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2012 IL App (3d) 110102-U

Order filed March 12, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 21 <sup>st</sup> Judicial Circuit
Plaintiff-Appellee,	)	Kankakee County, Illinois
	)	
v.	)	Appeal No. 3-11-0102
	)	Circuit No. 09-CF-253
	)	
MILTON M. CANTU,	)	Honorable
	)	Clark E. Erickson
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justice McDade concurred in the judgment.  
Justice Holdridge dissented.

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**ORDER**

- ¶ 1     *Held:*       The trial court erred by denying defendant's motion to suppress because the officers unduly prolonged the traffic stop. The trial court's ruling is reversed, and the cause is remanded to the trial court for further proceedings.
- ¶ 2     Defendant appeals his conviction for unlawful possession of a controlled substance with the intent to deliver on the grounds that the trial court should not have denied his motion to suppress evidence because the officers unduly prolonged the traffic stop and fundamentally

changed the nature of the stop. Consequently, defendant claims his encounter with the police was not voluntary at the time he gave consent to search his sister's residence, and therefore, all evidence obtained by the police at the residence should have been suppressed. We reverse the trial court's ruling denying defendant's motion to suppress evidence.

¶ 3

### FACTS

¶ 4 On May 8, 2009, a Kankakee County grand jury issued a bill of indictment charging defendant with the offense of unlawful possession of a controlled substance with the intent to deliver. On August 21, 2009, defendant filed a motion to suppress evidence claiming that he was unduly detained during a traffic stop for an improper registration on April 16, 2009, that his constitutional rights were violated, and that his consent to allow police inside his sister's residence resulted from the taint of the illegal detention.

¶ 5 On January 15, 2010, the trial court conducted a hearing on defendant's motion to suppress evidence. Defendant testified that he sometimes stayed at his sister's house located at 1489 East River Street. On April 16, 2009, defendant drove his mother's white Pontiac motor vehicle toward his sister's house. His brother was seated in the passenger seat of the vehicle. According to defendant, he saw officer Douglas sitting in the alley, apparently watching his sister's house. As he drove around the block, he saw another officer exit from a different alley. Defendant drove around the block again. At that time, officer Douglas stopped defendant at the corner of Bourbonnais and Osborn, approximately one-half block from his sister's residence.

¶ 6 Defendant asked Douglas why he stopped him. Douglas replied, "routine traffic stop," and asked defendant for his license and registration. Defendant said that he gave Douglas his license and a piece of paper showing that his mother owned the vehicle. After Douglas returned

to his vehicle, officer Joe Powers approached the Pontiac and started talking to defendant “like, normal.” Defendant said that he asked Powers “why you F’ing with me.” According to defendant, Powers told defendant to get out of the vehicle.

¶ 7 Douglas returned and told defendant the registration belonged to a van and not the Pontiac. Defendant said that the papers showed that his mother just purchased the Pontiac and that she transferred the plates from the van to the Pontiac. Defendant said that he had other papers to prove this fact in the center console of the vehicle. Defendant testified that Douglas then looked inside the Pontiac for approximately 1 or 1½ minutes without defendant’s permission.

¶ 8 After Douglas finished looking in the vehicle, defendant entered the passenger side of the Pontiac, and Powers entered the driver’s seat. According to defendant, a total of 15 minutes had elapsed at this point. While in the vehicle, defendant said that Powers kept talking about defendant selling drugs, that the police had a warrant for his sister’s house, and that the police intended to raid his sister’s house. Powers told defendant that he would not go to jail if he gave Powers the drugs. According to defendant, “that’s when I broke down and I told him, yeah, I had it there. And he was like you could take me to your sister’s house, and that’s when he entered my sister’s house.”

¶ 9 Defendant told the court that he did not feel free to leave while sitting with Powers in the Pontiac. Defendant said that he drove to his sister’s house with Powers in the passenger seat of the vehicle. After leaving his sister’s residence, defendant and Powers went to the sheriff’s department. He said that the police did not arrest him. Instead, defendant went to an office where Powers presented defendant with a completed consent to search form with the date and

time of April 16, 2009, at 21 hours, 33 minutes for defendant's signature. On cross-examination, defendant admitted he agreed to speak with Powers and was not handcuffed during his encounter with the police.

¶ 10 Carlos Lopez, defendant's brother, testified that he was with defendant on April 16, 2009, when they were stopped by the police. The officer told them that he was conducting a routine traffic stop. After being stopped, other officers arrived, and eventually, defendant got out of the vehicle. Later, one of the officers told Lopez to get out of the vehicle. Lopez stated that after being patted down, the officer searched the seats and rear console of the vehicle while he was standing outside. After this search, defendant and one of the officers entered the vehicle and spoke inside. Lopez said that defendant and the officer then left the scene with defendant driving. Later, defendant returned to the traffic stop, still driving the motor vehicle.

¶ 11 David Douglas, a Kankakee County sheriff's deputy, testified that on April 16, 2009, he, along with officer Powers and officer Bright, participated in a surveillance operation of the residence located at 1489 East River in Kankakee, Illinois. On that evening, he observed a vehicle driven by defendant and conducted a traffic stop on the vehicle. He asked defendant for his driver's license and insurance and told defendant that he stopped defendant for a vehicle code violation. Douglas took defendant's license back to his squad car. Douglas said that his computer did not work properly when checking defendant's driver's license so he had to run the information "over the air." He stated that he ran the registration information on the vehicle more than once. While Douglas was writing a citation for a registration violation, he observed defendant and Powers walk to the rear of his vehicle. Douglas said that he was still waiting for information, such as, whether defendant had any outstanding warrants, while he wrote the

citation.

¶ 12 Before completing the citation, Douglas advised defendant of the registration discrepancy while defendant was speaking with Powers. Defendant told him that the registration papers were in the center console or the glove box. Douglas asked Lopez to exit the vehicle, patted down Lopez, and then looked in the car for the registration papers. He also obtained Lopez's identification and then searched the car for weapons, since defendant and Powers intended to sit in the vehicle. He estimated that approximately eight minutes had elapsed at this point.

¶ 13 After searching the vehicle, Douglas returned to his car to run Lopez's identification information and finish the registration citation. Later, Douglas walked to defendant's vehicle with the completed citation. At that time, Powers told him to wait one second. After waiting, Douglas told Powers, "I'm done with the citation. I says what are we doing." According to Douglas, Powers responded that he and defendant were "gonna go get cocaine." Douglas estimated that 15 to 18 minutes passed from the time of the initial stop until the time Powers left with defendant. Douglas told Lopez that he was free to leave and informed Lopez that defendant left in order to obtain registration paperwork for the vehicle.

¶ 14 The State called Joe Powers, a Kankakee County sheriff's deputy assigned to major crimes task force, who testified consistent with Douglas concerning the events on April 16, 2009. Powers testified that after Douglas stopped defendant's vehicle, Powers went to the scene and asked defendant if he could talk to him. Defendant said, "yes, Joe, I'll talk to you." Defendant did not want to speak to Powers outside the car because his brother could overhear the conversation. Consequently, Douglas searched the Pontiac so that defendant and Powers could speak inside the car. Once inside the Pontiac, Powers told defendant that Powers knew

defendant was selling drugs. Defendant told him that he did not have any drugs in the car but admitted "it's at my sister's house – or auntie's house on \*\*\* 1489 River Drive – or East River." Defendant agreed to take Powers, and only Powers, to the residence. Defendant drove Powers to the residence, but Bright followed. After arriving at the house, Powers went inside the house with defendant, who retrieved a black duffle bag containing cocaine and a scale. Powers returned to the scene of the traffic stop with defendant and delivered the cocaine to Douglas. Defendant drove the Pontiac to the sheriff's department where Powers took a statement from defendant and gave defendant a consent to search form to sign.

¶ 15 On March 12, 2010, the parties appeared before the court for a ruling on defendant's motion to suppress evidence. The court stated that although the traffic stop was pretextual, there was probable cause for the stop. The court found that defendant's conversation with officer Powers was a consensual encounter that resulted in defendant's consent to search the nearby residence. The court found that the time of the initial stop until the time when defendant agreed to speak with Powers was reasonable and denied defendant's motion to suppress evidence.

¶ 16 Following a stipulated bench trial held on December 20, 2010, the court found defendant guilty of the offense of unlawful possession of a controlled substance with the intent to deliver. On February 8, 2011, the trial court sentenced defendant to 10 years imprisonment.

¶ 17 Defendant filed a timely notice of appeal.

¶ 18 ANALYSIS

¶ 19 On appeal, defendant contends the trial court erred by denying defendant's motion to suppress evidence because the duration of the stop was unreasonable, the officers' actions fundamentally altered the purpose of the traffic stop, and defendant's interaction with Powers was

involuntary, resulting in an unlawful consent to search. The State responds that the trial court properly denied defendant's motion to suppress.

¶ 20 A circuit court's ruling on a motion to suppress involves mixed questions of law and fact. Findings of fact made by the circuit court are given great deference and will be upheld on review unless such findings are against the manifest weight of the evidence. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). However, we review *de novo* the ultimate question of a defendant's legal challenge to the denial of his motion to suppress. *People v. Lee*, 214 Ill. 2d 476, 483-484 (2005); *People v. Pitman*, 211 Ill. 2d 502, 512 (2004); *People v. Sorenson*, 196 Ill. 2d at 431 (citing *In re G.O.*, 191 Ill. 2d 37, 50 (2000)).

¶ 21 On appeal, defendant agrees that Douglas "initially" conducted a pretextual but, nonetheless, lawful traffic stop of defendant. Defendant argues that the police fundamentally changed the nature of the stop and continued the traffic stop for an unreasonable amount of time which rendered defendant's consent to search the nearby residence involuntary.<sup>1</sup> The trial court found the duration of the traffic stop was not unreasonable and defendant's conversation with Powers involved a consensual encounter. We disagree.

¶ 22 The case law provides that a consensual encounter following an initial traffic stop cannot begin until the traffic stop ends. See *People v. Cosby*, 231 Ill. 2d 262 (2008); *People v. Roa*, 398 Ill. App. 3d 158 (2010). Douglas testified that after searching the vehicle so that Powers and defendant could speak inside the Pontiac, Douglas returned to his car to finish writing defendant's traffic citation. Consequently, defendant's traffic stop was ongoing as Powers spoke

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<sup>1</sup> The fundamental nature of the stop analysis has been overruled by our supreme court and the United States Supreme Court. *People v. Harris*, 228 Ill. 2d 222, 240-44 (2008); See *Illinois v. Caballes*, 543 U.S. 405 (2005); *Muehler v. Mena*, 544 U.S. 93 (2005).

to defendant in the Pontiac.

¶ 23 Next, we consider whether the duration of the entire traffic stop was reasonable. When making such a determination, a reviewing court should examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly. See *U.S. v. Place*, 462 U.S. 696, 709 (1983); *Florida v. Royer*, 460 U.S. 491, 500 (1983).

¶ 24 While Douglas was investigating the registration violation, Douglas also searched the interior of the Pontiac for weapons so that Powers could safely converse with defendant inside the vehicle and searched Lopez's person. By the time Douglas completed the precautionary search of the vehicle and Lopez's person and completed the registration investigation, more than 15 minutes had elapsed. When Douglas approached defendant to deliver the completed traffic citation, Powers indicated that he wanted additional time to speak with defendant, and then Powers and defendant left the traffic stop to "go get cocaine." It is clear from this record that Douglas delayed the delivery of the citation to defendant to allow Powers to continue to speak with defendant and then retrieve cocaine from another location.

¶ 25 Based upon this record, we conclude that the officers knowingly, intentionally, and unduly prolonged defendant's traffic stop beyond the time necessary to complete the traffic citation. Accordingly, the trial court should have granted defendant's motion to suppress the evidence seized.

¶ 26 CONCLUSION

¶ 27 The judgment of the circuit court of Kankakee County is reversed, and the cause is remanded to the trial court for further proceedings.

¶ 28 Reversed and remanded.



¶ 29 JUSTICE HOLDRIDGE, dissenting:

¶ 30 I respectfully dissent. In my view, the evidence in this case does not suggest that officers Douglas and Powers unreasonably delayed the traffic stop in order to obtain incriminating evidence against the defendant. I recognize that a traffic stop justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is "prolonged beyond the time reasonably required to complete that mission." *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). However, there is no "talismatic" period of time beyond which an initially-justified traffic stop becomes an unreasonable seizure under the fourth amendment. *People v. Koutsakis*, 272 Ill. App. 3d 159, 163 (1995). The brevity of the stop is an important factor when determining whether the stop is reasonable (*id.* at 163-64), and courts must consider the purpose to be served by the stop as well as the time reasonably needed to effectuate those purposes (*id.* at 164) as an officer's authority to investigate a traffic violation "may not become a subterfuge in order to obtain other evidence merely based on the officer's suspicion." *Id.*

¶ 31 In this case, the traffic stop lasted between 15 and 20 minutes. During that time period, Douglas: (1) spoke to the defendant; (2) called police dispatch and asked them to run checks on the defendant's driver's license and on the license plate of the Pontiac Grand Am the defendant was driving; (3) exited his squad car and asked the defendant why the license plate on the Pontiac was registered to a van owned by Delia Cantu; (4) searched the Pontiac for the vehicle registration papers; (5) returned to his squad car, called dispatch, and asked them to run checks on the van and on the VIN of the Pontiac to make sure that the car or plates were not stolen (a process which Douglas testified "took some time"); (6) returned to the Pontiac, ordered Lopez to step out of the car, and frisked him; (7) searched the passenger area of the Pontiac for weapons;

and (8) wrote a traffic citation. Fifteen to twenty minutes is not an unduly long period of time to complete those multiple tasks. See, e.g., *People v. Staley*, 334 Ill. App. 3d 358, 368 (2002) (traffic stop lasting "somewhat more than 18 minutes" was not unreasonably long where the police officer confirmed the status of the defendant's drivers license and her license plate registration and wrote two traffic citations during that time period).

¶ 32 Moreover, there is no evidence that Douglas or Powers prolonged the traffic stop in an attempt to obtain incriminating evidence. Before Douglas had finished writing the citation, Powers initiated a conversation with the defendant during which he told the defendant that the police knew he was selling drugs and urged the defendant to confess. As the defendant concedes, it was not improper for Powers to ask the defendant about potential narcotics offenses during the traffic stop as long as the questioning did not "unreasonably prolong the duration of the stop." *People v. Salinas*, 383 Ill. App. 3d 481, 498-99 (2008); see also *People v. Harris*, 228 Ill. 2d 222, 242-43 (2008) ("During a lawful seizure, \*\*\* police may ask questions unrelated to the original detention and are not required to form an independent reasonable suspicion of criminal activity before doing so"). The police officers did not unreasonably prolong the traffic stop in this case. By the time Douglas had finished writing the traffic citation, the defendant had already admitted that he had cocaine at his sister's house and had given Powers verbal consent to search the house. There is no evidence that Douglas dragged his feet in writing the citation while the defendant spoke with Powers.

¶ 33 The majority places great emphasis on the fact that Douglas momentarily delayed the delivery of the completed traffic citation to the defendant so that Powers and the defendant could finish their conversation. However, this delay was very brief, and, more importantly, it occurred

*after* the defendant confessed and gave Powers consent to search the house. That distinguishes this case from cases wherein we have found that a traffic stop was unreasonably prolonged in order to obtain incriminating evidence. See, *e.g.*, *People v. Baldwin*, 388 Ill. App. 3d 1028, 1034-35 (2009) (duration of traffic stop held unreasonable where officer prolonged stop approximately nine and one half minutes after he decided not to give the defendant a ticket by questioning defendant and calling for a drug-sniffing dog); *Koutsakis*, 272 Ill. App. 3d at 164 (duration of detention held unreasonable where officer detained the defendant for several minutes after writing the warning ticket while waiting for another officer to arrive with a drug-sniffing dog).

¶ 34 In my view, the evidence in this case establishes that Douglas and Powers detained the defendant for no longer than it took to issue a valid traffic citation and to complete other legitimate tasks incident to a reasonable and lawful traffic stop. Moreover, even assuming *arguendo* that the momentary delay in delivering the citation was improper, it occurred after the defendant confessed and gave the police consent to search his sister's house. Accordingly, those statements were made during the course of a legitimate traffic stop and should not be suppressed.