2011 IL App (3d) 110138-U

Order filed November 3, 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-Appellant,	)	
v.	)	Appeal No. 3-11-0138 Circuit No. 10-DT-489
AARON WALKER,	)	Honorable Carmen Goodman,
Defendant-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: In a case in which the defendant was stopped in a roadside safety check and was subsequently arrested for driving under the influence of cannabis, the circuit court granted the defendant's motion to quash arrest and suppress evidence after finding that the officer lacked probable cause to arrest. The appellate court reversed, holding that the totality of the circumstances at the time of the arrest indicated that the officer did in fact have probable cause to arrest.

¶ 2 The defendant, Aaron Walker, was charged with driving under the influence (625 ILCS 5/11-501(a)(6) (West 2010)). He filed a motion to quash arrest and suppress evidence, which the circuit court granted after a hearing. On appeal, the State argues that the circuit court erred when

it granted the motion. We reverse and remand.

¶ 3 FACTS

¶ 4 The defendant was charged with driving under the influence of cannabis pursuant to section 11-501(a)(6) of the Illinois Vehicle Code, which prohibits a person from driving or being in actual physical control of a vehicle if "there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis." 625 ILCS 5/11-501(a)(6) (West 2010).[1] Trooper Grant Carrolan stated in his report that he "smelled strong odor of cannabis emitting from the vehicle and driver stated he smoked cannabis two hours prior to the stop."

¶ 5 On December 23, 2010, the defendant filed a motion to quash arrest and suppress evidence, which alleged that Carrolan lacked probable cause to arrest the defendant. On January 25, 2011, the circuit court held a hearing on the motion.

¶ 6 Carrolan testified at the hearing that he had been a trooper with the Illinois State Police since November 2009. He and several other officers were conducting roadside safety checks on the night of March 13, 2010. Carrolan signaled the defendant to drive into the safety check. Carrolan obtained a license and proof of insurance from the defendant, but smelled an odor of

[1] The defendant initially received a ticket on March 13, 2010, for driving under the influence of cannabis pursuant to section 11-501(a)(4) of the Illinois Vehicle Code, which prohibits a person from driving or being in actual physical control of a vehicle while under the influence of any drug, other than alcohol, or combination of drugs such that the person is incapable of driving safely. 625 ILCS 5/11-501(a)(4) (West 2010). On July 22, 2010, the charge was changed via information to allege a violation of section 11-501(a)(6).

burnt cannabis coming from the vehicle. Carrolan had been trained to recognize the smell of cannabis. He asked the defendant about the smell, and the defendant replied that he had smoked cannabis in the vehicle two hours earlier. Carrolan also observed that the defendant had "glossy" and bloodshot eyes, had slurred speech, and appeared to be sleepy. Based on these observations, Carrolan, who had arrested individuals in the past for driving under the influence of cannabis, arrested the defendant.[2]

¶ 7 At the close of the hearing, the circuit court ruled that Carrolan lacked probable cause to arrest the defendant, stating the following:

> "And -- I am going to tell you what, I have a problem with this. He is being charged with driving under the influence of drugs, just like driving under the influence of alcohol for the safety of -- that your -- that he was arrested for that. And all the elements have to fit. What -- this is a motion not only to suppress evidence, which we really don't have, but to quash the arrest.
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> * * *
>
> Officer, we do know, goes back and forth to his vehicle. The defendant produces a valid license and proof of insurance. And he continues to ask him more questions about -- because he says he smells this cannabis while this other individual is sitting in the car and defendant was to say I smoked some cannabis, that we don't -- after a search incident to the arrest, after the defendant was placed

[2] No field sobriety tests were performed; Carrolan testified that he had been trained in field sobriety tests to determine alcohol impairment, not drug impairment. Also, a search incident to arrest was conducted, but nothing illegal was found.

> under arrest, was never found within the interior of the vehicle. That there is no indication, too, that he had a problem driving to the roadside safety check, that he observed him violating any of the traffic violations.
>
> He indicates that he had no active warrants, he had a valid license and proof of insurance. But whatever occurred was based on this one statement, and he didn't ask him in proximity of time that he was [*sic*] supposedly smoked it. There was no field sobriety tests taken to determine that third element of driving under the influence of alcohol."

Thus, the court granted the defendant's motion to quash arrest and suppress evidence.

¶ 8 Thereafter, the State filed a certificate of substantial impairment and appealed the circuit court's decision.

¶ 9 ANALYSIS

¶ 10 On appeal, the State argues that the circuit court erred when it granted the defendant's motion to suppress.

¶ 11 On appeal from a circuit court's ruling on a motion to suppress, we employ a two-part standard of review. *People v. McDonough*, 239 Ill. 2d 260, 265-66 (2010). First, because "the circuit court is in a superior position to determine and weigh the credibility of the witnesses, observe witnesses' demeanor, and resolve conflicts in their testimony," we review the court's findings of historical fact under the manifest weight of the evidence standard. *McDonough*, 239 Ill. 2d at 266. Second, because we are "free to undertake [our] own assessment of the facts in relation to the issues presented and may draw [our] own conclusions when deciding what relief should be granted," we review the court's ultimate legal ruling on the motion under the *de novo*

standard. *McDonough*, 239 Ill. 2d at 266.

¶ 12 "Probable cause to arrest exists where the facts and circumstances known to the police officer at the time of the arrest are sufficient to warrant a person of reasonable caution to believe that an offense had been committed and that the offense was committed by the person arrested." *People v. Sims*, 192 Ill. 2d 592, 614 (2000). "Although a 'mere suspicion' that the person arrested has committed the offense is an insufficient basis for arrest [citations], evidence sufficient to convict is not required [citations]." *People v. Lippert*, 89 Ill. 2d 171, 178 (1982); see also *Sims*, 192 Ill. 2d at 614-15 (noting that "the evidence relied upon by the arresting officers does not have to be sufficient to prove guilt beyond a reasonable doubt").

¶ 13 After reviewing the totality of the circumstances in this case as they existed at the time of the arrest, we hold that Carrolan in fact had probable cause to arrest the defendant for driving under the influence of cannabis. While Carrolan had only been on the job for several months at the time of the incident in question, he was trained in recognizing the odor of cannabis and had arrested individuals in the past for driving under the influence of cannabis. Here, Carrolan testified that he arrested the defendant because: (1) an odor of cannabis was emanating from the vehicle; (2) the defendant admitted he smoked cannabis in the vehicle two hours earlier; and (3) he observed that the defendant had glossy and bloodshot eyes, had slurred speech, and appeared to be sleepy. Under these circumstances, we hold that Carrolan had probable cause to arrest the defendant based on the reasonable belief that a crime had been committed. See *People v. Lee*, 214 Ill. 2d 476, 484 (2005) ("[t]he determination of whether police had probable cause to arrest focuses on the factual considerations upon which reasonable and prudent people, not legal technicians, act").

¶ 14 Lastly, we note that our decision in this case is not to be construed as a conclusive determination at trial that the defendant in fact violated section 11-501(a)(6) of the Code.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of Will County is reversed and the case is remanded for further proceedings.

¶ 17 Reversed and remanded.