2013 IL App (4th) 120820-U

NO. 4-12-0820

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 31, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Adams County
TERRON L. CARTMILL,	)	No. 11CF702
Defendant-Appellee.	)	
	)	Honorable
	)	William O. Mays,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justice Appleton concurred in the judgment.
Presiding Justice Steigmann specially concurred.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court, concluding the trial court's factual finding defendant did not leave his vehicle unattended was not against the manifest weight of the evidence.

¶ 2 In November 2011, the State charged defendant, Terron L. Cartmill, with unlawful possession of cocaine with intent to deliver (720 ILCS 570/401(c)(2) (West 2010)). Defendant filed a motion to suppress evidence, arguing the arresting police officer did not have articulable suspicion a crime had been committed or was being committed when he stopped defendant for parking on striped lines in a parking lot and leaving the vehicle running when he exited the vehicle. In August 2012, the trial court granted defendant's motion to suppress.

¶ 3 On appeal, the State argues the trial court improperly granted the motion to suppress evidence. The State asserts the arresting officer was permitted to stop defendant

because he reasonably inferred defendant had left his vehicle unattended in violation of section 20.323 of the Quincy Municipal Code (Municipal Code) (Quincy Municipal Code § 20.323 (adopted Feb. 25, 1980)) and section 11-1401 of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-1401 (West 2010)). We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In November 2011, the State charged defendant with unlawful possession of cocaine with intent to deliver (720 ILCS 570/401(c)(2) (West 2010)). The charge resulted from a stop and a search of defendant's person.

¶ 6 A. Defendant's Motion to Suppress

¶ 7 In February 2012, defendant filed a motion "to quash arrest and suppress evidence" arguing the stop resulting in his arrest was improper. (We note the proper title for such a motion is "motion to suppress evidence." See *People v. Hansen*, 2012 IL App (4th) 110603, ¶¶ 61-63, 968 N.E.2d 164.)

¶ 8 In April 2012, the trial court's hearing on defendant's motion commenced. During opening argument, the State acknowledged the apartment complex was private and asserted "the City of Quincy does enforce parking restrictions in private areas all the time, parking lots that have no-parking areas."

¶ 9 Defendant testified, on November 10, 2011, he drove his red 2010 Dodge Charger to the 12th Street Apartments in Quincy. Defendant went there to pick up his sister. When he got to the apartment complex he got out of the car and left it running. He "was on [his] way towards the building" when he heard "Stop." He kept walking and when he heard "Stop" a second time he turned around and saw a police officer. Defendant testified he intended to go to

his sister's door, ring the doorbell, and return to his vehicle. Defendant left the vehicle running and was going to ring his sister's doorbell when the police officer told him to "stop." The officer requested identification and discovered defendant had an outstanding warrant.

¶ 10 On cross-examination, defendant testified the area he parked in was a "load and unload zone" and not a no-parking zone. He testified nobody else was in the vehicle.

¶ 11 Steve Bangert testified he is a police officer with the Quincy police department. Bangert testified he received information, via an anonymous source, an individual named "Black" was in a red vehicle and selling drugs from that vehicle on Diana Drive. Bangert proceeded to the 12th Street Apartment complex on Diana Drive, a private facility, to investigate the tip. He observed a red Charger in the parking lot "that was running parked in a area for no parking that is striped on the ground with yellow paint stripes." Bangert testified, "I exited my vehicle, and as I did so, the driver of the vehicle stepped from the vehicle. I approached this person." Defendant's vehicle was running. Bangert approached defendant and asked for a driver's license. Bangert testified he approached defendant because "[t]he vehicle was sitting running in a no-parking position. I wanted to ascertain who the person that was driving it and whether or not the vehicle was allowed to sit there running in no parking." Defendant responded he did not have a driver's license and Bangert requested an identification card. Bangert learned defendant had an outstanding arrest warrant in Missouri and arrested defendant.

¶ 12 On cross-examination, Bangert testified he parked his patrol vehicle directly behind defendant's vehicle. Defendant was in the car when Bangert pulled in behind defendant's vehicle and he had not seen defendant driving. Defendant took "[a] couple steps" after Bangert called for him to stop. Defendant replied he needed to get his sister. Defendant did not get more

than 20 or 30 feet away from the vehicle. Bangert admitted he did not observe signs indicating the area was a no-parking zone. He had not received a complaint concerning parking at the apartment complex. Bangert testified Quincy officers have ticketed vehicles left unattended and running in private driveways.

¶ 13 At the conclusion of testimony, defendant argued Bangert did not have authority to issue traffic tickets on private property. Defendant argued "if the officer had let him go into the building, then it would have been, at least, arguably, unattended, but Mr. Cartmill testified he was going up to ring the doorbell, come back."

¶ 14 In June 2012, the trial court heard additional evidence on the motion. John Steinkamp, a city engineer for Quincy, testified the apartment complex is within city limits. He was not aware whether the police department has a policy to enforce parking ordinances at the apartment complex. According to Steinkamp, the city does not maintain or make repairs to the apartment complex parking areas.

¶ 15 Bobbie Mercer, a former property manager at the apartment complex, testified the "purpose of the landing area was for loading and unloading of groceries, laundry, passengers. You were not to park for extended periods of time with an unattended vehicle." There were no "no parking" or "handicapped" signs in the area. On cross-examination, Mercer testified she had never called the police for parking problems at the complex.

¶ 16 During closing argument, the State conceded the anonymous tip was not a sufficient basis to stop defendant, but it contended Officer Bangert had reasonable suspicion upon seeing the vehicle left unattended and running in a no-parking zone.

¶ 17 B. The Trial Court's Order

¶ 18 In August 2012, the trial court entered a written order granting defendant's motion. The court found Bangert received an anonymous tip a person was selling drugs from the truck of a red vehicle parked in the parking lot at the 12th Street Apartments. Bangert observed a red vehicle in the apartment's parking lot "stopped in a striped 'loading' area." Defendant exited the vehicle and left it running with the keys in the vehicle. Bangert asked defendant to stop, which he did, and defendant "was between 3 and 20 feet from the car."

¶ 19 The trial court framed the question as whether "the officer had the reason to stop the defendant on a violation of the City of Quincy Ordinance 20.323 (unattended vehicles)." The court considered two out-of-state cases and concluded "that defendant had not gotten far enough away from the vehicle to constitute it being 'unattended.' "

¶ 20 In August 2012, the State filed a certificate of impairment and notice of appeal pursuant to Illinois Supreme Court Rule 604(a) (eff. July 1, 2006).

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 The State argues Officer Bangert was permitted to conduct an investigatory stop and request defendant's identification because he reasonably inferred defendant had left his vehicle unattended in violation of section 20.323 of the Municipal Code (Quincy Municipal Code § 20.323 (adopted Feb. 25, 1980)) and section 11-1401 of the Vehicle Code (625 ILCS 5/11-1401 (West 2010)). Additionally, the State argues (1) "even assuming defendant did not leave his vehicle unattended for purposes of the statute, Officer Bangert had the requisite reasonable articulable suspicion that defendant was about to commit the offense" as he was walking away

from his vehicle; and (2) "[i]t was reasonable for Bangert to suspect that defendant had parked in a no[-]parking zone and had therefore committed an additional traffic violation."

¶ 24 Defendant responds (1) the trial court's finding defendant was only 3 to 20 feet away from his vehicle and he did not leave his vehicle unattended was not against the manifest weight of the evidence and (2) "Bangert should have known that he did not have the authority to enforce the ordinance on private property." Further, defendant questions whether a police officer's authority under *Terry v. Ohio*, 392 U.S. 1 (1968), extends to petty offenses and ordinance violations.

¶ 25 A. Standard of Review

¶ 26 In reviewing a trial court's ruling on a motion to suppress evidence, this court applies a two-part standard of review: we will reverse factual findings only if they are against the manifest weight of the evidence; however, *de novo* review applies to the trial court's ultimate ruling of whether reasonable suspicion exists and whether suppression is warranted. *People v. Grant*, 2013 IL 112734, ¶ 12, 983 N.E.2d 1009.

¶ 27 B. The Fourth Amendment Claim

¶ 28 The fourth amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. "The 'essential purpose' of the fourth amendment is to impose a standard of reasonableness upon the exercise of discretion by law enforcement officers to safeguard the privacy and security of individuals against arbitrary invasions." *People v. McDonough*, 239 Ill. 2d 260, 266, 940 N.E.2d 1100, 1106 (2010) (quoting *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979)). "[T]he reasonableness of a particular law

enforcement practice is judged by balancing its promotion of legitimate governmental interests against its intrusion of fourth amendment interests, *i.e.*, the individual's right to personal security free from arbitrary interference by law enforcement officers." *McDonough*, 239 Ill. 2d at 267-68, 940 N.E.2d at 1106.

¶ 29 1. *The State's Asserted Basis for the Stop*

¶ 30 "Courts have divided police-citizen encounters into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or '*Terry* stops' which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) encounters that involve no coercion or detention and thus do not implicate fourth amendment interests." *People v. Luedemann*, 222 Ill. 2d 530, 544, 857 N.E.2d 187, 196 (2006). See also *Terry*, 392 U.S. at 21-22; 725 ILCS 5/107-14 (West 2010) (statutory codification of *Terry* standard).

¶ 31 The State argues the encounter between defendant and Officer Bangert was a permissible investigatory stop pursuant to *Terry*. In order to justify a *Terry* stop, an officer's stop must be justified at its inception, based on specific, articulable facts and the reasonable inferences to be drawn from those facts. *People v. Close*, 238 Ill. 2d 497, 505, 939 N.E.2d 463, 467 (2010). In determining whether a police officer had reasonable suspicion criminal activity was afoot, one must take into account the totality of the circumstances. *People v. Avant*, 331 Ill. App. 3d 144, 151, 771 N.E.2d 420, 426 (2001). "In judging the police officer's conduct, we apply an objective standard: 'would the facts available to the officer at the moment of the seizure *** "warrant a man of reasonable caution in the belief" that the action taken was appropriate?' " *Close*, 238 Ill. 2d at 505, 939 N.E.2d at 467 (quoting *Terry*, 392 U.S. at 21-22). However, "[a]n officer 'who mistakenly believes a violation occurred when the acts in question are not prohibited

by law is not acting reasonably.' " *People v. Johnson*, 384 Ill. App. 3d 409, 414, 893 N.E.2d 275, 279-80 (2008) (quoting *People v. Cole*, 369 Ill. App. 3d 960, 968, 874 N.E.2d 81, 88 (2007)).

¶ 32 2. *The State's Claim the Vehicle Was "Unattended"*

¶ 33 a. The Alleged Municipal Code Violation

¶ 34 Section 20.323 of the Municipal Code, as relevant to this appeal, provides:

> "No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, and removing the key, or when standing upon any perceptible grade, without effectively setting the brake thereon and turning the front wheels to the curb or side of the highway."
> Quincy Municipal Code § 20.323 (adopted Feb. 25, 1980).

Section 11-1401 of the Vehicle Code addresses unattended motor vehicles and contains nearly identical language to the first sentence of section 20.323. See 625 ILCS 5/11-1401 (West 2010).

¶ 35 Section 20.109 of the Municipal Code permits apartment complex owners to contract with Quincy "to regulate and enforce laws, ordinances, rules and regulations pertaining to the parking of automobiles or motor vehicles, the traffic at parking areas and, in general, traffic and vehicles, on or at such private property." Quincy Municipal Code § 20.109 (adopted Feb. 25, 1980). See also 625 ILCS 5/11-209 (West 2010) (same).

¶ 36 As defendant points out, the question whether Officer Bangert could enforce the unattended ordinance on private property is a dispositive issue. See 625 ILCS 5/11-201 (West 2010) (provisions relating to operation of vehicles refer exclusively to the operation of vehicles upon highways except where a different place is specifically referred); 625 ILCS 5/1-126 (West

2010) (defining "highway" as "publicly maintained" roadways "open to the use of the public for purposes of vehicular travel"); 625 ILCS 5/1-163 (West 2010) (defining "private road or driveway" as "[e]very way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons."); see generally *Ruyle v. Reynolds*, 43 Ill. App. 3d 905, 907, 357 N.E.2d 804, 806 (1976) (holding section 11-1401 was inapplicable because the vehicle was left unattended in a private parking lot and not on a public street). However, in its written order the trial court did not address this argument or make a factual finding whether such an agreement existed and we will not engage in our own factual inquiry. We note, as the " 'essential purpose' " of the fourth amendment is to limit "arbitrary invasions" by the state upon individuals (*McDonough*, 239 Ill. 2d at 266, 940 N.E.2d at 1106), the trial court should have found whether Quincy police officers had authority to enforce traffic regulations on the apartment complex grounds before considering whether defendant had violated such a regulation. In considering whether the vehicle was left "unattended," we express no opinion regarding whether Officer Bangert had authority to enforce traffic regulations in a private parking lot.

¶ 37 b. The Cases Relied on By The Trial Court

¶ 38 The trial court relied upon *Hartford Insurance Co. v. Manor Inn of Bethesda, Inc.*, 617 A.2d 590 (1992), for its conclusion defendant "had not gotten far enough away from the vehicle to constitute it being 'unattended' " when defendant was "3 or 20 feet from the car." In *Hartford*, the Maryland Court of Special Appeals considered whether a vehicle was left unattended for purposes of the section 21-1101 of the Maryland Transportation Article (Md. Code Ann. Transp. § 21-1101 (West 1992)). There, the defendant's employee left a van parked

with the doors unlocked and the key in the ignition. *Hartford*, 617 A.2d at 592. A third party stole the van and caused a traffic accident. *Hartford*, 617 A.2d at 592. The Maryland court stated " 'The term "unattended motor vehicle" has been held to mean "without anyone present [in the vehicle] who is competent to prevent any of the probable dangers to the public." ' " *Hartford*, 617 A.2d at 594 (quoting *Collins v. Luper*, 277 A.2d 445, 447 (1971)). The court concluded the employee left the key in the ignition and, without determining a distance, "[t]he employee was also far enough away to render the van clearly 'unattended.' Thus there was a violation of the statute that could be evidence of negligence." *Hartford*, 617 A.2d at 594.

¶ 39 The trial court also cited *State v. Harper*, 800 N.W.2d 683 (2011). In *Harper*, the Nebraska Court of Appeals considered whether the defendant was involved in an accident with an unattended vehicle triggering the defendant's obligation to provide written notice and a report to law enforcement. *Harper*, 800 N.W.2d at 689. The evidence showed the vehicle owner was "physically present at the time of the accident, witnessed the accident, approached and spoke with Harper, and affirmatively represented to Harper that [he] was the owner of the damaged vehicle." *Harper*, 800 N.W.2d at 690. The court concluded the vehicle the defendant collided with was not an unattended vehicle. *Harper*, 800 N.W.2d at 690.

¶ 40 c. The State's Cited Case

¶ 41 In its brief, the State argues defendant's vehicle was "unattended" "as no one was in the car to prevent any of the probable dangers that could stem from an unattended vehicle." The State asserts "unattended" means " 'no one in the vehicle.' " The State relies on *Ceen v. Checker Taxi Co.*, 42 Ill. App. 3d 93, 95, 355 N.E.2d 628, 629 (1976), where the court considered whether a taxicab was "unattended" for purposes of what is now section 11-1401 of

the Vehicle Code when the cab driver left a passenger in the passenger compartment and proceeded inside a building. Relying on a dictionary, the First District defined "unattended" as " 'lacking a guard, escort, caretaker, or other watcher *** not watched with care, attentiveness or accuracy.' " *Ceen*, 42 Ill. App. 3d at 97, 355 N.E.2d at 631 (quoting Webster's Third International Dictionary 2482 (3d ed. 1966))). The First District stated:

> "The owner or driver of a vehicle may of course avoid violating the statute by simply turning off the motor and removing the ignition key. However, if he chooses to leave the key in the ignition he must be sure that the vehicle is left attended. Taking this common dictionary meaning of the term 'unattended' in light of the statute's purpose, the statute therefore requires the owner or driver of a vehicle who leaves the keys in the ignition to ensure that it is guarded or watched over in such a manner so as to avoid the vehicle being set in motion by children, thieves, other intermeddlers or nonhuman agencies. We are of the opinion that this requires an owner or driver to leave such a vehicle in the attendance of a person the owner or driver trusts, who is to be responsible for watching over that vehicle, who is capable of controlling the vehicle and who has immediate access to the controls should the vehicle be suddenly set in motion while the motor is running." *Ceen*, 42 Ill. App. 3d at 97, 355 N.E.2d at 631.

The court noted its "construction of the term 'unattended' includes not only the situation where

there is no one in the vehicle, but also where there is a person present, but that person cannot be trusted by the owner or is not responsible for watching over the vehicle or does not have immediate access to the vehicle's controls or is not capable of operating the vehicle if that becomes necessary." *Ceen*, 42 Ill. App. 3d at 98, 355 N.E.2d at 631-32. We note *Ceen* is a part of a line of cases concluding violation of section 11-1401 is *prima facie* evidence of negligence. See *Ney v. Yellow Cab Co.*, 2 Ill. 2d 74, 78, 117 N.E.2d 74, 78 (1954); *Johnson v. Bishop*, 388 Ill. App. 3d 235, 237-40, 902 N.E.2d 763, 765-68 (2009) (discussing cases).

¶ 42 d. The Trial Court's Determination the Vehicle Was Not "Unattended"

¶ 43 In its written order, the trial court found defendant was only 3 to 20 feet away and concluded the vehicle was not "unattended." Both defendant and Officer Bangert testified defendant, after exiting his vehicle, took a "couple steps" before he stopped. It was not against the manifest weight of the evidence for the trial court to find defendant was only 3 to 20 feet away from his vehicle.

¶ 44 The cases discussed above stand for the proposition a vehicle can be unattended when an individual is not inside the vehicle, as in *Hartford*, or when an individual is inside the vehicle, as in *Ceen*. Interestingly, *Hartford* defined an unattended vehicle as one without an individual present inside the vehicle and did not determine the distance the van driver was from the vehicle. *Hartford*, 617 A.2d at 594. Of course, *Hartford* is an out-of-state case interpreting Maryland law and is not binding on the trial court or this court. See *Carroll v. Curry*, 392 Ill. App. 3d 511, 517, 912 N.E.2d 272, 278 (2009). We disagree that *Ceen* stands for the proposition that every running unoccupied vehicle is unattended. We note the court's comment in *Ceen* regarding whether a vehicle with no one in it was unattended was not necessary to the resolution

of the issue in that case. Moreover, the reasoning in *Ceen* demonstrates the need to analyze the issue of whether a vehicle is unattended on a case by case basis, considering the specific facts before the court. Therefore, to the extent *Ceen* suggest a hard and fast rule that the absence of a driver in a vehicle with the keys in the ignition is unattended, we decline to follow it.

¶ 45 Neither the Municipal Code or the Vehicle Code defines "unattended" and it is appropriate, as in *Ceen*, to look to the dictionary to ascertain the plain and ordinary meaning of the word. See *People v. Chapman*, 2012 IL 111896, ¶ 24, 965 N.E.2d 1119. Here, defendant had not left the vehicle "unattended" without a guard, escort, caretaker, or watcher (see Webster's Third New International Dictionary 2482 (3d ed. 1976)) as he had just exited the vehicle and was still nearby.

¶ 46 The State's argument the officer had reasonable suspicion to believe defendant was about to leave his vehicle unattended is unpersuasive. The State contends it was reasonable for Officer Bangert to infer defendant "was planning on continuing getting further away from his running vehicle and going into an apartment." As the State asserts this is an investigatory stop, it must be justified at its inception. It was not. Bangert testified defendant was still in the vehicle when he exited his patrol car and moved to engage defendant. There is no evidence Bangert knew or suspected which apartment defendant was going to, its distance from the vehicle, or that he would go inside the apartment before he asked defendant to stop. We question how the officer could reasonably suspect defendant was about to leave his car unattended when defendant was still in his vehicle at the time the officer moved to engage defendant. Without a reasonable articulable basis that defendant was about to leave the vehicle unattended, the officer's basis amounted to a mere hunch.

¶ 47 C. The State's Claim Defendant Was Parked In A No-Parking Zone

¶ 48 The State asserts it was reasonable for Officer Bangert "to suspect defendant had parked in a no-parking zone and therefore committed an additional traffic violation" because defendant parked over an area with yellow stripes painted on the road. The trial court heard evidence this area was used as a "landing zone" for use in loading passengers, and it found defendant stopped in a "striped 'loading' zone." Moreover, defendant points out the Municipal Code requires no-parking areas to be designated by a sign (Quincy Municipal Code §§ 20.501, 20.517 (adopted Feb. 25, 1980)) and the evidence showed no signs indicated parking was not permitted. The officer was mistaken as a matter of law in his belief defendant's car was in a no-parking zone. Our analysis in *People v. Cole*, 369 Ill. App. 3d 960, 874 N.E.2d 81 (2007), is illustrative regarding a stop based on a mistake in law. In *Cole*, the officer stopped the defendant because of a strand of beads hanging from his rearview mirror. At the hearing on the motion suppress, the officer testified he believed hanging any item between the driver and the windshield constituted a statutory violation (625 ILCS 5/12-503(c) (West 2004)). The statute, however, only prohibits hanging items which materially obstruct the driver's view. *Cole*, 369 Ill. App. 3d at 966, 874 N.E.2d at 87; 625 ILCS 5/12-503(c) (West 2004). We determined in *Cole*, "a traffic stop based on a mistake of law is generally unconstitutional, even if the mistake is reasonable and made in good faith." *Cole*, 369 Ill. App. 3d at 967, 874 N.E.2d at 88. However, we went on in *Cole* to agree with the distinction in *United States v. Delfin-Colina*, 464 F.3d 392 (3d Cir. 2006), which requires we, "look to whether specific, articulable facts produced by the officer would support reasonable suspicion of a traffic infraction." *Delfin-Colina*, 464 F.3d at 398. If despite a misinterpretation of the law, the facts known to the officer raised a reasonable suspicion that

defendant was violating the law as written, then the stop is deemed constitutional. In this case, a reasonable officer correctly interpreting the law would not have reasonable suspicion to believe defendant was violating the law. The officer engaged defendant because defendant's car was parked in a striped area on a private parking lot. The officer believed anyone who parked in a striped area of a private parking lot did so in violation of the law. Putting aside whether Bangert can enforce a no-parking zone on private property, the officer's mistake of law renders the stop unconstitutional.

¶ 49 D. Defendant's Argument About The Scope of *Terry*

¶ 50 As we agree the officer did not have reasonable articulable suspicion, we need not address defendant's argument a police officer's authority pursuant to *Terry* does not extend to petty offenses and ordinance violations.

¶ 51 III. CONCLUSION

¶ 52 For the reasons stated, we affirm the trial court's judgment.

¶ 53 Affirmed.

¶ 54 PRESIDING JUSTICE STEIGMANN, specially concurring,

¶ 55 I agree with the majority but write separately to point out that this case might have been different if the State, in responding to defendant's motion to suppress, had also argued that defendant's conduct violated section 11-1401 of the Vehicle Code (625 ILCS 5/11-1401 (West 2010)), which provides as follows:

> "Unattended motor vehicles. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, effectively setting the brake thereon and, when standing upon any perceptible grade, turning the front wheels to the curb or side of the highway."

However, because the rule of forfeiture applies to the State as well as to a defendant, this court should not consider the applicability of section 11-1401 of the Vehicle Code as a basis to reverse the trial court's grant of defendant's motion to suppress. See *People v. Roberson*, 367 Ill. App. 3d 193, 196, 854 N.E.2d 317, 320 (2006) ("[T]he State cannot make an argument on appeal that the State never made in the suppression hearing"); *People v. Krinitsky*, 2012 IL App (1st) 120016 ¶ 26, 982 N.E.2d 848. Doing so would result in something that courts of review ought (almost) never do—namely, reverse the trial court based upon an argument it never heard.

¶ 56 The potential advantage to the State that was essentially abandoned by not citing section 11-1401 of the Vehicle Code was that section 11-1401 does not require what the Quincy municipal code apparently does, which is an agreement between the city and private apartment owners to regulate and enforce traffic laws on their private property. Nonetheless, I choose to

discuss this issue because the subject of unattended motor vehicles is important and the legislature might wish to revisit this subject.

¶ 57 The Illinois Supreme Court discussed an earlier, but substantially identical, version of section 11-1401 in *Ney v. Yellow Cab Co.*, 2 Ill. 2d 74, 117 N.E.2d 74 (1954). In that case, a thief stole a cab that had been left unattended with its motor running in violation of then-section 92 of article XIV of the Uniform Traffic Act (Ill. Rev. Stat. 1953, ch. 95 1/2, ¶ 189), and the thief struck a parked car while making his escape. The parked car's owner brought an action against the cab company to recover damages, and the supreme court interpreted the statute as follows:

> "We cannot but conclude that this entire section is a public safety measure. This being so, what harm did the legislature foresee and attempt to prevent by prohibiting the leaving of an unattended motor vehicle with the key in the ignition? ***
> *** The legislature *** used clear and express terms making it the duty of persons in charge of motor vehicles to do certain acts upon leaving their vehicles unattended. The motivation of such legislation is not the State's desire to punish but rather its interest in public welfare for the protection of life, limb[,] and property by prevention of recognized hazards." *Ney,* 2 Ill. 2d at 78, 117 N.E.2d at 77-78.

¶ 58 The supreme court's interpretation of the unattended motor vehicle statute makes clear that whether such a vehicle is present in the parking lot of a strip mall or, as in the present

case, in the private parking lot of an apartment building makes no difference. The statutory concerns about protecting the public in each scenario are the same.

¶ 59 Nonetheless, application of section 11-1401 of the Vehicle Code to this case is uncertain because section 11-201 of the Vehicle Code appears to limit its provisions to highways. That provision reads as follows:

> "Provisions of the act refer to vehicles upon the highways—Exceptions. The provisions of this Chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:
>
> 1. Where a different place is specifically referred to in a given section.
>
> 2. The provisions of Articles IV and V of this Chapter shall apply upon highways and elsewhere throughout the State." 625 ILCS 5/11-201 (West 2010).

¶ 60 One could argue that despite the language of section 11-201 of the Vehicle Code, section 11-1401 would still apply to a private parking lot because the provision of section 11-201 limiting the scope of the Vehicle Code to highways refers to "the operation of vehicles upon highways," while section 11-1401 deals with vehicles that stand unattended and by definition are not being operated upon highways.

¶ 61 The better approach to the issue of unattended vehicles would be for the legislature to revisit the issue to make clear both the scope of section 11-1401 and whether it

should apply to private parking lots, as in the present case. Further, the legislature should consider possible statutory changes in the language of section 11-1401, given how some recent vehicles come with a remote starter that permits the owner to start the vehicle's engine away from the vehicle as long as the driver has first locked it.