2012 IL App (3d) 110338-U

Order filed April 6, 2012

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 14th Judicial Circuit,
Plaintiff-Appellant,	)	Henry County, Illinois,
	)	
v.	)	Appeal No. 3-11-0338
	)	Circuit No. 10-CF-287
THOMAS S. BRENNAN,	)	
	)	Honorable
Defendant-Appellee.	)	Jeffrey W. O'Connor,
	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's motion to suppress should have been denied because (1) defendant's vehicle was properly stopped for speeding; (2) the post-stop seizure of defendant and the driver was supported by reasonable suspicion; and (3) the search of the vehicle was conducted pursuant to valid consent.

¶ 2 Defendant, Thomas S. Brennan, was charged with controlled substances trafficking (720 ILCS 570/401.1(a) (West 2010)), unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(a)(7.5)(D) (West 2010)), and unlawful possession of a controlled substance (720

ILCS 570/402(a)(7.5)(D) (West 2010)). Defendant filed a motion to suppress, which was granted by the trial court. The State appeals, arguing that: (1) the cause should be remanded for new proceedings due to the participation of an attorney not licensed in Illinois; and (2) the motion to suppress should not have been granted because: (a) defendant and the driver consented to the encounter; (b) the police had probable cause to search the vehicle; or (c) the police had reasonable suspicion to conduct a further investigation. We decline to remand the cause pursuant to the State's first argument. However, we do find that the police acted within their constitutional power at all points during their encounter with defendant and the driver, and therefore defendant's motion to suppress should have been denied.

¶ 3 FACTS

¶ 4 Following a traffic stop, defendant was charged with controlled substances trafficking (720 ILCS 570/401.1(a) (West 2010)), unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(a)(7.5)(D) (West 2010)), and unlawful possession of a controlled substance (720 ILCS 570/402(a)(7.5)(D) (West 2010)). On September 1, 2010, attorney Nino Tinari filed an appearance on behalf of defendant, which was followed by an appearance filed by Steve Hanna on September 9, 2010. Defendant then filed a motion to suppress. A hearing on defendant's motion was held on January 6, 2011.

¶ 5 At the hearing, the State called Sergeants Floyd Blanks and Clint Thulen of the Illinois State Police. Blanks testified that on August 22, 2010, he was on patrol and spotted a blue pickup truck with a camper shell passing a tractor-trailer on Interstate 80. Suspicious that the vehicle was traveling over the 65 mile-per-hour speed limit, Blanks activated his radar, which indicated that the vehicle was traveling 73 miles per hour. Blanks turned on the video camera in his car and proceeded

to stop the vehicle for a speeding violation.

¶ 6 After observing that the vehicle had a California license plate, Blanks approached the driver of the vehicle, Robert Huckel, and asked for his identification. Defendant, who was in the passenger seat, told Blanks that he was the owner of the vehicle. Defendant also gave Blanks his driver's license. Blanks returned to his vehicle with the documents and called in to the police dispatcher, who informed him that both Huckel and defendant had drug-related criminal histories in New Jersey. While still in his vehicle, Blanks detected an odor of cannabis emanating from Huckel's driver's license. He relayed his discovery to Thulen, who had arrived at the scene while Blanks was checking the documents.

¶ 7 Blanks asked Huckel to step out of his vehicle and meet him at the back of the truck. While they talked, Thulen stood next to the driver's side door of the truck and talked to defendant. Huckel told Blanks that they were in the process of moving defendant out of a townhouse in New Jersey that he had shared with a former girlfriend. Blanks informed Huckel that he was going to give him a warning for his speeding. He then handed Huckel the warning and the documents.

¶ 8 Immediately after handing back the documents, Blanks said, "Got a question *** I can smell, a little bit of marijuana on your license here *** I'm gonna ask you something. Is there anything illegal in the vehicle?" Blanks testified that at this point, Huckel was not free to leave. Huckel said, "No, sir." Blanks then pointed to the back compartment and asked what was in there. Huckel responded that he had one bag in the vehicle and that defendant just had some clothes. Without further prompting, Huckel said "I can get the key if you'd like." Blanks responded, "Would you please. Thank you. It's no problem." Once Huckel returned with the key, Blanks said, "I appreciate it, you don't have to." Huckel replied that it was "no problem at all." After Huckel opened the back

compartment, Blanks asked if he could search within the truck, and Huckel consented. Huckel and defendant were then escorted away from the truck, and Blanks began his search.

¶ 9 Blanks testified that he detected an odor of marijuana once Huckel opened the back compartment of the vehicle. Upon a search of Huckel's bag, Blanks found two canisters that appeared to have contained marijuana. Thulen joined the search after having a conversation with Huckel and defendant. He informed Blanks that defendant had also verbally consented to a search of the vehicle, and noted that the vehicle was traveling from an area of California known as the triangle, where high grade marijuana is grown. The officers used a density meter on the spare tire located underneath the body of the vehicle, and the meter indicated the presence of something inside. The officers looked inside the tire and found plastic bags containing 16 kilos (35 pounds) of methylenedioxymethampnetamine (MDMA). Huckel and defendant were arrested.

¶ 10 Following the officers' testimony, the trial court asked the parties to brief the question of whether the smell of drugs emanating from a document, but not from within the vehicle, would give an officer probable cause to search the vehicle. It also asked Tinari, whom the trial court knew was from the Philadelphia area, if he was licensed to practice law in Illinois. He said that he was not. At that point Hanna told the court that he was acting as local counsel. Both Hanna and Tinari informed the court that they believed they had already filed a Rule 707 motion to allow Tinari to appear *pro hac vice*. The court noted that it did not see a 707 motion in the file; however, it did state that it would grant the motion.

¶ 11 After the parties briefed the trial court's question, the court adopted the factual statements and conclusions of law contained in defendant's brief and granted the motion to suppress. The State appeals.

¶ 12 ANALYSIS

¶ 13 I

¶ 14 The State first argues that the cause must be remanded for new proceedings due to the participation of an attorney not licensed in the state of Illinois. Pursuant to section 1 of the Attorney Act (705 ILCS 205/1 (West 2010)) and Illinois Supreme Court Rule 707 (eff. July 1, 2007), an attorney licensed to practice law in another state may not practice law in Illinois absent leave of court. See *Lozoff v. Shore Heights, Ltd.*, 35 Ill. App. 3d 697 (1976). Generally, where one not licensed to practice law has instituted legal proceedings on behalf of another, the suit should be dismissed. *Ratcliffe v. Apantaku*, 318 Ill. App. 3d 621 (2000). However, courts have found that reversal is not warranted under unique circumstances or where dismissal of a claim does not comport with the purpose of the rule. See *Janiczek v. Dover Management Co.*, 134 Ill. App. 3d 543 (1985).

¶ 15 In this case, it is undisputed that the trial court knew that Tinari was an attorney from the Pennsylvania and was not licensed in Illinois. Further, it is clear from the record that the court addressed the issue with Tinari and his local counsel, Hanna. Tinari and Hanna informed the court, incorrectly, that they had already filed a motion to allow Tinari to appear *pro hoc vice*. Although the court did not see the motion in the file, it stated that it would grant the motion. Therefore, the mistake was merely clerical. Tinari's status and participation was made apparent to the court and accepted by it. We find that remanding the cause for new proceedings would be a waste of judicial resources and would not serve the purpose of the rule prohibiting participation from those not licensed in Illinois. Thus, we decline the State's invitation to remand the cause due to Tinari's participation.

¶ 16 II

¶ 17 The State next argues that defendant's motion to suppress should not have been granted. We review a trial court's ruling on a motion to suppress evidence pursuant to a two-part test. *People v. Absher*, 242 Ill. 2d 77 (2011). First, we will uphold the court's factual findings unless they are against the manifest weight of the evidence. *Id*. Second, we assess the established facts in relation to the issues presented and review the ultimate legal question of whether suppression is warranted *de novo*. *Id*.

¶ 18 The fourth amendment of the United States Constitution and article I, section 6 of the Illinois Constitution protect citizens from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Based on these provisions, police officers are required to obtain a warrant, supported by probable cause, before they may search persons or property. *People v. James*, 163 Ill. 2d 302 (1994). However, there are exceptions to this rule. Under the automobile exception, law enforcement officers may undertake a warrantless search of a vehicle if there is probable cause to believe that the automobile contains evidence of criminal activity that the officers are entitled to seize. *Id*. Further, a search may be legally conducted without a warrant or probable cause if there is voluntary consent. *People v. Plante*, 371 Ill. App. 3d 264 2007). In order to be voluntary, the consent must be freely given without duress or coercion. *Id*.

¶ 19 In this case, we hold that the officers' actions were supported by sufficient cause during the initial stop, the post-stop seizure, and the search of the vehicle.

¶ 20 A. Initial Stop

¶ 21 It is undisputed that Huckel and defendant were properly pulled over pursuant to a lawful traffic stop. It is also undisputed that the officer returned Huckel's information and gave him a warning prior to asking him about the odor of cannabis on his license. Because the traffic stop ended

when the officer returned Huckel's information and gave him a warning, the focus of our analysis must be on the officer's post-stop actions. See *People v. Davenport*, 392 Ill. App. 3d 19 (2009).

¶ 22 B. Post-Stop Seizure

¶ 23 The United States Supreme Court has held that a person is seized when an officer restrains that person's movement by physical force or a show of authority. *United States v. Mendenhall*, 446 U.S. 544 (1980). The Court further held that a person is seized when, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. *Id.* Examples of circumstances that might indicate seizure, even where the person did not attempt to leave, include but are not limited to: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the citizen; or (4) the use of language or tone of voice indicating that compliance with the officer's request might be compelled. *Id*.

¶ 24 Here, following the conclusion of the traffic stop, Huckel would not have believed that he was free to leave due to the officer's questioning, his tone of voice, and the fact that he was standing at the rear of defendant's vehicle with an officer blocking the driver's side door. Further, the officer testified that when he asked Huckel about the odor, Huckel was in fact not free to leave. Therefore, we conclude that a subsequent seizure had occurred.

¶ 25 C. Reasonable Suspicion

¶ 26 Having found that Huckel and defendant were seized anew, the next question is whether that subsequent seizure was lawful. The Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968), found that it is in the public interest to allow police officers a limited ability to seize individuals for an investigatory stop. Thus, an initial stop may be broadened into an investigative detention. *People*

v. Ruffin, 315 Ill. App. 3d 744 (2000). Such seizures need not be supported by probable cause, so long as an officer has reasonable suspicion based upon specific and articulable facts that a person has committed, or is about to commit a crime. *People v. Brownlee*, 186 Ill. 2d 501 (1999). Mere hunches and unparticularized suspicions are not enough to justify a broadening of the stop into an investigatory detention. *Ruffin*, 315 Ill. App. 3d 744.

¶ 27 In this case, the officer's suspicion was based on the following: (1) Huckel's driver's license smelled like cannabis; (2) the vehicle was traveling from an area in California known for growing drugs; and (3) both occupants of the vehicle had drug-related criminal histories. We believe that the smell of cannabis on Huckel's driver's license, when combined with the other factors, was enough to raise the officer's suspicion from a mere hunch to a reasonable suspicion. Therefore, we find that the seizure of Huckel and defendant after the initial stop had concluded was lawfully based on reasonable suspicion, and that Huckel was lawfully seized when he gave consent to search.

¶ 28 D. Consent

¶ 29 1. Authority to Consent

¶ 30 The next question is whether the search was conducted pursuant to a valid consent. We note that it was Huckel and not defendant who gave the initial consent to search, even though the vehicle was owned by defendant. However, the driver of a vehicle has the authority to consent to the search of a vehicle because he has immediate possession and control of the entire vehicle. *People v. Sanchez*, 292 Ill. App. 3d 763 (1997). This is true even when the owner of the vehicle is present and does not object to the search. *Id*. Here, because Huckel was driving and defendant did not object to the search, Huckel's consent was appropriate.

¶ 31 2. Scope of Consent

¶ 32 Having concluded that the consent to search the vehicle was given by one with authority to consent, our final inquiry is whether the officers exceeded the scope of the consent. When the police rely upon consent as the basis for a warrantless search, they have no more authority than they have apparently been given by the voluntary consent of the defendant. *People v. Baltazar*, 295 Ill. App. 3d 146 (1998).

¶ 33 The standard for measuring the scope of a suspect's consent is that of objective reasonableness, which requires consideration of what a typical reasonable person would have understood by the exchange between the officer and the suspect. *Id*. By stating the intended object of the search either directly or by revealing a suspicion of specific criminal activity, a police officer both apprises the suspect that his constitutional rights are being impacted, and he informs the suspect of the reasonable parameters of his inquiry. *Id*. Therefore, an officer may search smaller containers found inside the larger area being searched if it would be objectively reasonable to find the stated object of the search in the container. *Id*.

¶ 34 Based on our review of the traffic stop, we believe that the officers did not exceed the scope of the consent given by Huckel or defendant. Neither Huckel nor defendant limited the search of the vehicle to a certain area or certain items. Further, the officer made it clear that they were searching for drugs when he referred to the smell of cannabis on Huckel's driver's license. Based on the intent of the search, it was objectively reasonable to believe that drugs could be found in the bag and the spare tire. However, we do note that even if the search of the spare tire did not fall within the scope of Huckel and defendant's consent, that search was appropriate because once the officers detected an odor of marijuana and found the two canisters in the bag, probable cause was established. See *People v. Stout*, 106 Ill. 2d 77 (1985).

¶ 35 CONCLUSION

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

¶ 37 Reversed and remanded.