

2013 IL App (2d) 120695-U  
Nos. 2-12-0695 & 2-12-0698 cons.  
Order filed March 29, 2013

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellant,	)	
v.	)	No. 11-CM-4601
DAVID ROSENFELD,	)	Honorable Helen S. Rozenberg,
Defendant-Appellee.	)	Judge, Presiding.

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellant,	)	
v.	)	No. 11-CM-4600
ELIZABETH EISENSTEIN,	)	Honorable Helen S. Rozenberg,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Hutchinson and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred in granting defendants' motions to quash and suppress: the court had no basis to reject the officer's testimony that, while in his jurisdiction, he saw that defendants' vehicle had an expired registration sticker, thus validating the traffic stop; the officer did not unduly prolong the stop, as he investigated the driver only while he was writing tickets for him, thus validating the subsequent arrest (including the demand that the driver exit the vehicle); whether the officer then had probable cause to search the vehicle was beyond the scope of defendants' motions and thus beyond proper consideration.

¶ 2 Following a traffic stop, defendant David J. Rosenfeld, the driver of the vehicle that was stopped, was placed under arrest and charged with two counts of unlawful possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2010)) and a single count each of possession of cannabis (720 ILCS 550/4(a) (West 2010)) and false personation of a public officer or public employee (720 ILCS 5/17-2(b)(2) (West 2010)). Rosenfeld's passenger, defendant Elizabeth Eisenstein, was also arrested and was separately prosecuted for unlawful possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2010)). Both defendants successfully moved to quash their arrests and suppress evidence obtained as a result of the traffic stop and the subsequent arrests. The State appealed from the orders granting defendants' motions, and we consolidated the appeals. We reverse and remand.

¶ 3 In their motions, defendants argued that the traffic stop was unlawful because it occurred outside the jurisdiction of the officer who conducted it. They also argued that the officer unlawfully seized Rosenfeld by ordering him to step out of the vehicle and that "any evidence that the officer gleaned incident [to the seizure] \*\*\* should be suppressed as the fruit of a poisonous tree." Notably, defendants did not offer any alternative legal theory for suppressing any evidence in the event that the initial stop and the officer's demand that Rosenfeld step out of the vehicle were held to be valid.

¶ 4 A joint hearing was held on defendants' motions. Lincolnshire police officer Andrew A. Markoya was the sole witness at the hearing. He testified that, at about 2:29 p.m. on October 4, 2011, he was on duty and was driving a marked squad car. He was assigned to the Lake County

Major Crime Task Force and his jurisdiction included all of Lake County. While on eastbound Aptakistic Road preparing to make a left turn onto northbound Milwaukee Avenue, Markoya observed a Cadillac with an expired registration sticker in an adjacent lane. Markoya explained that, at that intersection, eastbound Aptakistic Road consists of two left-turn lanes and a single right-turn lane. Markoya's vehicle was in the outer left-turn lane. According to Markoya, the Cadillac was in the right-turn lane and was "slightly in front" of Markoya's vehicle. When the vehicle ahead of the Cadillac turned onto southbound Milwaukee Avenue, the Cadillac then pulled forward, stopped briefly, and made a right turn onto Milwaukee Avenue. While the Cadillac was completing the turn, Markoya noticed that the vehicle's registration sticker had expired. Markoya waited for traffic to clear, pulled into the right-turn lane, and turned onto Milwaukee Avenue. His vehicle reached a speed of 50 to 60 miles per hour as he attempted to catch up with the Cadillac. Markoya ran a license plate check on the Cadillac and determined that the plates had expired. Markoya testified that it took him 15 or 20 seconds to catch up with the Cadillac. The Cadillac was in Lincolnshire when Markoya first observed it. However, the traffic stop took place outside Lincolnshire.

¶ 5 At some point after the Cadillac pulled over, Markoya inspected the registration sticker and determined that it had been issued for a different vehicle. Markoya approached the driver's side of the Cadillac and Rosenfeld rolled down the window. Rosenfeld displayed a valid driver's license, but did not provide proof of insurance. When Markoya asked Rosenfeld about the expired registration sticker, Rosenfeld explained that there had been a mix-up concerning the registration sticker for the specialty license plates on another vehicle he owned. Rosenfeld also gratuitously stated that he was a special assistant Illinois Attorney General. Markoya asked Rosenfeld if he had any identification confirming that he held that position. Rosenfeld presented a laminated

identification card indicating that he was a special assistant Illinois Attorney General for the Illinois State Toll Highway Authority, but Markoya suspected the card might not be authentic. When Markoya returned to his squad car to prepare tickets for the registration violations, he radioed his dispatcher and requested that the dispatcher contact the Attorney General's office to verify Rosenfeld's status. After 5 to 10 minutes, while Markoya was preparing the tickets, the dispatcher informed Markoya that Rosenfeld was not employed by the Attorney General's office. Markoya then asked Rosenfeld to step out of the car and he placed Rosenfeld under arrest. Defense counsel elicited testimony from Markoya that he smelled cannabis when Rosenfeld stepped out of the vehicle. That testimony prompted the following objection from the prosecutor: "He's already placing him into custody. I think the seizure has already happened." The parties then stipulated that "[s]hortly thereafter" Markoya searched the vehicle and found cannabis and drug paraphernalia. Markoya also searched Eisenstein's purse and recovered an item of drug paraphernalia.

¶ 6 Markoya's squad car was equipped with a video camera, which began recording shortly before Rosenfeld's vehicle pulled alongside the squad car on Aptakisic Road. During the hearing, the video recording was played up to the point when Rosenfeld was placed under arrest.

¶ 7 In granting the motions, the trial court stated that "the officer's first testimony is that he noticed the defendant's car in the right-turn lane, noticed that, not only was the sticker expired, but that it was registered to the wrong vehicle." The trial court added, "He might well have seen that it was expired, that it was registered to the wrong vehicle; I just don't find that credible based on the size of the letters and the view and the timing of the view shown here." According to the court, Markoya had testified that "within five to six seconds he's caught up with defendant." The court observed that "it took longer to do that," and that "[i]t took a great deal of maneuvering at a high rate

of speed to stop somebody in a jurisdiction other than his for an expired registration tag.” The court reasoned that Markoya’s assignment to the Lake County Major Crime Task Force did not give him authority “to barrel into another jurisdiction at a high rate of speed in order to give somebody a ticket for an expired registration.” The court further concluded that, even if the initial stop was valid, Markoya lacked probable cause to search Rosenfeld’s vehicle. In this regard, the court found that Markoya was not credible when he testified that he detected the odor of cannabis when Rosenfeld stepped out of his vehicle. The court reasoned that Markoya would have noticed the odor earlier because he was speaking with Rosenfeld through an open car window.

¶ 8 The State moved for reconsideration. In denying the motion, the trial court stated as follows:

“Well, I think it’s unquestionable that this motion rises and falls on the officer’s credibility. And the court had the opportunity to view and hear from the officer on the stand and also to view the [video recording] and how it conformed to and didn’t conform with the officer’s testimony on the stand.

And I continue to find the officer’s testimony that he determined that the sticker was not current from the distance he was stopped at the light as momentarily he was to be not credible. \*\*\* [A]nd his lack of credibility in that regard was supported by other instances I think I had mentioned previously and defense mentioned throughout the hearing.”

The State filed timely notices of appeal.

¶ 9 At the outset, we consider defendants’ request that we strike the State’s brief and dismiss this appeal because the State’s brief does not include a statement of the applicable standard of review (see Ill. S. Ct. R. 341(h)(4) (eff. July 1, 2008)) and because its statement of facts violates Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2008). The State’s brief does in fact include a proper

statement of the standard of review. Moreover, we find no deficiency in the statement of facts sufficient to warrant dismissal of the appeal. Defendants complain that the statement of facts is incomplete because it does not explain the basis for the trial court's ruling. However, the ruling is adequately explained in connection with the State's argument. Even assuming, *arguendo*, that organizing the brief in this fashion could be considered to violate our supreme court rules, any such violation would be purely technical and would not impair our understanding of the relevant facts. Similarly, although defendants contend that the statement of facts does not properly identify the facts that were in dispute, the State's argument adequately cures any deficiency in this regard. Accordingly, we deny defendants' request to dismiss this appeal and we turn our attention to the merits.

¶ 10 On appeal from a trial court's ruling on a motion to quash and suppress, the reviewing court "will accord great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence." *People v. Close*, 238 Ill. 2d 497, 504 (2010). However, the trial court's ultimate decision to grant or deny the motion is subject to *de novo* review. *Id.* We have noted that "[a]n officer's observation of a traffic violation is sufficient to provide the officer with probable cause to arrest a defendant for the violation, and, thus, a stop is proper." *People v. Grier*, 407 Ill. App. 3d 553, 557 (2011). Markoya testified that he stopped Rosenfeld's vehicle because it had an expired registration sticker. In its initial ruling the trial court stated, "[Markoya] might well have seen that it was expired, that it was registered to the wrong vehicle; I just don't find that credible based on the size of the letters and the view and the timing of the view shown here." A plausible reading of this statement is that the trial court believed that Markoya, from his vantage point at the intersection of Aptakisic Road and Milwaukee Avenue, could have discerned

the sticker's expiration date. However, the trial court's ruling on the State's motion for reconsideration forecloses that reading. The court specifically stated that it "continue[d] to find the officer's testimony that he determined that the sticker *was not current* from the distance he was stopped at the light as momentarily he was to be not credible." (Emphasis added.)

¶ 11 That finding was largely superfluous, given the trial court's principal rationale for granting the defendants' motions—that Markoya, a Lincolnshire police officer, pursued Rosenfeld's car, at a speed of 50 to 60 miles per hour ("a high rate of speed," in the trial court's estimation), outside Lincolnshire and that the pursuit was based on a minor offense. However, that rationale is untenable. Section 107-4(a-3) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/107-4(a-3) (West 2010)) provides, in pertinent part, "Any peace officer employed by a law enforcement agency of this State may conduct temporary questioning \*\*\* and may make arrests in any jurisdiction within this State: (1) if the officer is engaged in the investigation of an offense that occurred in the officer's primary jurisdiction and the temporary questioning is conducted or the arrest is made pursuant to that investigation." There is no dispute that Rosenfeld's vehicle was located in Lincolnshire when Markoya first observed it. If Markoya observed that the registration sticker had expired, he was authorized to investigate the offense and detain Rosenfeld for questioning. Although the trial court reasoned that the statute did not contemplate a high-speed chase for a minor offense, that understanding has no basis in the language of the statute. A court "may not add language or a provision to, or add exceptions, limitations, or conditions, or otherwise alter a statute so as to depart from the plain meaning of the language employed in the statute." *Werderman v. Liberty Ventures, LLC*, 368 Ill. App. 3d 78, 83 (2006).

¶ 12 Thus, the legality of the traffic stop depends on whether Markoya did, in fact, observe the expired registration sticker on Rosenfeld's vehicle while the vehicle was in Markoya's primary jurisdiction—Lincolnshire. The trial court found that Markoya's testimony on this point was not credible. Although a trial court's determination of a witness's credibility is accorded great deference, the court may not arbitrarily or capriciously reject a witness's testimony. *People v. Bavas*, 251 Ill. App. 3d 720, 724 (1993). Testimony may be rejected if it is inherently improbable (*id.*), but that is not the case with Markoya's testimony that he observed an expired registration on Rosenfeld's vehicle as it turned onto Milwaukee Avenue. Markoya's testimony and the video footage recorded from his squad car show that Markoya had the opportunity to observe the rear portion of Rosenfeld's vehicle in daylight at a relatively close distance for several seconds as that vehicle made a right turn onto Milwaukee Avenue. The stickers would be of little use if the numerals representing the expiration date were not visible at a reasonable distance to police officers patrolling our state's roads.

¶ 13 Here, it appears that the trial court found that Markoya had been contradicted in several respects, and that his testimony about the expired registration sticker was entitled to little credence. *Cf. People v. Miller*, 242 Ill. App. 3d 423, 436 (1993) (where evidence contradicted officer's testimony that he and another officer were *both* stopped in their vehicles at an interstate highway crossover when the defendant's vehicle drove past, trial court was entitled to reject officer's testimony that he observed expired registration sticker *prior* to conducting traffic stop). It also appears, however, that the trial court either misunderstood or did not correctly recall Markoya's testimony. Notably, the trial court seems to have been under the impression that Markoya had testified that, when he first encountered Rosenfeld's Cadillac on Aptakisic Road, he was able to read the license plate number printed on the registration sticker and determine that the sticker was issued

for a different vehicle. To the contrary, Markoya testified only that he was able to read the *expiration date* at that point. Markoya testified that it was after Rosenfeld's vehicle pulled over that he determined that the plate number on the sticker did not match the plates on the vehicle. The trial court also mistakenly believed that Markoya had testified that it took only five to six seconds to catch up with Rosenfeld's vehicle. Markoya actually testified that it took 15 to 20 seconds. In fact, the video recording shows that it took somewhat longer. However, the discrepancy does not impeach Markoya's credibility on other matters. Accordingly, the trial court's decision to disregard Markoya's testimony appears to be based on invalid reasons lacking evidentiary support. We therefore conclude that the trial court's decision was arbitrary and cannot stand.

¶ 14 The trial court further concluded that Markoya was not credible when he testified that he smelled marijuana when Rosenfeld exited his vehicle. Thus, the court concluded that, even if the stop was valid, there was no probable cause to justify the warrantless search of Rosenfeld's vehicle. See generally *United States v. Ross*, 456 U.S. 798, 820-821 (1982) (if there is probable cause to believe a vehicle contains evidence of criminal activity, police may search any area of the vehicle in which the evidence may be found). However, the question of whether there was probable cause to search the vehicle was outside the scope of defendants' motions.

¶ 15 As noted, in their written motions, defendants sought to suppress evidence recovered in connection with the stop on two grounds and two grounds only: (1) that the stop itself was unlawful and (2) that contraband recovered from the vehicle was the "fruit of the poisonous tree" inasmuch as Markoya was able to detect the odor of marijuana only because he unlawfully ordered Rosenfeld to step out of the vehicle. For purposes of their motions, however, defendants assumed that Markoya did in fact detect the odor of marijuana when Rosenfeld complied with the order. Accordingly, the

State had no occasion to introduce evidence on this point. Indeed, based on the scope of the motions, the State properly objected to evidence of what transpired after Rosenfeld was placed under arrest. *People v. Piscotti*, 136 Ill. App. 3d 420 (1985), is instructive. In that case, the defendant moved to suppress statements on the grounds that they were extracted through physical and mental coercion. Because the evidence presented by the State at the hearing was, for the most part, properly limited to the voluntariness of the defendant's statement, the record did not fully reveal what information was known to police when the defendant was arrested. *Id.* at 433. Accordingly, the *Piscotti* court declined to speculate about whether the defendant was arrested without probable cause, such that his statements were the inadmissible fruits of an illegal arrest. Similarly here, given the manner in which defendants framed the issues in their motions, the State properly limited the evidence it presented to the events leading to Rosenfeld's arrest. Under the circumstances, the trial court should not have engaged in speculation over whether what occurred thereafter gave rise to probable cause to search Rosenfeld's vehicle.

¶ 16 Finally, we agree with the State that the suppression rulings cannot be sustained on the theory that, by investigating Rosenfeld's claim that he was a special assistant Illinois Attorney General, Markoya unreasonably prolonged the traffic stop. See generally *People v. Harris*, 228 Ill. 2d 222, 235-36 (2008) (a traffic stop that is lawful at its inception can become unlawful if unreasonably prolonged). Here, the additional investigation was completed while Markoya was still in the process of writing tickets for Rosenfeld. Thus, the subsequent arrest, including the demand that Rosenfeld exit the vehicle, was valid.

¶ 17 For the foregoing reasons, we reverse the orders of the circuit court of Lake County granting defendants' motions to quash and suppress, and we remand for further proceedings.

¶ 18 Reversed and remanded.