2016 IL App (2d) 150820-U
No. 2-15-0820
Order filed June 29, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. JOHN GIAMBRONE, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Kane County. No. 13-DT-1115 Honorable Robert J. Morrow, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in granting defendant's motion to suppress, as defendant did not present any evidence to establish a prima facie case for suppression, and in dismissing the charge, as defendant did not move for dismissal and in any event no valid basis for dismissal existed.

¶ 2 This is the State's appeal from the trial court's dismissal of a driving-under-the-influence (DUI) (625 ILCS 5/11-501(a)(2) (West 2012)) charge against defendant, John Giambrone, and its grant of a suppression motion in the same case. The State asserts that the trial court erred when, based on the State's inability to secure the arresting officer's testimony, and without requiring defendant to make a *prima facie* case for the unlawfulness of his arrest, it suppressed

the evidence stemming from that arrest. It further asserts that the trial court erred when it dismissed the charges "on defendant's motion" when defendant had not moved for dismissal and the record shows no other basis for the dismissal. We agree with the State.

¶ 3 On October 26, 2013, defendant was charged by complaint with DUI. The complaint, a standard traffic citation, stated that the arresting officer had cited defendant at the scene of a single-car accident. (Additional evidence in the record indicates that the arresting officer smelled alcohol on defendant's breath and found a part-full beer can under the driver's seat of defendant's crashed vehicle.) Defendant filed a motion to suppress the evidence arising from his arrest. He asserted that the "investigation of [his] vehicle after the accident was a seizure as contemplated by the Fourth Amendment," and that his conduct before his arrest "could not be reasonably interpreted *** as constituting probable cause."

¶ 4 The motion first came up for hearing on March 3, 2015. The arresting officer was on vacation and did not appear. Over defendant's objection, the trial court continued the matter to June 12, 2015. During the resetting, defendant specifically noted that he had not filed a speedy-trial demand.

¶ 5 On June 12, 2015, defendant was present and ready, but the State reported that the arresting officer was again on vacation. The trial court denied the State's request for a continuance because it had already continued the matter once, and then asked the State what it wanted to do. The State responded, "I can't do anything with it, Judge. I'm not ready to go." To that, the trial court replied, "[I]t's a '13 case, so it's at least two years old, I'm going to grant the Defense Motion to Dismiss. State does not appear to be ready to proceed, so I'll grant the Defense's Motion to Suppress [E]vidence."

¶ 6 The State moved for reconsideration of both rulings. It first argued that defendant had

failed to make a *prima facie* case for suppression, meaning that the burden had never shifted to the State to show the lawfulness of the seizure. Next, noting that defendant had never moved for dismissal and that the trial court had not stated its basis for dismissing, it argued that the trial court could not properly dismiss a criminal complaint or indictment *sua sponte*. Defendant did not respond. The trial court denied the motion without clarifying its basis for the dismissal. The State appeals. Ill. S. Ct. R. 604(a) (eff. Dec. 3, 2015).

¶ 7 On appeal, the State again argues that the trial court erred in dismissing the case on defendant's nonexistent motion. It also argues again that the trial court should not have granted the motion to suppress when defendant had not made a *prima facie* showing that the arrest was illegal. Defendant has not filed a brief, but his brief's absence does not hinder our review since the issues in this case are simple. *People v. Cosby*, 231 Ill. 2d 262, 285 (2008) (citing *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976)).

¶ 8 We note that the context of the trial court's rulings suggests that the trial court was frustrated by the State's inability to secure the presence of the arresting officer at the suppression hearing. In general, neither the suppression of evidence, nor the dismissal of charges is an appropriate sanction under such circumstances, particularly where there has been no showing of negligence or bad faith on the part of the State. *In re Julio C.*, 386 Ill. App. 3d 46, 53 (2008); *People v. Hawkins*, 235 Ill. App. 3d 39, 41 (1992); *cf. People v. Tsiamas*, 2015 IL App (2d) 140859, ¶ 18. However, the trial court did not indicate that it intended its rulings as sanctions, and we do not evaluate them as such.

¶ 9 We address the suppression ruling first. When we review a ruling on a motion to suppress evidence, we are deferential to the trial court's findings of fact, but we review its ultimate legal ruling as to whether suppression is warranted *de novo*. *People v. Luedemann*, 222 Ill. 2d 530,

542-43 (2006) *Id.* at 542 (citing *Ornelas v. United States*, 517 U.S. 690 (1996)). Here, the trial court made no factual determinations, so our review is *de novo*. *People v. Lampitok*, 207 Ill. 2d 231, 240 (2003).

¶ 10 A defendant bears the burden of proof on a motion to suppress evidence. *People v. Cregan*, 2014 IL 113600, ¶ 23. The burden to show illegality remains on the defendant throughout, but if a defendant makes a *prima facie* showing that the evidence was the product of an illegal search or seizure, the burden shifts to the State to counter that evidence, *i.e.*, to show that suppression is not warranted. *Id.* Here, defendant, having presented no evidence at all, never made a *prima facie* showing of illegality. Thus, the trial court had no basis on which it could grant his motion. *Cf., e.g.*, *People v. Quinn*, 2 Ill. App. 3d 341, 347 (1971) (where trial court "judge specifically and clearly stated the findings of fact and conclusions of law upon which his [suppression] ruling was based").

¶ 11 Turning to the dismissal, we hold that it too was erroneous. First, the trial court erred when it "granted" a motion to dismiss that defendant had not in fact made. Second, and more importantly, a trial court may only lawfully dismiss a criminal charge on grounds enumerated in section 114-1 of the Code of Criminal Procedure (725 ILCS 5/114-1(a) (West 2012)) or on the basis of a clear constitutional violation, such as a clear denial of due process. See generally *People v. Woolsey*, 139 Ill. 2d 157, 164 (1990); *People v. Lawson*, 67 Ill. 2d 449, 455 (1977). But there is no such basis in this record. We therefore cannot sustain the trial court's decision to *sua sponte* dismiss the State's charges as there is no basis in the record for doing so.

¶ 12 Accordingly, for the reasons stated, we reverse the dismissal of the complaint against defendant, and vacate the order suppressing the State's evidence. This case is remanded to the trial court for further proceedings consistent with this order.

¶ 13 Reversed in part and vacated in part; cause remanded.