2024 IL App (1st) 221229

No. 1-22-1229

THIRD DIVISION
September 30, 2024

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	No. 21 CR 09385
v.	)	Honorable Vincent M. Gaughan
CORNELIUS EUBANKS,	)	Judge, Presiding
Defendant-Appellant.	)	

JUSTICE D.B. WALKER delivered the judgment of the court, with opinion.
Presiding Justice Lampkin and Justice Reyes concurred in the judgment and opinion.

OPINION

¶ 1 Defendant Cornelius Eubanks appeals his conviction for unlawful use of a weapon by a felon (UUWF) on the grounds that the statute under which he was charged is unconstitutional, that the search that led to the discovery of the firearm in his vehicle was unconstitutional, and that insufficient evidence was presented to establish his knowledge of the weapon found in a hidden compartment in the interior paneling of his vehicle. Defendant was convicted after a bench trial and sentenced to 26 months in prison. We reverse defendant's conviction outright.

¶ 2 I. BACKGROUND

¶ 3 The facts relevant to this appeal are largely uncontested. On January 21, 2021, Officers Bennie Traylor and Quentrell Curtis observed a 2008 Chevrolet Impala illegally parked in a bus lane. After the officers turned on their emergency lights and stopped their police cruiser near the Impala, Officers Martin and Velez (whose first names are not provided in the record) arrived to provide backup. Defendant, who was seated in the driver's seat of the Impala, rolled down his window and spoke with the officers. When defendant rolled down his window, Officer Curtis noticed the odor of burnt cannabis. When Officer Martin requested defendant's driver's license, he was unable to provide one. Officer Martin instructed defendant to step out of the vehicle. Defendant complied and was directed to the back of the vehicle, where he was "temporarily detained," in Officer Curtis' words. As defendant was being moved to the rear of the vehicle, Officer Traylor began to perform a search of the passenger compartment of the Impala.

¶ 4 Officer Curtis testified that he did not observe defendant to have bloodshot eyes, nor did he see any smoke coming out of the car, nor did he ask defendant when defendant had last smoked cannabis, nor whether he smoked it at all.

¶ 5 Officer Traylor testified that he searched the immediate area around the driver's seat. During his search, Officer Traylor removed a dashboard panel to the left of the steering wheel, behind which he found a handgun in a concealed compartment. Officer Traylor testified that the dashboard panel he removed to access the compartment could only be removed while the driver's side door was open, but there was also a second way to access the panel. He did not specify whether the driver's side door needed to be open to use that alternative method. At

some point during the search, defendant informed Officer Curtis, who was detaining him at the back of the car with Officer Martin, that there was "some weed" in the vehicle. While the State asserts that this statement was made prior to the search, the body worn camera footage contained in the record shows that defendant was standing behind the trunk of his car, speaking to Officer Curtis when he made the statement. He was not handcuffed at the time, though defendant asserts that he was. No contraband other than the firearm was recovered during the search. Defendant was taken into custody and ultimately charged with unlawful use or possession of a weapon by a felon (UUWF). 720 ILCS 5/24-1.1(a) (West 2020). At trial, the parties stipulated that defendant had a qualifying previous felony conviction. The record reflects that the previous conviction was a 2010 conviction for possession of a stolen motor vehicle.

¶ 6 On March 22, 2022, prior to defendant's bench trial, defendant filed a "Motion to Suppress Evidence Illegally Seized." In that motion, defendant argued that the firearm should be suppressed because the search of defendant's vehicle was without defendant's consent, conducted without a warrant, and conducted without probable cause or appropriate exigent circumstances. Defendant also argued that the search was neither incident to, nor contemporaneous with, petitioner's arrest.

¶ 7 At defendant's bench trial, the circuit court found that the search was in compliance with the fourth amendment (U.S. Const., amend. IV) after stating that an officer has the right, after smelling burnt cannabis, to search in areas in which they have previously, in their experience, recovered narcotics. The circuit court found defendant guilty and sentenced him to 26 months' imprisonment with the Illinois Department of Corrections. This timely appeal follows.

¶ 8 II. ANALYSIS

¶ 9 Defendant presents three arguments on appeal: (1) that the statute under which he was convicted is unconstitutional as applied to him, (2) that the vehicle search conducted by Officer Traylor was not justified by probable cause or as a search incident to arrest, and (3) that the evidence introduced at trial was insufficient to support a finding that defendant had knowledge of the firearm that was discovered during the vehicle search. We need only address the second of these arguments.

¶ 10 Defendant argues that the trial court erred in denying his motion to suppress because the officers lacked a valid basis to search the vehicle. The State counters that the officers possessed probable cause to search the vehicle because they detected the smell of burnt cannabis. Alternatively, the State argues that, even if the officers did not have probable cause to search the vehicle, the search was permissible under the exception for a search incident to arrest. We will review these two potential bases for the search separately, as either could independently justify the search.

¶ 11 In reviewing a motion to suppress, we apply a mixed standard of review wherein we accept the circuit court's factual findings unless they are against the manifest weight of the evidence, but the ultimate legal question of whether suppression was warranted is reviewed *de novo*. *People v. Hill*, 2020 IL 124595, ¶ 14. "*De novo* consideration means we perform the same analysis that a trial judge would perform." *People v. Randall*, 2022 IL App (1st) 210846, ¶ 33.

¶ 12 A. Probable Cause

¶ 13 The fourth amendment to the United States Constitution enshrined the right of individuals to "be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. The fourteenth amendment subsequently extended the fourth amendment to the states. U.S. Const., amend. XIV. Warrantless searches are *per se*

unreasonable with limited exceptions, including the automobile exception, which allows for warrantless searches of vehicles where such vehicle could be moved quickly out of the jurisdiction in which a warrant might be sought. See *Katz v. United States*, 389 U.S. 347, 357 (1967); *California v. Acevedo*, 500 U.S. 565, 569 (1991). While the automobile exception prevents a search from being *per se* unreasonable, officers must still have probable cause to conduct the search. *Hill*, 2020 IL 124595, ¶ 22. "To establish probable cause, it must be shown that the totality of the facts and circumstances known to the officer at the time of the search would justify a reasonable person in believing that the automobile contains contraband or evidence of criminal activity." *Id.* ¶ 23. "Probable cause deals with probabilities, not certainties." *Id.* ¶ 24. Accordingly, an officer need not "rule out any innocent explanations for suspicious facts." *Id.*

¶ 14 Until very recently, the question of whether the smell of burnt cannabis, alone, was sufficient to establish probable cause to search a vehicle was the subject of a split in appellate jurisprudence and a question not yet addressed in our First District. See *People v. Stribling*, 2022 IL App (3d) 210098, *People v. Redmond*, 2022 IL App (3d) 210524, *People v. Molina*, 2022 IL App (4th) 220152, *People v. Harris*, 2023 IL App (2d) 210697. However, our supreme court recently and clearly decided the matter in *People v. Redmond*, 2024 IL 129201. Our supreme court stated: "The laws on cannabis have changed in such a drastic way as to render the smell of burnt cannabis, standing alone, insufficient to provide probable cause for a police officer to search a vehicle without a warrant." *Id*. ¶ 46.

¶ 15 In *Redmond*, a traffic stop was initiated after the defendant was observed driving three miles per hour over the speed limit with an improperly secured license plate. *Id*. ¶ 8. The defendant pulled over immediately and made no furtive movements. *Id.* ¶ 15. When the officer

conducting the stop approached the vehicle, he detected a strong odor of burnt cannabis. *Id.* ¶ 8. The defendant denied smoking cannabis in the vehicle, and the officer did not observe "anything that was lit or currently emitting the odor of burnt cannabis in plain view." *Id.* The officer asked the defendant for his license and registration, which the defendant was unable to provide. *Id.* ¶ 10. The officer asked him to step out of his vehicle and moved him to a seat in the squad car. *Id*. ¶ 9. The officer observed no signs of impairment. *Id*. The officer testified at trial that he searched the vehicle "because there was an odor of burnt cannabis, Redmond gave evasive answers, Interstate 80 was 'a known drug corridor,' and Redmond admitted he was driving from Des Moines to Chicago, where both cities are 'hub[s] of criminal activity' ". *Id*. ¶ 11. The officer found a bag of improperly stored cannabis in the center console of the defendant's vehicle. *Id*. The defendant moved to suppress the cannabis at trial, and the trial court granted the motion. *Id.* ¶ 12.

¶ 16 At oral argument before our supreme court, the State conceded that the smell of burnt cannabis, alone, was insufficient to support a finding of probable cause, but asserted that there were "additional circumstances." *Id*. ¶ 46, n. 6. The court found that "given the fact that under Illinois law the use and possession of cannabis is legal in some situations and illegal in others, the odor of burnt cannabis in a motor vehicle, standing alone, is not a sufficiently inculpatory fact that reliably points to who used the cannabis, when the cannabis was used, or where the cannabis was used." *Id*. ¶ 47. The court further noted that the Vehicle Code does not outright prohibit the possession or use of cannabis in a vehicle, but rather the possession of improperly-stored cannabis and the use of cannabis in a vehicle " ' upon a highway in this State.' " *Id*. ¶ 57. Examining the broader totality of the circumstances, the court noted that the State abandoned the argument, found unpersuasive by the trial court, that Interstate 80 is a drug

corridor. *Id*. ¶ 59. The court found that Redmond's failure to produce his license and registration did not make it more likely that evidence of the suspected crime would be present. *Id*. ¶ 61. The court also found that not only were Redmond's allegedly evasive answers a matter of semantics, but his "failure to give 'direct answers' on his living arrangements did not make it any more likely, alone or along with the other evidence, that Redmond's car contained contraband or evidence of a crime." *Id*. The *Redmond* court acknowledged that the smell of burnt cannabis provided reasonable suspicion warranting further investigation, but stated that when that investigation produced no inculpatory facts, the officer did not have probable cause to search the vehicle, rendering his search unreasonable and unlawful. *Id*. ¶ 63.

¶ 17 In the case before this court, the officers on the scene observed no signs of cannabis consumption before beginning the search other than the odor of burnt cannabis. There was no smoke, no cannabis or paraphernalia observed, and defendant was not observed to have bloodshot eyes or any other indicia of intoxication. Defendant was not nervous or evasive. Defendant did not make any furtive motions before or after officers approached his vehicle that might suggest an attempt to hide contraband. Defendant was parked when the officers observed him and approached, so it cannot be said there was anything suspicious about his driving or how long it took him to stop.

¶ 18 Although defendant told Officer Curtis that there was "weed" in the vehicle, that statement was made after the search was already underway and therefore could not have been part of the probable cause analysis conducted by the officers prior to beginning the search. See, *e.g.*, *Randall*, 2022 IL App (1st) 210846 (excluding facts discovered after the initial search had begun from the analysis of the evidence supporting that search). Given the facts before us, we

see no justification for the officers' search aside from the odor of burnt cannabis and, in the wake of *Redmond*, that alone is insufficient to establish probable cause.

¶ 19 B. Search Incident to Arrest

¶ 20 Defendant argues that the search conducted by the officers was not valid under the search incident to arrest exception because (1) there was no reasonable basis to suspect that evidence of the crime for which he was stopped or for which he was arrested could be found in the vehicle and (2) he was handcuffed at the back of the vehicle at the time of the search, so there was no officer safety concern that warranted a vehicle search. The State's brief, incomprehensibly, answers a different question in their response: whether defendant was seized when officers approached and spoke to defendant through the window of his car. The State does not address the fact that defendant was not in his car during the search, but had been ordered out of the vehicle, patted down, and bodily directed by officers' hands to the back of the car, to a position where two officers stood bodily between him and the open door of the vehicle. It is unclear what conclusion the State's argument is intended to suggest. Accordingly, what remains to examine is only a question regarding the validity of the search as a search incident to arrest.

¶ 21 The United States Supreme Court, in *Gant*, unified the two rationales under which a search incident to arrest are permissible. *Arizona v. Gant*, 556 U.S. 332 (2009). One, which *Gant* refers to as the *Chimel* rationale, allows for a search incident to arrest in the interest of officer safety "only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." *Id.* at 343. The *Gant* court made particular note that "it will be the rare case in which an officer is unable to fully effectuate an arrest so that no real possibility of access to the arrestee's vehicle remains." *Id.* at 343 n.4. While a search of the

person of an individual being arrested is permitted, a search of the area of arrest is limited to that area "within the arrestee's immediate control." *People v. Cregan*, 2014 IL 113600, ¶ 29. In cases where officers have articulable reason to believe that an individual is dangerous and there may be a weapon in the individual's vehicle, officers are permitted to search those areas of a vehicle in which a weapon might be found. *Michigan v. Long*, 463 U.S. 1032, 1034 (1983); see *People v. Colyar*, 2013 IL 111835, ¶ 39.

¶ 22 In this case, despite defendant's assertion that he was handcuffed at the time of the search, the video from Officer Curtis' body worn camera shows that defendant was asked to step out of the vehicle, was patted down, and was moved to the back of his vehicle to stand behind the rear bumper, facing the car, with Officer Curtis just beside him while Officer Traylor searched the vehicle. Accordingly, if we interpret "secured," as the term is used in *Gant*, to mean handcuffed or placed in a locked police cruiser, defendant was unsecured at the time of the search. Nonetheless, his position behind the car with an officer standing just next to him, another officer between him and the open front driver's side door, and two other officers somewhere on the scene did not put him within "reaching distance" of the passenger compartment of his vehicle. This is not one of the rare instances hypothesized in the Supreme Court's footnote in *Gant*; the officers outnumbered the defendant four to one, he had been patted down, and there is no indication that they could not have handcuffed him or secured him in their police vehicle, had they any safety concerns. Furthermore, there were no indications that defendant was dangerous or that there might be a firearm in the car, unlike in *Colyar* and similar cases, wherein officers observe bullets in the vehicle or some other sign that could reasonably be interpreted to suggest the presence of a weapon or that the arrestee is dangerous.

Colyar, 2013 IL 111835, ¶ 8, 43. As such, we see no justification for the officers' actions as a search incident to arrest in the interest of officer safety.

¶ 23 The other *Gant* rationale allows for a search incident to arrest "when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." (Internal quotation marks omitted.) *Gant*, 556 U.S. at 343. The defendant in *Gant* was arrested for driving with a suspended license, and the court noted that it was "an offense for which police could not expect to find evidence in the passenger compartment of Gant's car." *Id.* at 344. Here, the reason for officers initially approaching the vehicle was its position parked at a bus stop. Defendant revealed, after being asked for his license, that he did not have one and had only a state identification card. We see no discernible difference in the likelihood that evidence of such offenses would be found in defendant's vehicle than the likelihood presented in *Gant*. Accordingly, we cannot say a search incident to arrest was warranted under this second of the two rationales.

¶ 24 As the search was neither justifiable by probable cause nor as a search incident to arrest, we must conclude that the circuit court erred in denying defendant's motion to suppress. Where the underlying charge cannot be proven without the evidence that should have been suppressed, a reviewing court may outright reverse the defendant's conviction on that charge. *People v. Lozano*, 2023 IL 128609, ¶ 47 (citing *People v. Eubanks*, 2019 IL 123525, ¶ 100). We choose to do so here. As we have reversed on these grounds, we need not reach defendant's arguments regarding the constitutionality of the UUWF statute and regarding the sufficiency of the evidence presented as to his knowledge of the weapon.

¶ 25 III. CONCLUSION

¶ 26 For the foregoing reasons, we reverse defendant's conviction outright.

¶ 27 Reversed.

***People v. Eubanks*, 2024 IL App (1st) 221229**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 21-CR-09385; the Hon. Vincent M. Gaughan, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Douglas R. Hoff, and Matthew B. Chapman, of State Appellate Defender's Office, of Chicago, for appellant.
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