2018 IL App (4th) 170271-U

NO. 4-17-0271

FILED
July 11, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
MOHAMED SAMANTAR,	)	No. 15CF760
Defendant-Appellant.	)	
	)	Honorable
	)	Paul G. Lawrence,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in denying defendant's motion to suppress evidence.

¶ 2 In June 2015, a grand jury indicted defendant, Mohamed Samantar, with one count of the following: (1) controlled-substance trafficking with intent to deliver (720 ILCS 570/401.1(a) (West 2014)), (2) unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(11) (West 2014)), and unlawful possession of a controlled substance (720 ILCS 570/402(a)(11) (West 2014)). In July 2016, defendant filed a motion to suppress evidence, which the trial court denied. After an August 2016 bench trial, the court found defendant guilty of all three charges and sentenced him to 18 years in prison. Thereafter, defendant filed a motion for a new trial and other posttrial relief, which the court denied in November 2016.

¶ 3 On appeal, defendant argues the trial court erred in denying his motion to suppress. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2015, a grand jury indicted defendant, a native of Somalia, with three drug-related offenses following a traffic stop. In count I, the indictment alleged defendant committed the offense of controlled-substance trafficking with intent to deliver (720 ILCS 570/401.1(a) (West 2014)) in that he knowingly brought more than 200 grams of cathinone into the state with the intent to deliver it. In count II, the indictment alleged defendant committed the offense of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(11) (West 2014)) in that he knowingly and unlawfully possessed with the intent to deliver more than 200 grams of cathinone, a controlled substance. In count III, the indictment alleged defendant committed the offense of unlawful possession of a controlled substance (720 ILCS 570/402(a)(11) (West 2014)) in that he knowingly and unlawfully had in his possession more than 200 grams of cathinone, a controlled substance. Defendant pleaded not guilty.

¶ 6 In July 2016, defendant filed a motion to suppress evidence. Therein, defendant alleged he was a passenger in a rental vehicle driven by Awil Aden, who was pulled over for improper lane usage. A search of the vehicle resulted in the discovery of cathinone in the trunk of the vehicle, and both defendant and Aden were arrested. Defendant alleged the traffic stop was unduly prolonged where, after issuing Aden a written warning, the arresting officer continued questioning defendant and Aden.

¶ 7 In August 2016, the trial court conducted a hearing on the motion to suppress. The court appointed an interpreter to translate the proceedings for defendant.

¶ 8 Illinois State Trooper Ryan Albin testified he had been a patrol officer for 10 years and a canine handler for 2 years. The dog was present in the patrol car while Albin conducted patrol operations on Interstate 55 in McLean County on June 15, 2015. Albin observed "a blue Toyota [minivan] activate its turn signal and proceed to cut a red van off." Albin initiated a traffic stop for improper lane usage. Albin testified he approached the driver, identified as Aden, and asked Aden for his driver's license. While standing at the driver-side door, Albin noticed "an unusual odor emitting from the van." Albin described the odor as "a lot like cannabis, but it wasn't cannabis." Through training at the police academy, Albin had the ability to identify the smells of both fresh and burning cannabis. He described the odor emanating from the van as "comparable" to cannabis. Albin peered into the windows of the minivan. Albin observed "a blanket covering unknown objects in the rear trunk." He found it "unusual" that a blanket was used to cover the trunk's contents. Albin described the van as having "a lived in look," meaning he observed "a lot of trash" in the van.

¶ 9 Albin learned defendant (who was seated in the front passenger seat) rented the minivan in Minnesota. Albin asked defendant for his driver's license and the rental agreement. Albin noted defendant had rented the vehicle for five days, June 10, 2015, to June 15, 2015. Albin advised Aden of the improper lane usage violation, detailing what he had observed. Albin characterized the incident as "no big deal" and told Aden he would issue a written warning. Albin asked that Aden step out of the rental vehicle and be seated in the front passenger seat of his patrol car.

¶ 10 While Albin waited for the results of a warrant check and confirmation of defendant's and Aden's Minnesota driver information, Albin engaged Aden in conversation. Albin testified Aden appeared "overly nervous." "His breathing, compared to the rest of the

people I bring back to my squad car, appeared to be rapid, and you could see his heart beating in his chest." Albin again advised Aden he planned to issue a written warning but Aden's demeanor did not change. Aden told Albin he and defendant had been to Ohio. Aden did not know what he had done in Ohio and did not respond when asked how long he had been in Ohio. Albin called for backup "[b]ecause at this time I believed that criminal activity was present." Albin continued to wait "for the computer return," noting "out-of-state licenses tend to take longer to return."

¶ 11 Trooper Albin then left his patrol car and approached defendant, who had remained seated in the front passenger seat of the rental van, "for the purpose of obtaining the registration." Albin engaged defendant in conversation while defendant secured the vehicle's registration. Defendant advised Albin he and Aden had been to "Atlanta." Aden told Albin he and defendant had been to Ohio. Albin thought it odd that defendant and Aden "had completely different stories."

¶ 12 Albin secured the vehicle's registration and walked to the rear of his patrol car where he spoke to Trooper Payne, the backup officer, for approximately three minutes. Albin testified he removed his "portable" microphone as he walked toward the rear of his patrol car, placing it in the patrol car "so I could pick up the driver's voice." Albin testified he spoke to Payne about the traffic stop and "how I developed reasonable suspicion I believed criminal activity was present." Albin advised Payne he planned to ask to search the vehicle.

¶ 13 Albin testified he returned to his patrol car and secured his microphone. Albin advised Aden he would be free to leave after Albin returned his documents to him and Aden signed the written warning. Albin then returned Aden's documents and turned his front emergency lights off. The two men left the patrol car and Aden began walking toward the rental

van. Albin called for Aden to return to the front of the patrol car to sign the written warning. Albin provided Aden a copy of the written warning and advised him he was free to leave. As Aden walked toward the minivan, Albin asked if he "could have a moment more of his time." Aden turned and walked back toward Albin and Albin asked him if there was anything illegal in the rental van and if he could "search it." Aden told Albin he did not know; the vehicle belonged to defendant.

¶ 14 Albin immediately walked to the passenger side of the vehicle and asked defendant if there was anything illegal in the rental vehicle and defendant's answer was no. Albin asked defendant if he could search the vehicle and defendant consented. Upon a second inquiry by Albin, defendant confirmed he was providing consent for Albin to search the minivan.

¶ 15 At Albin's request, defendant stepped out of the rental van and walked to the rear of the vehicle. Albin lifted the latch of the trunk compartment of the vehicle and "some of the blanket and some of the packaging fell out of the trunk of the vehicle." The contents of the "packaging" were later identified as cathinone.

¶ 16 Albin testified he did not engage his canine in an open-air-sniff of the minivan because the canine had not been trained to detect the odor of cathinone and would not have alerted to the presence of illegal drugs in the minivan. Albin acknowledged noting in his written report that Atlanta, Georgia is "a known source for contraband."

¶ 17 John Walker testified he was interning with the Illinois State Police on June 15, 2015. He was present in the patrol car when Trooper Albin made contact with defendant and Aden. Walker recalled the blue minivan cutting in front of a red minivan. The driver of the red minivan "hit his brakes."

¶ 18 After the parties rested, the trial court recessed the hearing to allow the court to view in chambers a disc containing a dash cam recording of the traffic stop. After the recess, and following arguments on the motion, the court denied defendant's motion to suppress. The court found Albin had reasonable grounds to make the traffic stop based on improper lane usage. The court also found the stop took "nearly 20 minutes." However, the court found the evidence justified Albin's reasonable suspicion that defendant's vehicle contained contraband. The court stated, in part, as follows:

> "And so right off the bat, like in many cases where an officer walks up to a vehicle and smells the burnt odor of cannabis and in this situation smells an odor of something similar to cannabis, that combined with all of the other factors that I just mentioned does certainly give the officer then a reasonable articulable suspicion to believe that a drug-type offense has occurred, which in this court's opinion it was not even necessary for him to seek consent from the defendant."

¶ 19 Following a bench trial, the trial court found defendant guilty of controlled-substance trafficking with intent to deliver, unlawful possession of a controlled substance with intent to deliver, and unlawful possession of a controlled substance. The court sentenced him to 18 years in prison.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Defendant first argues the trial court erred in denying his motion to suppress as the traffic stop was unduly prolonged in this case. We disagree.

¶ 23 A. Standard of Review

¶ 24 On review of a motion to suppress, this court is presented with mixed questions of law and fact. *People v. McQuown*, 407 Ill. App. 3d 1138, 1143, 943 N.E.2d 1242, 1246 (2011).

> "In reviewing a trial court's ruling on a motion to suppress, the trial court's findings of historical fact are reviewed only for clear error, giving due weight to any inferences drawn from those facts by the fact finder, and reversal is warranted only when those findings are against the manifest weight of the evidence. [Citation.] However, a reviewing court remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted. [Citation.] A trial court's ultimate legal ruling as to whether suppression is warranted is subject to *de novo* review. [Citations.]" *People v. Hackett*, 2012 IL 111781, ¶ 18, 971 N.E.2d 1058.

¶ 25 B. The Fourth Amendment

¶ 26 The fourth amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. Similarly, the Illinois Constitution affords citizens with "the right to be secure in their persons, houses, papers[,] and other possessions against unreasonable searches [and] seizures." Ill. Const. 1970, art. I, § 6. Our supreme court has interpreted the search-and-seizure clause of the Illinois Constitution in a manner consistent with the United States Supreme Court's fourth-amendment jurisprudence. See *People v. Caballes*, 221 Ill. 2d 282, 335-36, 851 N.E.2d 26, 57 (2006).

¶ 27 "When a police officer observes a driver commit a traffic violation, the officer is justified in briefly detaining the driver to investigate the violation." *People v. Ramsey*, 362 Ill. App. 3d 610, 614, 839 N.E.2d 1093, 1097 (2005). A stop of a vehicle and the detention of its

occupants constitute a "seizure" under the fourth amendment, even if the stop is brief and for a limited purpose. *Timmsen*, 2016 IL 118181, ¶ 9. To be constitutionally permissible, a vehicle stop must be reasonable under the circumstances, and the stop will be deemed reasonable " 'where the police have probable cause to believe that a traffic violation has occurred.' " *Ramsey*, 362 Ill. App. 3d at 615 (quoting *Whren v. United States*, 517 U.S. 806, 810 (1996)).

¶ 28 Here, defendant does not challenge the validity of the stop at its inception. Trooper Albin observed defendant's rental van move from a single lane of traffic without first ascertaining that such movement could be made with safety, in violation of section 11-709(a) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-709(a) (West 2014)). Thus, Trooper Albin had probable cause to initiate a valid traffic stop.

¶ 29 In analyzing the conduct of police officers during a lawful traffic stop, our supreme court has looked to the United States Supreme Court's decision in *Illinois v. Caballes*, 543 U.S. 405 (2005). *People v. Harris*, 228 Ill. 2d 222, 239, 886 N.E.2d 947, 958 (2008).

> "First, a seizure that is lawful at its inception can become unlawful 'if it is prolonged beyond the time reasonably required' to complete the purpose of the stop. *Caballes*, 543 U.S. at 407 ***. Second, so long as the traffic stop is 'otherwise executed in a reasonable manner,' police conduct does 'not change the character' of the stop unless the conduct itself infringes upon the seized individual's 'constitutionally protected interest in privacy.' *Caballes*, 543 U.S. at 408 ***." *Harris*, 228 Ill. 2d at 239.

"Thus, police conduct occurring during an otherwise lawful seizure does not render the seizure unlawful unless it either unreasonably prolongs the duration of the detention or independently

triggers the fourth amendment." *People v. Baldwin*, 388 Ill. App. 3d 1028, 1033, 904 N.E.2d 1193, 1198 (2009).

¶ 30 Citing *People v. Cosby*, 231 Ill. 2d 262, 276, 898 N.E.2d 603 (2008), the State asserts defendant's argument that the traffic stop was unreasonably prolonged is "irrelevant." The State argues defendant was not seized where Albin returned Aden's documents, requested consent to search the car, and defendant voluntarily consented to the search. Defendant responds that "[t]he record is void of any indication" he was told he was free to leave and Albin did not return documents to defendant. Thus, defendant asserts he "remained seized the entire time he was questioned by law enforcement" and police questioning of defendant unreasonably prolonged the traffic stop. For purposes of resolution of this matter, we assume defendant remained seized the entire time. Even so, we affirm on alternative bases.

¶ 31 In looking at the length of the stop, no bright-line rule has been adopted to indicate when a stop has been unreasonably prolonged. *Baldwin*, 388 Ill. App. 3d at 1034. Instead, the duration of the stop must be justified by the nature of the offense and "the ordinary inquiries incident to such a stop." *Caballes*, 543 U.S. at 408; *People v. Driggers*, 222 Ill. 2d 65, 73, 853 N.E.2d 414, 419 (2006); *People v. Koutsakis*, 272 Ill. App. 3d 159, 164, 649 N.E.2d 605, 609 (1995) ("Courts must consider the purpose to be served by the stop as well as the time reasonably needed to effectuate those purposes."). Courts "employ a contextual, totality of the circumstances analysis that includes consideration of the brevity of the stop and whether the police acted diligently during the stop." *Baldwin*, 388 Ill. App. 3d at 1034.

¶ 32 Applying these standards, we find the duration of the traffic stop at issue in this case was reasonable. Review of the video from Albin's patrol car shows the duration of the traffic stop was approximately 17 minutes from Albin's initial contact with defendant and Aden

to the point where Albin handed Aden a copy of the signed warning and stated, "have a nice day." During those 17 minutes, Albin spoke with defendant and Aden. Albin explained the reason for the traffic stop. He requested a driver's license from defendant and Aden and the rental agreement. He returned to his patrol car and ran routine computer checks on the driver, passenger, and the vehicle. Albin returned to the rental van, approaching defendant regarding the vehicle's registration, and then engaged in an approximately three-minute-long discussion with Payne concerning the traffic stop and his "reasonable suspicion *** criminal activity was present." Immediately after Albin spoke with Payne, he returned to his patrol car, completed the written warning, returned to Aden all of the documents he had requested, and advised Aden he was free to go. As Aden walked toward the rental van, Albin called to him, reminding Aden he needed to sign the citation. Aden returned to the front of the patrol car and signed the written warning. Finally, Albin provided Aden a copy of the written warning and wished him well. Seventeen minutes is not an unduly long period of time to complete those tasks. See *People v. Staley*, 334 Ill. App. 3d 358, 366, 778 N.E.2d 362 (2002) (traffic stop lasting " 'somewhat more than 18 minutes' " was not unreasonably long where the police officer confirmed the status of the defendant's driver's license and her license plate registration and wrote two traffic citations during that time period). Albin did not cease working on the traffic stop while engaging defendant, Albin, and Payne in conversation. Given the duration of the stop and Albin's diligence in executing the stop, we find the traffic stop in question was not unreasonably prolonged.

¶ 33 In *McQuown*, this court found a traffic stop unduly prolonged where the "business portion" of the traffic stop lasted just more than 10 minutes, but the officer did not request a canine until 13 minutes after that. *McQuown*, 407 Ill. App. 3d at 1145. Then, the canine unit did

not arrive until 25 minutes later. *Id*. In *Baldwin*, the court found the officer was "apparently ready to conclude the initial purpose of the [traffic] stop" 4 1/2 minutes into the stop, but continued to question the driver, made multiple unsuccessful requests for consent to search the vehicle, and eventually requested a narcotics canine to the scene. *Baldwin*, 388 Ill. App. 3d at 1035. The court held the stop had been unreasonably prolonged. *Id*. However, in *Staley*, this court found a traffic stop lasting 18 minutes was reasonable where officers acted diligently and where there was no evidence that the officers attempted to extend the stop.

¶ 34 As in *Baldwin* and *McQuown*, many cases in which courts have found a traffic stop unreasonably prolonged also involve narcotics canines, and either a delay in requesting the canine or an extended wait prior to the canine's arrival. Defendant relies on *Baldwin*, *Koutsakis* and *People v. Pulling*, 2015 IL App (3d) 140516, 34 N.E.3d 1198, for the proposition defendant's detention was unreasonably long. In *Koutsakis*, the appellate court noted the factual findings of the trial court, including a determination that "a stop of 14, 18 or 20 minutes was too long to write a warning ticket for a minor speeding offense" and that the officer stalled for additional time while waiting for the canine's arrival. *Koutsakis*, 272 Ill. App. 3d at 164. The appellate court found the trial court's findings were not against the manifest weight of the evidence and affirmed the trial court's judgment holding the length of the defendant's detention was unreasonable. *Koutsakis*, 272 Ill. App. 3d at 161, 164. In *Pulling*, the court found the officer "unlawfully prolonged the duration of the stop when he interrupted his traffic citation preparation [(after approximately 16 minutes)] to conduct a free-air sniff based on an unparticularized suspicion of criminal activity." *Pulling*, 2015 IL App (3d) 140516, ¶ 15. Unlike *Baldwin*, *Koutsakis* and *Pulling*, this case does not involve the suppression of evidence after a police officer detains an individual for a length of time longer than necessary to issue a warning or

citation and then, without articulable suspicion, requests a canine unit. Thus, we continue to find the stop was not impermissibly prolonged.

¶ 35 In the alternative, we find that in the event we were to conclude the officer prolonged the stop beyond the time necessary to issue the warning ticket, the facts in this case establish a reasonable articulable suspicion of criminal conduct that justified any prolonged detention. Defendant argues "[t]he reasons provided by trooper Albin and adopted by the trail court should not have amounted to the reasonable suspicion necessary to delay the stop." However, "A traffic stop 'may be broadened into an investigative detention *** if the officer discovers specific, articulable facts which give rise to a reasonable suspicion that the defendant has committed, or is about to commit, a crime.' " *Baldwin*, 388 Ill. App. 3d at 1035 (quoting *People v. Ruffin*, 315 Ill. App. 3d 744, 748, 734 N.E.2d 507, 511 (2000)). Here, Albin approached the driver-side door of the rental vehicle and noted an unusual odor emanating from the vehicle, "a lot like cannabis, but it wasn't cannabis." A blanket covered unknown objects in the rear of the van. The van appeared "lived-in." Aden displayed extreme and continuing nervousness during the encounter and he and defendant's statements about their travel were inconsistent. The officer also noted that Atlanta, which he took to refer to Atlanta, Georgia, served as a well-known source for illegal substances.

¶ 36 Defendant asserts "the presence of a blanket does not equate to criminal activity," and further, "there appears to be an area known as Atlanta, Ohio." However, it was reasonable for Albin to infer from the facts that the blanket intentionally concealed objects in the rear of the van and defendant's reference to Atlanta referred to Atlanta, Georgia. We stress a reasonable suspicion depends not on any single circumstance but on the totality of the circumstances. Further, the various factors can generate suspicion incrementally. Although there may be an

explanation for each individual factor considered separately, the factors viewed in combination may constitute enough reasonable suspicion to warrant further detention. All of this information added up to "specific, articulable facts which give rise to a reasonable suspicion that the defendant has committed, or is about to commit, a crime.' " *Baldwin*, 388 Ill. App. 3d at 1035 (quoting *People v. Ruffin*, 315 Ill. App. 3d 744, 748, 734 N.E.2d 507, 511 (2000)).

¶ 37 C. Manifest Weight Challenge

¶ 38 Defendant next argues the trial court's findings of fact were against the manifest weight of the evidence. As stated above, "[i]n reviewing a trial court's ruling on a motion to suppress, the trial court's findings of historical fact are reviewed only for clear error, giving due weight to any inferences drawn from those facts by the fact finder, and reversal is warranted only when those findings are against the manifest weight of the evidence." *Hackett*, 2012 IL 111781, ¶ 18. A trial court's decision is "against the manifest weight of the evidence when an opposite conclusion is apparent, or when the findings appear to be unreasonable, arbitrary or not based on the evidence." *People v. Urdiales*, 225 Ill. 2d 354, 432, 871 N.E.2d 669, 715 (2007). This deferential review "is grounded in the reality that the trial court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony." *People v. Pitman*, 211 Ill. 2d 502, 512, 813 N.E.2d 93, 100-01 (2004). After careful review of this record, we cannot say that the trial court's rulings in this regard were against the manifest weight of the evidence.

¶ 39 The trial court found several factors provided a reasonable suspicion defendant and Aden were engaged in criminal activity beyond the minor traffic offense. Defendant first argues the court's finding that the odor was "similar to cannabis" was against the manifest weight

of the evidence. The court considered "the biggest factor" to be the odor emanating from the rental vehicle. The court stated, in part:

> "But the biggest factor in this case to me is right off the bat where the trooper walked up to the vehicle, he testified here in court that he smelled an odor. Now on cross-examination, he said it was a very unusual odor. It smelled a lot like cannabis but not cannabis. He had learned at the Illinois State Police what burnt and raw cannabis smells like, and he said that it was comparable to that."

¶ 40 Our supreme court has held that "distinctive odors can be persuasive evidence of probable cause." *People v. Stout*, 106 Ill. 2d 77, 87, 477 N.E.2d 498, 502 (1985). "A police officer's detection of controlled substances by their smell has been held to be a permissible method of establishing probable cause." *Id.* Thus, this method of detection does not constitute an unconstitutional search. *Id.* In this case, Albin detected an unusual odor emanating from the rental vehicle. He described the odor as "a lot like cannabis, but it wasn't cannabis." Albin testified that "[i]f it smelled liked cannabis, it would give me probable cause" but because he "wasn't sure" the unusual odor provided probable cause to search the vehicle, he continued to process the traffic offense. We do not find the court's finding the odor was "similar to cannabis" to be against the manifest weight of the evidence.

¶ 41 Defendant next argues the trial court's finding Aden was "very, very nervous" was against the manifest weight of the evidence. Specifically, defendant argues "the squad car footage of the traffic stop tells a different story." While waiting for the results of a warrant check and confirmation of defendant's and Aden's Minnesota driver information, Albin engaged Aden in conversation. Albin testified Aden seemed excessively nervous for a motorist involved in a

routine traffic stop. Even after Albin reassured Aden he planned to issue only a written warning, Aden's demeanor did not change.

¶ 42 The trial court viewed in chambers a recording of the traffic stop. Although the court acknowledged Aden's limited English language skills as a possible contributing factor, it confirmed Aden's excessive nervousness as "a factor that the trooper was able to consider." We do not find the court's finding is against the manifest weight of the evidence. We note further Albin's opportunity to observe more subtle signs of nervousness not readily apparent in a video recording.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 45 Affirmed.