2011 IL App (3d) 100173–U

Order filed August 12, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3–10–0173
v.	)	Circuit No. 09–DT–2145
	)	
NICHOLAS GOODWIN,	)	Honorable Brian Barrett,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Justice McDade specially concurred.

ORDER

¶ 1 *Held*: The trial court correctly determined that the doctrine of collateral estoppel did not require rescission of the statutory summary suspension of the defendant's driver's license.

¶ 2 The defendant, Nicholas Goodwin, was charged by uniform citation with driving under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2008)). His driver's license was summarily suspended because he refused a request to submit to a breath alcohol test (625 ILCS

5/11-501.1 (West 2008)). The defendant filed a motion to quash his arrest and suppress evidence in the DUI prosecution. Following a full evidentiary hearing, Judge Brian Barrett granted the defendant's motion, finding that the arresting officer did not have a reasonable, articulable suspicion of criminal activity to warrant an investigatory traffic stop. Subsequently, the defendant filed a petition to rescind the statutory summary suspension of his driver's license. At the hearing on his petition, Judge Barrett found that the officer did have probable cause to effect a traffic stop. The petition to rescind the statutory summary suspension was denied. Judge Barrett found that the doctrine of collateral estoppel did not apply in a statutory summary suspension proceeding. The defendant appealed.

¶ 3 The facts in this matter are not in dispute. On December 4, 2009, Officer Brian Wojowski of the New Lenox Police Department stopped the defendant for an improper turn and subsequently arrested the defendant for operating a motor vehicle while under the influence of alcohol and improper turning. The defendant filed a motion to quash the arrest and to suppress evidence. A full evidentiary hearing was held on the motion, at which Officer Wojowski testified that he started to follow the defendant's pickup truck as it traveled eastbound on Route 30 in New Lenox. He testified that he did not notice anything unusual about the defendant's driving at the time he first observed the truck. He continued to follow the truck as it turned northbound on Vine Road, which Officer Wojowski testified was a hilly two-lane road with varying degrees of yellow center line markings and no shoulder markings. The officer followed the defendant for approximately ½ mile until he turned right onto a residential two-lane road with no markings. After the defendant had traveled approximately 50 feet on the residential street, the officer stopped the defendant's truck. No other vehicles were present.

¶ 4 When asked specifically about the improper turn, Officer Wojowski responded that the defendant "didn't stay closest to the right edge" and that "[i]n my opinion the truck that he was driving could make a turn closer than it did." He further testified that he stopped the defendant because he had made a wide right turn. Under direct examination by the prosecution, Officer Wojowski was asked if the defendant's wheels ever touched the center line, to which he responded: "[i]f they did, it was very briefly. He was in his lane, that's why I wrote a lateral movement. If he touched it, I couldn't ding him for that."

¶ 5 In addition to Officer Wojowski's testimony, the court observed a video of the stop taken from Officer Wojowski's squad car.

¶ 6 After hearing the evidence and arguments of counsel, Judge Barrett granted the motion to quash the arrest and suppress the evidence. The judge observed that, although there were some limitations as to the quality of the video, he "did not see anything unusual with the turn, and the best that the officer could testify to was that [the defendant] could have made a closer turn. That does not rise to the level of probable cause, and the motion to suppress is granted."

¶ 7 Approximately two weeks later, a hearing was held before Judge Barrett on the defendant's petition to rescind the statutory summary suspension of his driver's license. Officer Wojowski gave testimony nearly identical to the testimony he had given at the suppression hearing. He reiterated that the sole reason for the stop was the "wide right turn." Judge Barrett denied the petition to rescind the statutory summary suspension of the defendant's driver's license, finding that Officer Wojowski had probable cause to effect the traffic stop. In so doing, the judge held that the doctrine of collateral estoppel did not apply to the statutory summary suspension proceeding.

¶ 8 Approximately two weeks later, the defendant's motion to reconsider the court's summary suspension order and the State's motion to reconsider the court's ruling on the suppression motion both came up for hearing. The court denied both motions to reconsider. Again, Judge Barrett held that the principles of collateral estoppel did not apply in the summary suspension proceeding. Following the denial of the State's motion to reconsider the suppression order, the State *nolle prossed* and dismissed the DUI complaint.

¶ 9 The sole issue before this court is whether the trial court erred in finding that the doctrine of collateral estoppel did not apply in the instant statutory summary suspension hearing. The applicability of the doctrine of collateral estoppel is a question of law which this court reviews *de novo*. *In re A.W.*, 231 Ill. 2d 92, 99 (2008).

¶ 10 Collateral estoppel is an equitable doctrine, the application of which precludes a party from relitigating an issue decided in a prior proceeding. *American Family Mutual Insurance Co. v. Savickas*, 193 Ill. 2d 378, 387 (2000). The doctrine of collateral estoppel provides that "when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit and applies to criminal as well as civil cases." *Gumma v. White*, 345 Ill. App. 3d 610, 616 (2003), *aff'd on other grounds*, 216 Ill. 2d 23 (2005). Collateral estoppel applies to both questions of law and findings of fact. *Long v. Elborno*, 397 Ill. App. 3d 982 (2010) (*citing Du Page Forklift Service, Inc. v. Material Handling Services, Inc.,* 195 Ill. 2d 71, 79 (2001)). The minimum threshold requirements for the application of collateral estoppel are: (1) the issue decided in the prior adjudication is identical with the one presented in the subsequent proceeding; (2) there was a final judgment on the merits

in the prior adjudication; and (3) the party against whom estoppel is asserted was a party or in privity with a party in the prior adjudication. *Gumma v. White,* 216 Ill. 2d 23, 38 (2005).

¶ 11 As to the first requirement for the application of the doctrine of collateral estoppel, the State concedes that the issue decided in the suppression hearing, whether there was probable cause to stop the defendant's vehicle for driving under the influence of alcohol, was identical to the issue presented in the statutory summary suspension rescission hearing.

¶ 12 As to the second requirement for the application of collateral estoppel, a final judgment on the merits in the prior adjudication, the State maintains that the requirement was not met because on the date the defendant filed his amended petition to rescind the suspension alleging collateral estoppel, January 5, 2010, the trial court's ruling in the suppression hearing, issued December 30, 2010, was still subject to a motion to reconsider. The State acknowledged that the motion to reconsider in the suppression hearing was subsequently denied, and the State then voluntarily dismissed the DUI charge. The State maintains, nonetheless, that the order granting the motion to quash the arrest and suppress evidence was not a "final" order at the time the trial court ruled on the defendant's collateral estoppel argument. We agree.

¶ 13 A judgment or order is "'final' if it disposes of the rights of the parties, either on the entire case or on a separate part thereof." *Long v. Elborno,* 397 Ill. App. 3d at 991. Here, the State still had a right to seek reconsideration or appeal from the trial court's suppression order. When a court grants a criminal defendant's motion to quash arrest and suppress evidence, the State has 30 days from the entry of that order in which to file a certificate of impairment and an appeal pursuant to Supreme Court Rules 604(a) (eff. July 1, 2006), and 606(b) (eff. September 1, 2006). It is well-settled that the suppression order is not final and remains appealable until 30

days after the entry of the order. See *People v. Holmes*, 235 Ill. 2d 59, 67 (2009); *People v. Williams*, 138 Ill. 2d 377, 394 (1990); *People v. Taylor*, 50 Ill. 2d 136, 140 (1971). Failure to file a timely motion to reconsider or an appeal renders the suppression order final. *Id.* Until the 30 days allotted under supreme court rule have expired, the order is not final. *Id.*

¶ 14 Here, the record clearly established that, at the time the defendant raised collateral estoppel in his statutory summary suspension proceeding and at the time the trial court entered its order denying his petition to rescind the suspension, fewer than 30 days had expired from the date of the court's entry of the suppression order. Thus, the order in the suppression hearing was not a "final" order and, therefore, the doctrine of collateral estoppel could not apply.

¶ 15 Because we find that the suppression order was not a final order such that the doctrine of collateral estoppel would apply in the statutory summary suspension hearing, we do not need to address the question of privity, the third requirement for application of the doctrine of collateral estoppel. Nor do we need to address the parties' remaining arguments concerning whether collateral estoppel is generally available in statutory summary suspension hearings under *People v. Moore,* 138 Ill. 2d 162 (1990).

¶ 16 For the foregoing reasons, the judgment of the circuit court of Will County denying the defendant's petition to rescind the statutory summary suspension of his driver's license is affirmed.

¶ 17 Affirmed.

¶ 18 JUSTICE McDADE, specially concurring:

¶ 19 While I concur with the majority's decision, I write separately to voice my bewilderment over the trial court's inconsistent findings regarding whether Wojowski had probable cause to effectuate a traffic stop of the defendant.

¶ 20 The record indicates that the trial court explained that its inconsistent findings were justified because at the suppression hearing, Wojowski "testified to conclusory statements that the defendant was weaving within [his own] lane[,]" but at the summary suspension hearing, "the [State's] questions were more succinct, more direct, and [Wojowski's] descriptions were far more quality in the descriptions." I respect the ability of the trial court to make determinations of this sort. However, as the majority notes, Wojowski gave nearly identical testimony at each hearing. Thus, I do not believe that the trial court should have departed from its finding that Wojowski lacked probable cause to stop the defendant, and consequently, do believe it should have granted the defendant's petition to rescind the statutory summary suspension of his license. As matters now stand, defendant's license has been statutorily suspended for failure to agree to a breathalyzer test required in conjunction with a traffic stop that should never have been made, for a violation that has not been prosecuted and of which defendant has never been convicted. Nonetheless, given the majority's correct conclusion that the defendant filed his notice of appeal prematurely, I join in their determination that we cannot properly apply collateral estoppel to the case at bar.