2015 IL App (3d) 140945-U

Order filed August 26, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

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. 3-14-0945 Circuit Nos. 13-DT-1074 and 13-TR-58351
CARRIE L. NARBONE,	)	Honorable David M. Carlson,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court erred in granting defendant's motion to quash arrest and suppress evidence where the evidence obtained at hearing justified a reasonable belief that defendant was driving under the influence.

¶ 2 Defendant, Carrie L. Narbone, was charged with two counts of driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2010)). Defendant filed a motion to quash arrest and suppress evidence. The State filed an interlocutory appeal and certificate of

impairment (Ill. S. Ct. R. 604(a) (eff. Feb. 6, 2013)) from the circuit court's order granting defendant's motion. We reverse and remand.

¶ 3 FACTS

¶ 4 Police Officer Napoleon of the Steger police department was the sole witness at the hearing on defendant's motion to quash arrest and suppress evidence. Napoleon testified that on July 31, 2013, he was operating stationary radar when he observed defendant's vehicle traveling at 52 miles per hour in a 30-miles-per-hour zone. Napoleon effectuated a traffic stop, approached the vehicle, and asked defendant for her identification. Napoleon observed that defendant was "irate" and had tears in her eyes. Napoleon noticed the odor of alcohol emitting from the vehicle and from defendant's breath. He also noted that defendant's eyes were red and watery and that her speech was slightly slurred. Napoleon asked defendant if she had anything to drink, and she responded that she had just left work from a bar in South Chicago Heights.

¶ 5 Napoleon asked defendant to exit the vehicle so he could investigate further. He asked defendant if he could perform some tests to determine her driving ability to which defendant stated, "I'm fucked." Napoleon asked why she said that and defendant answered, "[B]ecause I'm fucked and I'm going to be over." Napoleon stated that defendant then said, "[P]lease don't tow my mom's car. You can arrest me, but please don't tow my mom's car." Defendant got out of the vehicle using the door for balance and then walked slowly toward the rear of the vehicle.

¶ 6 Napoleon administered a horizontal gaze nystagmus (HGN) test on defendant. He asked defendant to stand with her legs straight and her arms at her sides. Napoleon stated that defendant failed the test "based on the cues," which indicated to him that she was under the influence of alcohol. Napoleon next administered the walk and turn test. Defendant walked correctly in one direction, but did not pivot correctly at the end. Defendant also raised her arms

for balance while walking back. Napoleon determined that she failed the test. Napoleon then had defendant perform the one-leg-stand test, which she passed.

¶ 7 Napoleon offered defendant a portable Breathalyzer test (PBT). Defendant responded, "I'm going to be over anyway, I'm not blowing." Napoleon explained to defendant that he believed she was under the influence based on his observations. Defendant said, "[P]lease don't tow my mom's car, I'm over the limit but I'm not blowing, just arrest me, my mom needs to go to work in the morning." Napoleon placed defendant under arrest for DUI.

¶ 8 Following the arrest, defendant submitted to a chemical test. The test disclosed a blood alcohol concentration (BAC) of 0.192.

¶ 9 After hearing the above evidence, the circuit court granted defendant's motion in part by suppressing everything after the arrest. The court said that the officer had every right to pull defendant over for speeding and had a right to take her out of the car after he smelled alcohol, but granted the motion in part based on the field sobriety tests.[1] Specifically, the court stated:

> "I am going to grant the motion in part. Everything after the arrest is suppressed. She had–the officer had every right to pull her over for speeding. *** I believe he had a right to take her out of the car after the smell of alcohol. Based upon the field sobriety tests, however, that's why I am granting the motion in part after the arrest."

¶ 10 The State filed a motion to reconsider. The court upheld the motion to quash, stating in pertinent part:

[1] The sole issue on appeal is the suppression of evidence. The parties do not contest the circuit court's findings regarding the traffic stop or the officer's order that defendant step out of the vehicle.

"Quite frankly that's why I granted the motion to suppress was because [the officer] did testify credibly and that he did go through the field sobriety tests, and I think taking into consideration the totality of the circumstances while I find it absolutely reasonable for him to stop her, I think [defense counsel] is right. I think he, you know, the officer had he wanted to could have further investigated particularly as it related to the field or the [*sic*] what does she mean by I'm fucked. It could mean she's got a bad driving record. It could be all sorts of things.

* * *

*** I believe the facts presented at the hearing again taking into consideration the totality of all the circumstances including but not limited to the lack of any indicia of impairment, that's really what it comes down to because obviously to find probable cause for a DUI arrest the arrest has to have some sort of–you have to show impairment. *** We have no indicia of impairment even at the motion to suppress that or hearing, so for that reason I'm going to deny it."

¶ 11 The circuit court's ruling effectively suppressed evidence that after defendant was arrested she submitted to a chemical test and that test disclosed a BAC of 0.192. The State now appeals from the circuit court's suppression order.

¶ 12 ANALYSIS

¶ 13 The State's sole argument on appeal is that the circuit court erred in granting defendant's motion to quash arrest and suppress evidence, which had the effect of suppressing all evidence after defendant's arrest, including the results of defendant's chemical test. Because the record clearly establishes that Napoleon had probable cause to arrest defendant for DUI, we reverse the judgment of the circuit court and remand for further proceedings.

¶ 14 We review a trial court's ruling on a motion to quash an arrest pursuant to a two-part test. *People v. Jones*, 215 Ill. 2d 261, 267-68 (2005). First, we will uphold the court's factual findings and credibility determinations 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 trial court's ultimate legal rulings *de novo*. *Id.* at 268.

¶ 15 "Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *People v. Wear*, 229 Ill. 2d 545, 563 (2008). The existence of probable cause is based on the totality of the circumstances at the time of the arrest. *Id.* at 564.

¶ 16 The only evidence offered at the hearing for the motion to quash and suppress was the testimony of Napoleon, which the circuit court expressly found to be credible. We do not find any manifest error in this determination, and therefore, we defer to the court's credibility finding. See *People v. Ceja*, 204 Ill. 2d 332, 347 (2003) (when confronted with a finding regarding a witnesses' credibility, a court of review should defer to the circuit court's credibility finding absent manifest error).

¶ 17 Here, the evidence presented at trial showed that defendant: (1) had a strong odor of alcohol emanating from her vehicle and her breath; (2) had slightly slurred speech; (3) had red, watery eyes; (4) told the officer "I'm fucked" when he asked her to perform some field sobriety tests; (5) used the door for balance in exiting the vehicle; (6) failed the HGN test; (7) failed the walk and turn test; and (8) when asked to take a PBT responded, "I'm going to be over anyway, I'm not blowing" and "please don't tow my mom's car, I'm over the limit but I'm not blowing, just arrest me, my mom needs to get to work in the morning." Based on this evidence, we conclude

there was probable cause to arrest defendant, as a reasonably cautious person would have thought defendant was operating her vehicle under the influence of alcohol.

¶ 18 In coming to this conclusion, we reject defendant's reliance upon the alleged fact that "there was nothing about the defendant's driving that would have indicated to [Napoleon] that she was under the influence of alcohol." Even if we were to accept defendant's argument, the evidence discovered subsequent to the stop justified a reasonable belief that defendant was driving under the influence of alcohol. *People v. Kennedy*, 144 Ill. App. 3d 4 (1986) (holding that material evidence of intoxication discovered after a stop for speeding justified a reasonable belief that defendant was DUI).

¶ 19 We also reject defendant's contention that she did well on the field sobriety tests and that the circuit court came to the conclusion that she passed the tests. Again, the only evidence at the hearing came from the testimony of Napoleon, whom the circuit court found credible. Napoleon testified that defendant failed two out of the three tests. Although the circuit court said it was granting the motion "[b]ased upon the field sobriety tests," nowhere in the record did the court make an affirmative finding that defendant passed these tests. Moreover, even if we were to assume that the circuit court did, in fact, conclude that defendant passed the tests, such a finding would be against the manifest weight of the evidence as Napoleon was the only one to testify at the suppression hearing, and he testified credibly that defendant failed two of the three tests.

¶ 20 Lastly, we reject defendant's claim that Napoleon should have investigated further into the meaning of defendant's statements as the statements could have had more than one meaning and that defendant might not have known what it actually meant to "blow over." We hold these statements, when viewed in conjunction with all the other circumstances (the field sobriety tests,

defendant's statements, the odor of alcohol, and defendant's slurred speech, red eyes, and gait) establish probable cause that defendant was operating her vehicle under the influence of alcohol.

¶ 21 CONCLUSION

¶ 22 The judgment of the circuit court of Will County is reversed and remanded.

¶ 23 Reversed and remanded.