990) (missing license plate, in violation of section 3-413(a) of the Illinois Vehicle Code (Ill. Rev. Stat. 1989, ch. 95½, ¶413(a)), was grounds for traffic stop); *People v. Sturlic*, 130 Ill. App. 3d 120, 124 (1985) (missing license plate was grounds for traffic stop).

¶ 13 Our conclusion that the obstruction of defendant's license plate by snow constituted grounds to stop defendant should not be read as an imposition of an obligation on motorists to periodically stop and clear their license plates while driving in snowy weather. That question is not before us, and we do not decide it at this time. The evidence presented in this case was that it was not snowing when Ducak stopped defendant and that it had not snowed since two days prior to the stop of defendant.

¶ 14 In his reply brief, defendant suggests that the statutes the State contends govern the sparking plow (625 ILCS 5/12-101(a) (West 2008)) and the obstructed license plate (625 ILCS 5/3-413(b) (West 2008)) are not penal and, thus, are not sufficient to serve as grounds for conducting a traffic stop. Defendant raised this contention for the first time in his reply brief. Accordingly, we conclude that it is forfeited, as the State was not given an opportunity to respond to it. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) ("Points not argued [in the appellant's brief] are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."). In any case, as we noted

in *People v. Kleutgen*, 359 Ill. App. 3d 275, 279 (2005), a penal statute is one that prohibits an act and prescribes a punishment. Here, sections 12-101(a) and 3-413(b) prohibit certain acts (driving a vehicle in an unsafe condition and having an obstructed license plate, respectively), and violations of these provisions are punishable by fines (see 625 ILCS 5/16-104 (West 2008); 730 ILCS 5/5-4.5-75(a) (West 2008)). Thus, these statutes are, in fact, penal. See *Kleutgen*, 359 Ill. App. 3d at 279 (statute prohibiting improper lane usage was penal because violations were punishable by fines).

¶ 15 In sum, we conclude that the trial court did not err in denying defendant's motion to quash and suppress, because the trial court was entitled to conclude that Ducak's testimony was credible and because the obstruction of defendant's license plate provided grounds on which Ducak could stop defendant.

¶ 16 CONCLUSION

¶ 17 For the reasons stated, the judgment of the circuit court of McHenry County is affirmed.

¶ 18 Affirmed.