2017 IL App (2d) 160400-U
No. 2-16-0400
Order filed July 12, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. JARED A. MITCHELL, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Stephenson County. No. 15-DT-90 Honorable James M. Hauser, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The officer had a reasonable suspicion that defendant had been driving under the influence of alcohol based on the smell of alcohol coming from the vehicle, defendant's admission that he had consumed alcohol prior to driving, and the officer's observation that defendant had red, glassy eyes. Accordingly, we reversed the trial court's order granting defendant's motion to quash arrest and suppress evidence, and remanded for further proceedings.

¶ 2 Following a traffic stop, defendant, Jared A. Mitchell, was charged with driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(1), (a)(2) (West 2014)). The trial court granted defendant's petition to rescind the statutory summary suspension of his driver's license and his motion to quash arrest and suppress evidence. The State appeals, arguing that the trial

court erred in granting defendant's motion to quash arrest and suppress evidence, because the officer had a reasonable suspicion that defendant was driving under the influence of alcohol. We reverse the trial court's order and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On October 17, 2015, defendant was charged by complaint with two counts of DUI. A breathalyzer test indicated that he had a blood alcohol concentration of .165, which resulted in his driving privileges being summarily suspended. See 625 ILCS 5/11-501.1 (West 2014).

¶ 5 On October 21, 2015, defendant filed a petition to rescind statutory summary suspension. Defendant argued that the arresting officer did not have reasonable grounds (1) to execute a traffic stop of defendant's vehicle and/or (2) to believe that defendant was driving while under the influence of alcohol. A hearing on the petition to rescind took place on November 20, 2015. At the hearing, defense counsel clarified that the defense would be challenging only the State's assertion that the arresting officer had reasonable grounds to believe that defendant was driving while under the influence of alcohol up until the point where the arresting officer asked defendant to exit his vehicle; the defense was not challenging what happened after defendant exited the vehicle (*e.g.* his performance on the field sobriety tests).

¶ 6 Officer Ben Johnson of the Freeport police department testified as follows. In the early morning hours of October 17, 2015, Johnson was on "stationary patrol" in a parking lot on Lincoln Street in Freeport, Illinois. At approximately 4:12 a.m., he observed defendant's car drive past him at about the posted speed of 30 miles per hour. Johnson also noticed that defendant's car was "rapidly accelerating" as it traveled eastbound on Lincoln Street.

¶ 7 Johnson pursued defendant's vehicle and was able to "catch up" with defendant as he was traveling eastbound on Broadway Street. Johnson then witnessed defendant's vehicle make a 45-

degree left turn at the "Y" intersection of Broadway Street and Pleasant Street. Defendant failed to activate his turn signal 100 feet before making the left turn onto Pleasant Street. See 625 ILCS 5/11-804(b) (West 2014). Johnson also noted that defendant took a wide turn onto Pleasant Street, almost striking the south curb of Pleasant Street. Johnson acknowledged that Cherry Avenue intersects Broadway Street about 50 feet before Pleasant Street intersects Broadway Street. Even so, defendant did not activate his left turn signal until he was "about parallel" with Pleasant Street.

¶ 8 Johnson activated his overhead flashers and initiated the traffic stop at 4:14 a.m. Defendant quickly responded and pulled off to the side of the road on Oak Avenue. Johnson executed the traffic stop because he believed defendant was speeding and because defendant used an improper turn signal. Defendant was responsive, cooperative, and did not have any trouble producing his identification. Defendant did not have an insurance card, but he was subsequently able to access that information on his phone. Johnson did not discern any slurred speech while defendant was still seated in the vehicle, but he did observe that defendant had glassy, bloodshot eyes. Johnson also observed that there was a passenger in the car, and defendant explained that he had picked up the passenger to take him home. Johnson further noticed that there was an odor of alcohol coming from defendant's vehicle, and defendant admitted that he had consumed one beer five hours prior. The passenger also stated that he had been out drinking and that defendant was giving him a ride home for that reason.

¶ 9 Johnson listed five facts which lead him to believe that defendant was under the influence of alcohol: (1) defendant's rapid acceleration; (2) defendant's wide turn where he almost struck the south curb of Pleasant Street; (3) defendant's glassy and bloodshot eyes; (4) the odor of

alcohol coming from defendant's vehicle; and (5) defendant's admission that he had consumed alcohol five hours before driving.

¶ 10 The parties stipulated to the foundation for the dash cam video and played it for the court. The video supported Johnson's assertions that at about 4:12 a.m., defendant's car drove past him while he was sitting in a parking lot, and that defendant failed to activate his turn signal until he was making his turn onto Pleasant Street. Further, the video showed that the passenger initially struggled to produce his identification, but that he was ultimately able to find it. At 4:17 a.m., Johnson remarked that he smelled alcohol coming from the vehicle. The passenger indicated that he had been drinking. Defendant initially stated that he had not been drinking; however, after Johnson inquired further, defendant stated that he had one beer five hours before, but that he had not consumed any alcohol thereafter.

¶ 11 Johnson then went back to his squad car where he apparently began speaking with another officer.[1] He remarked that he planned to "just run through" standardized field sobriety tests, and that if the smell of alcohol was actually coming from the passenger and not defendant, he would "probably be able to tell right away." After ascertaining the passenger's address, and based on defendant's direction of travel, Johnson remarked aloud that "[defendant was] not taking [the passenger] home." Johnson also noted that defendant had a valid driver's license, but that the passenger's license was revoked. Johnson then reapproached defendant's vehicle where he informed defendant that he would be conducting standardized field sobriety tests to ensure that defendant was okay to drive. At 4:22 a.m., Johnson asked defendant to exit the vehicle to perform the tests.

[1] The other officer was not visible at this point. However, the unnamed officer can later be heard answering Johnson's questions.

¶ 12 The defense rested after playing the dash cam video for the court; the State did not call any witnesses or introduce any other evidence. The trial court found that the initial traffic stop was justified because defendant did not activate his turn signal 100 feet before the intersection of Broadway Street and Pleasant Street. In considering whether Johnson knew sufficient facts to justify the subsequent DUI investigation, the trial court accepted as true Johnson's testimony that he smelled alcohol coming from the car, that defendant had glassy eyes, and that defendant accelerated rapidly. However, the trial court found that glassy eyes were to be expected at 4:30 in the morning and that defendant did not hit, or almost hit, the south curb of Pleasant Street. Further, the trial court found that defendant's action in waiting to activate his turn signal until he was past Cherry Avenue was safer than if he had activated the turn signal 100 feet before Pleasant Street. The trial court reasoned that by waiting to activate his turn signal, defendant minimized confusion as to where he was turning. Finally, the trial court noted that defendant was "talking fine" when he was interacting with Johnson, and that defendant was clearly capable of finding his insurance information online. The trial court granted defendant's motion to rescind the statutory summary suspension on the basis that Johnson did not have reasonable grounds to believe that defendant was driving under the influence of alcohol.

¶ 13 On December 15, 2015, the State filed a motion to reconsider the rescission of the statutory summary suspension. On March 11, 2016, defendant filed a motion to quash arrest and suppress evidence. The two motions were heard together on April 1, 2016. The parties agreed to re-watch the dash cam video and stipulated to its admission into evidence. Defense counsel also asked that the transcript from the summary suspension hearing be adopted as evidence at this hearing; the State did not object.

¶ 14 We briefly summarize the parties' arguments. Defendant argued that Johnson did not have a reasonable, articulable suspicion that defendant was driving under the influence of alcohol such that Johnson was justified in extending the scope of the initial traffic stop to a DUI investigation. Specifically, defendant argued that the only piece of evidence directly imputed to him was that he had bloodshot eyes at 4:30 in the morning. Defendant argued that the smell of alcohol was attributable to the passenger; that there was no evidence that he was speeding; that there was no evidence that he hit or almost hit the curb when making his turn onto Pleasant Street; and that his admission that he had one beer five hours prior was not enough, without more, to cause a reasonable officer to infer that defendant was driving under the influence of alcohol. Thus, defendant argued that Johnson's decision to expand the scope of the traffic stop beyond its initial purpose of making a brief seizure to write a traffic ticket was unjustified because Johnson did not have a reasonable suspicion of a DUI. Rather, Johnson had a mere hunch that defendant was driving under the influence of alcohol.

¶ 15 Conversely, the State argued that Johnson had a reasonable, articulable suspicion that defendant was driving under the influence of alcohol and, therefore, that Johnson was justified in conducting the DUI investigation. The State argued that the burden of reasonable suspicion was something less than probable cause and, therefore, that the burden was something less than a 50 percent suspicion. In considering all of the circumstances known to Johnson at the time he decided to administer field sobriety tests, and in light of the low burden necessary for an officer to expand the scope of a brief seizure, the State contended that a reasonable officer with experience in investigating DUIs, like Johnson, would ask the driver to perform field sobriety tests to ensure that the driver was not a threat to public safety.

¶ 16 The trial court denied the State's motion to reconsider its order rescinding statutory summary suspension and granted defendant's motion to quash arrest and suppress evidence. The trial court reasoned that while the standard necessary to expand the scope of a traffic stop was fairly low, it was nevertheless a burden, and an officer must have more than a mere hunch to expand the scope. Here, Johnson did not have "sufficient, specific and articulable facts such that a reasonable suspicion existed that [defendant] was driving under the influence [of alcohol]." Rather, Johnson had a hunch that defendant was driving under the influence of alcohol, and that was not enough to justify a DUI investigation.

¶ 17 On April 6, 2016, the State filed a motion to reconsider defendant's motion to quash arrest and suppress evidence. The trial court denied the State's motion to reconsider on April 26, 2016. On May 27, 2016, the State filed a certificate of impairment and notice of appeal.

II. ANALYSIS

¶ 18 On appeal, the State first argues that the trial court's factual finding that defendant did not almost hit the curb when he turned onto Pleasant Street is against the manifest weight of the evidence. Next, the State argues that the trial court erred in granting defendant's motion to quash arrest and suppress evidence. We apply a two-part standard of review when reviewing the trial court's ruling on a motion to quash arrest and suppress evidence. *People v. Almond*, 2015 IL 113817, ¶ 55. We afford great deference to the trial court's findings of fact, and we reverse those findings only if they are against the manifest weight of the evidence. *Id*. However, we review *de novo* the trial court's ultimate ruling as to whether suppression is warranted. *Id*.

¶ 19 We also note that defendant has not filed an appellee's brief. Our supreme court has instructed that we may address the merits of an appeal in the absence of an appellee's brief if

" 'the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief.' " *People v. Guillen*, 2014 IL App (2d) 131216, ¶ 20 (quoting *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976)).[2] Here, the focus is on whether Johnson had a reasonable, articulable suspicion of DUI such that he was justified in asking defendant to perform field sobriety tests. Defendant does not dispute the trial court's finding that there was a smell of alcohol coming from defendant's vehicle, that his eyes were glassy, or that he admitted to drinking prior to driving. Therefore, the record is indeed simple as to the pertinent facts. Further, the sole issue on appeal is whether those undisputed facts gave Johnson a reasonable suspicion of DUI. In light of the relevant case law which holds that a smell of alcohol, plus glassy eyes, plus an admission to drinking will give an officer a reasonable suspicion of DUI, we believe that this is a matter on which principled persons could not differ. See *id*. Thus, this is not such a complex legal issue that we cannot proceed without the aid of an appellee's brief. See *id*.

[2] In reversing a trial court's judgment, this court typically employs a different prong of *Talandis* which empowers a reviewing court to reverse a trial court's judgment where the appellant's brief demonstrates *prima facie* reversible error which is supported by the record. See *Ferris, Thompson, & Zweig, Ltd. v. Esposito*, 2016 IL App (2d) 151148, ¶ 7. On the other hand, we typically use the "easily decided" prong when we affirm a trial court's judgment. See *People v. Marcella*, 2013 IL App (2d) 120585, ¶ 23. However, in *Guillen*, this court used the "easily decided" prong to reverse the trial court. *Guillen*, 2014 IL App (2d) 131216 at ¶ 20. Therefore, the "easily decided" prong can be used where the record and the claimed errors are so simple that we may proceed without the aid of an appellee's brief.

¶ 20 First, we defer to the trial court's finding that defendant did not hit, or almost hit, the curb when turning onto Pleasant Street. The State argues that the evidence shows that defendant hit the curb when making a wide turn onto Pleasant Street. The State points to the dash cam video and Johnson's testimony at hearing in support of its argument. However, it is unclear from the dash cam video whether defendant's vehicle actually made contact with the curb of Pleasant Street. Therefore, the trial court's finding was not against the manifest weight of the evidence.

¶ 21 Next, we turn to the State's argument that Johnson had a reasonable, articulable suspicion that defendant was driving under the influence of alcohol such that he was justified in asking defendant to get out of the car to take field sobriety tests. Vehicle stops must comply with the fourth amendment's reasonableness requirement set forth in *Terry v. Ohio*, 392 U.S. 1, 20 (1968). *People v. Close*, 238 Ill. 2d 497, 505 (2010). Under *Terry*, an officer may conduct a brief, investigatory stop where he "reasonably believes that the person has committed, or is about to, commit a crime." *Id.* In order for the seizure to be justified, the " 'police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.' " *Id.* (quoting *Terry*, 392 U.S. at 19-21). The officer's suspicion must amount to more than an "inarticulate hunch." *Id.* However, the officer's suspicion need not rise to the level of suspicion required for probable cause.[3] *Id.* We apply an objective standard in judging the officer's conduct and consider whether the facts known to the

[3] "The test for reasonable suspicion is less exacting than that for probable cause." *Village of Lincolnshire v. Kelly*, 389 Ill. App. 3d 881, 886 (2009). Even probable cause does not demand a showing that the officer's belief that the suspect has committed a crime be more likely true than false. *Id.* at 886-87.

officer at the moment of the seizure would " 'warrant a man of reasonable caution [to believe] that the action taken was appropriate.' " *Id.* (quoting *Terry*, 392 U.S. at 21-22).

¶ 22 Here, Johnson stopped defendant's vehicle for failure to activate his turn signal 100 feet before turning onto Pleasant Street. See 625 ILCS 5/11-804(b) (West 2014). Thus, this stop was justified at its inception because Johnson witnessed defendant violate the statute. See *People v. Lubienski*, 2016 IL App (3d) 150813, ¶ 10 (a reasonable, articulable suspicion that defendant committed a traffic violation justifies an investigatory stop). However, a lawful seizure "can become unlawful if it is prolonged beyond the amount of time reasonably required to complete the [stop's] mission."[4] *Illinois v. Caballes*, 543 U.S. 405, 407 (2005); see *Arizona v. Johnson*, 555 U.S. 323, 333 (2009) (a seizure remains lawful only so long as unrelated inquiries do not "measurably extend" the stop's duration). A traffic stop's mission includes addressing the traffic violation that warranted the stop and "attend[ing] to related safety concerns." *Rodriguez v. United States*, ___ U.S. ___, ___, 135 S. Ct. 1609, 1614 (2015).

¶ 23 Safety concerns related to a traffic stop concerns permit the officer to make "ordinary inquiries incident to [the traffic] stop" (*Caballes*, 543 U.S. at 408) which are reasonably necessary in maintaining officer safety and ensuring "that vehicles on the road are operated

[4] The Illinois Supreme Court has abandoned the scope requirement previously employed in *People v. Gonzalez*, 204 Ill. 2d 220, 225 (2003). *Kelly*, 389 Ill. App. 3d at 884. Thus, the validity of an officer's actions during a traffic stop is no longer determined by whether those actions are related in scope to the circumstances that justified the seizure in the first place. *Id.* Rather, the validity of an officer's action which is unrelated to the initial seizure's mission is determined *only* by the duration of that unrelated inquiry. *Id.* at 885 (emphasis added); see *People v. Harris*, 228 Ill. 2d 222, 242 (2008).

safely and responsibly" (*Rodriguez*, ___ U.S. at ___, 135 S. Ct. at 1615). See *People v. Cummings*, 2016 IL 115769, ¶ 7. The officer's authority for the seizure ends when tasks tied to the traffic infraction are—or reasonable should be—completed. *Rodriguez*, ___ U.S. at ___, 135 S. Ct. at 1614. Thus, while an officer may conduct certain checks which are unrelated to a lawful traffic stop's mission, he may not do so in a manner that prolongs the stop, unless he has the reasonable suspicion ordinarily demanded to justify detaining an individual. *Id*. at ___, 135 S. Ct. at 1614-15.

¶ 24 The State cites *Village of Lincolnshire v. Kelly*, 389 Ill. App. 3d 881 (2009), and *People v. Bruni*, 406 Ill. App. 3d 165 (2010), to argue that Johnson had a reasonable suspicion, based on specific and articulable facts, that defendant was driving under the influence of alcohol. In *Kelly*, the defendant was pulled over for speeding at 2:15 a.m. *Kelly*, 389 Ill. App. 3d at 882. The defendant told the officer that she was coming from the Lincolnshire area, but, when asked what part of Lincolnshire she was coming from, she stated that she was coming from the Vernon Hills area and added, " 'we got really lost.' " *Id*. The defendant stated that she had been at a restaurant in Mundelein, and she admitted to drinking one glass of wine at the restaurant. *Id*. The defendant was not slurring her words, she had no difficulty handing the officer her driver's license, she had no problem with her hand dexterity, she had no problems with her eyes, her clothes were orderly, she was polite, and she had no trouble walking to the back of her car. *Id*. at 882-83. The officer did not observe any indicia of intoxication other than the smell of alcohol, her admission that she had been drinking, and her apparent disorientation. *Id*. at 882.

¶ 25 This court found that the officer had a reasonable suspicion, based on specific and articulable facts, that defendant had committed DUI. *Id*. at 887. We based our finding on (1) the relatively low standard for reasonable suspicion; (2) the officer's experience in investigating

DUIs; (3) the officer's observation of a "strong odor of alcohol" coming from the defendant's car; and (4) the defendant's admission to drinking prior to driving. *Id*. We stated that we understood the trial court's apprehension about permitting an officer to detain a driver for minor traffic violations and then administering field sobriety tests, but that " 'an officer faced with these facts would be derelict in his duties if he chose not to conduct further investigation.' " *Id*. (quoting *Village of Plainfield v. Anderson*, 304 Ill. App. 3d 338, 342 (1999)).

¶ 26 In *Bruni*, the defendant was stopped at a sobriety checkpoint at 1:00 a.m. *Bruni*, 406 Ill. App. 3d at 166. The defendant produced his driver's license and insurance card for the officer, and he stated that he was coming from a karaoke party at a friend's house. *Id*. The officer noticed a faint odor of alcohol coming from the defendant's vehicle, and observed that defendant's eyes were " 'glossy.' " *Id*. When the officer asked if he had been drinking, the defendant stated that he had consumed one beer. *Id*. The trial court denied the defendant's petition to rescind statutory suspension. *Id*.

¶ 27 On appeal, the defendant argued, among other things, that the officer did not have a reasonable, articulable suspicion that he was under the influence of alcohol. *Id*. at 169. Specifically, the defendant argued that the faint odor of alcohol coming from the car and his admission that he had one beer indicated only that he had consumed alcohol, not that he was under the influence of alcohol. *Id*. This court rejected the defendant's argument and held that the "defendant's admission that he had consumed a beer, coupled with the officer's testimony that he detected the odor of alcohol emanating from the passenger compartment of [the] defendant's vehicle and the officer's observation that defendant's eyes were 'glossy,' was sufficient to justify the relatively minor intrusion of requesting that a properly stopped motorist step out of a vehicle to perform field sobriety tests." *Id*. at 172. We therefore held that the

officer did have a reasonable, articulable suspicion that defendant was driving under the influence of alcohol, and again quoted *Anderson* for the proposition that, under similar circumstances, an officer would be derelict in his duties if he did not investigate further. *Id.*

¶ 28 Like the defendants in both *Kelly* and *Bruni*, defendant in the instant case admitted to consuming alcohol prior to driving and there was an odor of alcohol emanating from his car. Like the defendant in *Bruni*, defendant in the instant case had glassy eyes. Moreover, in *Kelly*, this court did not hesitate to find that the officer had a reasonable suspicion of DUI even where the defendant had no problems producing her driver's license or proof of insurance; she had no problems with her hand dexterity; her appearance was not disheveled; her speech was not slurred; and she was polite. Thus, defendant's ability to produce his driver's license, his normal appearance and speech, and his polite demeanor are not facts that mitigate the smell of alcohol coming from his vehicle, his glassy eyes, or his admission to drinking five hours prior. We also note that defendant's case citations from the trial court are inapposite.[5]

¶ 29 Finally, for the purpose of determining the existence of reasonable suspicion, "[t]he facts should not be viewed with analytical hindsight, but instead should be considered from the perspective of a reasonable officer at the time that the situation confronted him or her." *People*

[5] Defendant cited *People v. Boomer*, 325 Ill. App. 3d 206 (2001), and *People v. Lukach*, 263 Ill. App. 3d 318 (1994), in support of his argument that Johnson did not have reasonable, articulable suspicion of DUI. However, these cases consider the different standard of probable cause which is necessary to formally arrest someone: the officer's probable cause "must *** rise to a level higher than 'reasonable articulable suspicion,' the lesser standard required to justify an investigatory stop, rather than a full arrest." *People v. Day*, 2016 IL App (3d) 150852, ¶ 22 (*citing Illinois v. Wardlow*, 528 U.S. 1991, 123 (2000)).

v. Thomas, 198 Ill. 2d 103, 110 (2001); see *Kelly*, 389 Ill. App. 3d at 887 (quoting *Thomas* at 110). Thus, we hold that Johnson acted as a reasonable officer in conducting the DUI investigation because (1) Johnson had experience in conducting DUI investigations[6]; (2) defendant accelerated rapidly; (3) defendant had glassy eyes; (4) defendant smelled of alcohol; and (5) defendant admitted to consuming alcohol five hours prior. Johnson testified that it is common for a seized individual to state that he had consumed only one drink when in fact he consumed more than one: "in many DUI investigations, they'll lie to us. They'll minimize how [much alcohol] they consumed." While the trial court's explanations for the smell of alcohol and defendant's glassy eyes were intelligible, a reasonable officer could just as easily conclude that that a driver was under the influence of alcohol based on those same facts. Thus, in viewing this issue from the perspective of an objectively rational officer, and coupled with the pertinent case law, we find that a reasonable officer faced with similar circumstances would be derelict in his duties if he chose not to conduct further investigation.

III. CONCLUSION

¶ 30 For the reasons stated herein, we reverse the judgment of the circuit court of Stephenson County and remand for further proceedings.

¶ 31 Reversed and remanded.

[6] Johnson testified that he had conducted between 50-75 DUI investigations prior to this DUI investigation.