2019 IL App (3d) 180183

Opinion filed July 11, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellant,	)	
	)	Appeal No. 3-18-0183
v.	)	Circuit No. 15-DT-560
	)	
WILLIAM ATCHISON,	)	Honorable Lisa Y. Wilson,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court, with opinion
Justice Holdridge concurred in the judgment and opinion.
Justice McDade specially concurred, with opinion.

OPINION

¶ 1 The State appeals following the circuit court's dismissal of a charge of driving while under the influence of alcohol (DUI) against defendant, William Atchison. The State argues that the court, which dismissed that charge after granting a motion to suppress, was without authority to take such action. We reverse and remand for further proceedings.

¶ 2 I. BACKGROUND

¶ 3 The State charged defendant via complaint with misdemeanor DUI (625 ILCS 5/11-501(a)(2) (West 2014)) and failure to reduce speed (*id.* § 11-601(a)). Defendant subsequently filed a "Motion to Suppress Evidence and Quash Arrest Made Without Warrant."

¶ 4 A hearing on defendant's motion was held on December 10, 2015. Evidence adduced at the hearing showed that defendant was driving with three passengers in the vehicle when he was involved in a rollover accident. Peoria police officer Thomas Bieneman testified that he arrived on the scene, helped the occupants out of the vehicle, and called for an ambulance. All four occupants told emergency medical technicians (EMTs) that they were without injury and refused to go to the hospital. Bieneman then testified at length regarding his observations of defendant, defendant's admission to drinking alcohol, and defendant's performance on a number of field sobriety tests. The court also reviewed a video recording of the traffic stop.

¶ 5 On January 7, 2016, the circuit court announced that it would "grant the motion to quash the arrest of the DUI." The court found that Bieneman lacked credibility based on his inexperience and his improper administration of certain field sobriety tests. After the court announced its judgment, the prosecutor immediately inquired: "That would be all evidence collected by the officer after the point of arrest, [Y]our Honor?" The court responded affirmatively. In a corresponding written order filed that same day, the court wrote that "all evidence following the arrest shall be suppressed."

¶ 6 After the court denied the State's motion to reconsider, the State filed a certificate of substantial impairment and a notice of appeal. In the certificate, the State twice asserted that it was "unable to proceed to trial in this matter," on account of the court's suppression ruling. The State also asserted that the suppression "substantially impair[ed]" its ability to proceed with the

case. On appeal, this court affirmed the circuit court's ruling. *People v. Atchison*, 2017 IL App (3d) 160214-U.

¶ 7 The State then filed a motion *in limine* in the circuit court regarding the use of certain prearrest evidence. The State asserted that the observations of EMTs at the scene of the accident would not be affected by the prior suppression ruling and should thus be allowed into evidence. The circuit court granted defendant's motion to strike the State's motion. The court cited *res judicata*, commenting that "I would be standing by my prior decision *** that the arrest was quashed and based upon no probable cause."

¶ 8 At a hearing on March 1, 2018, the State informed the court that its evidence at trial would include prearrest observations made by Bieneman, prearrest observations made by EMTs, conversations between defendant and EMTs, and receipts from defendant's dinner on the night in question. Defense counsel objected, arguing that the court had already heard prearrest evidence and concluded that it did not amount to probable cause for an arrest. Counsel concluded: "[T]he State's going to be presenting a case that they know on its face has absolutely no probable cause going forward. They're going to rehash the same information and expect a different result after it's been a dispositive motion, and it's been appealed to the Appeals Court." Counsel requested that the court dismiss the DUI charge.

¶ 9 The court, echoing defense counsel's argument, asked the State: "[I]f there's no arrest at this point, where are we going with *** the trial?" The court continued: "[E]ssentially when I granted that motion, I interpreted that that case *** was done." The court also opined that, if defendant proceeded to a bench trial, it could not see how its decision would be any different from its ruling on the motion, especially considering the heightened standard of proof. The court

dismissed the DUI charge, and the State once again filed a certificate of impairment and a notice of appeal.

¶ 10 II. ANALYSIS

¶ 11 On this interlocutory appeal, the State argues that the circuit court did not have authority under section 114-1 of the Code of Criminal Procedure of 1963 (Code) to dismiss the DUI charge. See 725 ILCS 5/114-1 (West 2016). Defendant argues that, not only did the court have the statutory authority to dismiss the charge, but it was constitutionally mandated to do so. We reverse and remand for further proceedings.

¶ 12 Section 114-1(a) of the Code states:

> "(a) Upon the written motion of the defendant made prior to trial before or after a plea has been entered the court may dismiss the indictment, information or complaint upon any of the following grounds:
>
> (1) The defendant has not been placed on trial in compliance with Section 103-5 of this Code.
>
> (2) The prosecution of the offense is barred by Sections 3-3 through 3-8 of the Criminal Code of 2012.
>
> (3) The defendant has received immunity from prosecution for the offense charged.
>
> (4) The indictment was returned by a Grand Jury which was improperly selected and which results in substantial injustice to the defendant.
>
> (5) The indictment was returned by a Grand Jury which acted contrary to Article 112 of this Code and which results in substantial injustice to the defendant.

(6) The court in which the charge has been filed does not have jurisdiction.

(7) The county is an improper place of trial.

(8) The charge does not state an offense.

(9) The indictment is based solely upon the testimony of an incompetent witness.

(10) The defendant is misnamed in the charge and the misnomer results in substantial injustice to the defendant.

(11) The requirements of Section 109-3.1 have not been complied with." *Id.* § 114-1(a).

In *People v. Guido*, 11 Ill. App. 3d 1067, 1069 (1973), the court held that "[t]he [circuit] court on its own motion, or on the motion of the defendant, has no power before trial, in the absence of a statute, to dismiss criminal charges *** in a criminal case." The *Guido* court pointed out that those statutory grounds on which a court could dismiss charges were listed in section 114-1 of the Code. See *id.*

¶ 13 In *People v. Lopez*, 2015 IL App (4th) 150217, ¶ 10, the court observed that "[o]ver the last 42 years, the decision in *Guido* has been cited approvingly and followed" in numerous cases. One exception to the rule was carved out by our supreme court in *People v. Lawson*, 67 Ill. 2d 449, 455 (1977). There, the court concluded that

> "on the basis of the reasoning of the United States Supreme Court, we must conclude that a trial court does have an inherent authority to dismiss an indictment in a criminal case where there has been a clear denial of due process even though that is not a stated ground in section 114-1." *Id.*

Accordingly, it is well settled that "the trial court is authorized to dismiss criminal charges prior to trial only for the reasons set forth in section 114-1 of the Code *** or where there has been a clear denial of due process which prejudiced defendant." *People v. Schroeder*, 102 Ill. App. 3d 133, 135 (1981).

¶ 14 In the present appeal, the parties do not dispute these controlling principles of law. However, they dispute whether the dismissal of the DUI charge was authorized under section 114-1 of the Code. Additionally, defendant maintains that the dismissal was otherwise authorized because he did suffer a clear and prejudicial denial of due process. We address these arguments in turn.

¶ 15 A. Statutory Authorization Under Section 114-1

¶ 16 Defendant argues on appeal that the circuit court's dismissal was authorized by section 114-1(a)(2) of the Code. 725 ILCS 5/114-1(a)(2) (West 2016). That subsection, as seen above, refers to sections 3-3 through 3-8 of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/3-3 to 3-8 (West 2016)). Of those six referenced sections in the Criminal Code, defendant argues that section 3-4(a)(2) provided the authority for the circuit court to dismiss the DUI charge. See *id.* § 3-4(a)(2) (West 2016).

¶ 17 Section 3-4 of the Criminal Code, titled "Effect of former prosecution," holds:

> "(a) A prosecution is barred if the defendant was formerly prosecuted for the same offense, based upon the same facts, if that former prosecution:
>
> ***
>
> (2) was terminated by a final order or judgment, even if entered before trial, that required a determination inconsistent with any fact or legal proposition necessary to a conviction in the subsequent prosecution[.]" *Id.*

¶ 18 While double jeopardy issues ordinarily begin with a consideration of whether jeopardy attached at the first proceeding, subsection (a)(2) contains a specific carve-out for certain pretrial dismissals. As the original committee comments to section 3-4 explain, "[p]re-trial determinations which should bar a second prosecution (§ 3-4(a)(2)) might involve such issues as time limitation on prosecutions, double jeopardy, pardon, immunity from prosecution, and the substantial insufficiency of the particular wording of the indictment." Ill. Ann. Stat., ch. 38, § 3-4, Committee Comments-1961, at 134 (Smith-Hurd 1964). The committee also noted: "[A] dismissal of a case, sometimes called an acquittal not on the merits, based on variance or defective indictment or information, *** is not a bar to a subsequent prosecution." *Id.* at 133.

¶ 19 The operative concern when considering the effect of a pretrial dismissal of charges is whether the dismissal is "tantamount to an acquittal," as opposed to a dismissal for mere technical insufficiency. *People v. Baze*, 43 Ill. 2d 298, 300 (1969). Applying section 3-4(a)(2), the supreme court in *People v. Quintana*, 36 Ill. 2d 369, 371 (1967), held that a defendant could not be indicted on the same offense after the charge had previously been dismissed on speedy trial grounds.

¶ 20 Defendant's argument that section 3-4(a)(2) provided the authority for the circuit court to dismiss the DUI charge calls on this court to determine whether the circuit court's *original* order—granting defendant's motion to suppress evidence and quash arrest—was tantamount to an acquittal and thus could be considered a final order under that section.

¶ 21 The suppression of evidence is an interlocutory, rather than final, order. See Ill. S. Ct. R. 604(a)(1) (eff. July 1, 2017); *People v. Drum*, 194 Ill. 2d 485, 488 (2000); see also Black's Law Dictionary 938 (10th ed. 2014) (defining interlocutory as "interim or temporary; not constituting a final resolution of the whole controversy"). To be sure, we recognize that suppression of

certain evidence often effectively concludes a case. *E.g.*, *People v. Kipfer*, 356 Ill. App. 3d 132, 143 (2005) ("Because the State would be unable to prove beyond a reasonable doubt that defendant unlawfully possessed a controlled substance without the suppressed cocaine, we reverse outright defendant's conviction and sentence."). But the remedy of suppression is ultimately a remedy to be applied at a subsequent trial. See *People v. LeFlore*, 2015 IL 116799, ¶ 17. In short, the suppression of evidence is not a final order and is not tantamount to an acquittal.

¶ 22 Having found that a suppression order does not trigger double jeopardy, we must also consider whether the portion of the circuit court's order quashing defendant's arrest was of any effect. At the outset of this analysis, we recognize that the Appellate Court, Fourth District, has held that the quashing of an arrest is not an actual process cognizable under Illinois law. *People v. Hansen*, 2012 IL App (4th) 110603, ¶¶ 62-63; *People v. Ramirez*, 2013 IL App (4th) 121153, ¶¶ 56-61; *People v. Winchester*, 2016 IL App (4th) 140781, ¶ 30 (" 'Motion to quash arrest' is an arcane phrase that has a ring of authenticity but is actually meaningless verbiage."). In its decisions, the Fourth District has stressed that a "motion to quash arrest" does not appear anywhere in the Code. *Ramirez*, 2013 IL App (4th) 121153, ¶ 56; see 725 ILCS 5/100-1 to 122-7 (West 2016). While we appreciate the zeal with which the Fourth District has proclaimed a motion to quash arrest is nothing more than meaningless verbiage, we are more concerned with whether there was a statutory or constitutional basis for the circuit court's legal ruling than whether the correct terms were employed.

¶ 23 Defendant argues the circuit court's finding that Bieneman lacked probable cause to arrest necessarily prevents the prosecution from going forward because there must be a valid arrest in order for defendant to be made to stand trial. Conversely, the State argues the circuit

court's order "quashing the arrest" has no legal effect and does not operate to preclude the State from proceeding to trial on the underlying charge.

¶ 24 Our supreme court addressed this issue in *People v. Bliss*, 44 Ill. 2d 363 (1970). There the court held:

> "The general rule is that if a defendant is physically present before the court on an accusatory pleading, either because held in custody after arrest or because he has appeared in person after giving bail, the invalidity of the original arrest is immaterial, even though seasonably raised, as far as the jurisdiction of the court to proceed with the case is concerned. [Citations.] Due process of law is satisfied when one present in court is convicted of crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. Accordingly it is held that the power of a court to try a person for crime is not impaired by the fact that he has been brought within the court's jurisdiction by reason of a forcible abduction." *Id.* at 369.

This court recently employed that reasoning when we found that "an illegal arrest does not necessitate dismissal of the case where evidence still exists to convict defendant." *People v. Jordan*, 2016 IL App (3d) 150747-U, ¶ 23. While *Jordan* was an unpublished case, we officially adopt its analysis here.

¶ 25 As a legal arrest is not a prerequisite to prosecution, it follows that the finding that Bieneman lacked probable cause to arrest does *not* act to bar further prosecution or as an effective dismissal of the charges. Therefore, we must reject defendant's argument that, if Bieneman did not have probable cause to arrest, the State must not have had probable cause to prosecute. As implied in *Jordan*, even where an arrest is made without probable cause, the State

may nevertheless have *other* evidence sufficient to convict. After all, whether Bieneman had probable cause to arrest is a question that is only concerned with "the facts known to the officer at the time of the arrest." *People v. Grant*, 2013 IL 112734, ¶ 11. The State may still introduce other evidence, *i.e.*, evidence not known to the officer at the time of the arrest.

¶ 26 That principle is well illustrated in the present case, where the State indicated that it did have additional evidence to present at trial, in addition to Bieneman's prearrest observations. Specifically, the State indicated that it planned to introduce observations made by the EMTs who interacted with defendant, the substance of the EMTs' conversations with defendant, and receipts from defendant's dinner that night. While Bieneman's observations at the time of the arrest may not have amounted to probable cause, whether those observations plus the State's additional evidence are sufficient to convict is a distinct legal question, not precluded by a finding that Bieneman himself lacked probable cause.[1] Further, while defendant asserts that this additional evidence should have been introduced by the State at the suppression hearing, that evidence actually would have been irrelevant and thus inadmissible at that hearing, as it had no bearing on Bieneman's knowledge at the time he arrested defendant.

¶ 27 The circuit court's order granting defendant's "Motion to Suppress Evidence and Quash Arrest" was thus not a final order and was not tantamount to acquittal. In turn, that order did not serve as a bar to further prosecution under section 3-4(a)(2) of the Criminal Code. Accordingly, that section did not provide the circuit court the authority to dismiss the DUI charge against defendant.

¶ 28 B. Prejudicial Denial of Due Process

[1]It should also be noted that defendant was charged with a misdemeanor and probable cause is only required to proceed with felony prosecutions. See *infra* ¶¶ 33-35.

¶ 29 Having found that there was no statutory authorization for the circuit court's dismissal of the DUI charge, we next consider whether that dismissal was warranted because "there has been a clear denial of due process which prejudiced defendant." See *Schroeder*, 102 Ill. App. 3d at 135.

¶ 30 Defendant argues that he suffered a prejudicial denial of due process in two distinct ways. First, he asserts that his "due process has been violated by the People who continued to pursue a charge that lacked any constitutional authority (probable cause)." Next, he argues that the State's filing of a "false" certificate of substantial impairment amounts to prosecutorial misconduct that, in turn, "resulted in a clear denial of due process which prejudiced the Defendant."

¶ 31 1. Probable Cause

¶ 32 Defendant's argument that the State lacked probable cause proceeds as follows:

> "Just as police officers must have probable cause to make arrest [*sic*], prosecutors must also have probable cause to charge a defendant with a crime. It is undisputed in this case that the trial judge granted Defendant's motion to suppress evidence and quash arrest due to a lack of probable cause to arrest by the officer ***. Therefore when this case returned to the trial judge following affirmation by this Court, no probable cause existed for the original DUI charge against the Defendant ***."

Defendant concludes that his due process rights were violated when the State continued to pursue the DUI charge despite the lack of probable cause to do so.

¶ 33 The Illinois Constitution, however, only requires probable cause—found via indictment or preliminary hearing—in felony cases. Ill. Const. 1970, art. I, § 7 ("No person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the

initial charge has been brought by indictment of a grand jury or the person has been given a prompt preliminary hearing to establish probable cause."); see *People v. Stavrakas*, 335 Ill. 570, 582 (1929) ("A felony, under our statutes, is an offense punishable with death or by imprisonment in the penitentiary, while every other offense is a misdemeanor."); 720 ILCS 5/2-11 (West 2016) (" 'Misdemeanor' means any offense for which a sentence to a term of imprisonment in other than a penitentiary for less than one year may be imposed.").

¶ 34 That probable cause is only required in felony cases is further illustrated by the procedures found in the Code. The Code provides:

> "(a)All prosecutions of felonies shall be by information or by indictment. No prosecution may be pursued by information unless a preliminary hearing has been held or waived in accordance with Section 109-3 and at that hearing probable cause to believe the defendant committed an offense was found, and the provisions of Section 109-3.1 of this Code have been complied with.
>
> (b) All other prosecutions may be by indictment, information or complaint." 725 ILCS 5/111-2(a), (b) (West 2016).

Other portions of the Code reflect the same rule. See, *e.g.*, *id.* § 109-3(a) ("The judge shall hold the defendant to answer to the court having jurisdiction of the offense if from the evidence it appears there is probable cause to believe an offense has been committed by the defendant, as provided in Section 109-3.1 of this Code, *if the offense is a felony*." (Emphasis added.)); *id.* § 109-3.1(b) ("Every person in custody in this State for the alleged commission of a felony shall receive either a preliminary examination as provided in Section 109-3 or an indictment by Grand

Jury as provided in Section 111-2 ***.").[2] In sum, neither the Illinois Constitution nor the Code requires the State to demonstrate probable case—either through an indictment or at a preliminary hearing—where it is prosecuting a misdemeanor charged via criminal complaint. *E.g.*, *People v. Mitchell*, 68 Ill. App. 3d 370, 374-75 (1979).

¶ 35 As charged in the complaint in the present case, the offense of DUI is a Class A misdemeanor. 625 ILCS 5/11-501(a)(2), (c)(1) (West 2014). The State is not required to establish probable cause to proceed on a misdemeanor charge, and thus, the failure to do so is not grounds for dismissal of the charge. *People v. Davis*, 397 Ill. App. 3d 1058 (2010); *People v. Majors*, 405 Ill. App. 3d 879 (2010). As the establishment of probable cause was not a procedure due to defendant in this case, it follows that the State's alleged lack of probable cause did not constitute a prejudicial denial of defendant's due process rights. We note in closing that even if the State were obligated to demonstrate probable cause to proceed with the case, the court's finding that Bieneman lacked probable cause *to arrest* is not equivalent to a finding that the State did not have probable cause to charge or further prosecute defendant. See *supra* ¶ 27.

¶ 36 2. Certificate of Impairment

¶ 37 Finally, defendant argues that the State's filing of a "false" certificate of impairment amounted to prosecutorial misconduct and was thus a prejudicial violation of his due process rights.

¶ 38 We begin by considering the allegation that the State's certificate was "false." Following the circuit court's suppression order, the State filed the requisite certificate of impairment along with its notice of appeal. In that signed certificate, the State asserted, twice, that it would be "unable to proceed to trial in this matter" following the suppression ruling. Of course, after this

[2]Notably, the failure to comply with section 109-3.1 *is* a ground for dismissal of a charge provided in section 114-1.

court affirmed the suppression ruling, the State indicated that it actually could proceed to trial without the suppressed evidence and, indeed, that it planned to do so. Clearly, the initial statements that the State would be "unable" to go to trial without the suppressed evidence were untrue. On appeal, the State does not argue otherwise, instead merely claiming that "that is standard language in a certificate of impairment."

¶ 39 Nevertheless, we do not find that this erroneous claim resulted in a prejudicial denial of defendant's due process rights. In his argument, defendant relies wholly on case law concerning the introduction of false evidence before the grand jury, which is not relevant to the present situation since there has been no claim that the State sought to use false evidence or perjured testimony. Further, it should be noted that *People v. Young*, 82 Ill. 2d 234, 247 (1980), in which our supreme court established the requirement that the State file a certificate of impairment prior to an appeal, mandates only that the State aver "that the suppression substantially impairs the State's ability to prosecute the case." In its certificate here, the State did aver as such. Even if, as the defendant alleges, the false claim was misconduct on the part of the prosecutor, it did not result in an appeal that the State was not otherwise entitled to bring.

¶ 40 This lack of prejudice would also render the doctrine of judicial estoppel inapplicable. That doctrine "applies in a judicial proceeding when litigants take a position, benefit from that position, and then seek to take a contrary position in a later proceeding." *Seymour v. Collins*, 2015 IL 118432, ¶ 36. One of the elements of judicial estoppel, however, is that the party must "have succeeded in the first proceeding and received some benefit" from taking its position. *Id.* ¶ 37. As we explained above, the State gained no benefit from initially claiming it was "unable" to proceed. Not only was the State ultimately unsuccessful in that appeal, but the claim of

inability to proceed was not even necessary for the State to secure the appeal. See *Young*, 82 Ill. 2d at 247-48; Ill. S. Ct. R. 604(a) (eff. July 1, 2017).

¶ 41 III. CONCLUSION

¶ 42 The judgment of the circuit court of Peoria County is reversed and remanded for further proceedings.

¶ 43 Reversed and remanded.

¶ 44 JUSTICE McDADE, specially concurring:

¶ 45 I agree that the applicable rules support the analysis of the majority in this case and I therefore concur in the judgment.

¶ 46 I write separately to suggest that the certificate of substantial impairment has been "outed" as a legal nullity and that the supreme court should declare it officially dead. It is a meaningless exercise for the parties and the court.

¶ 47 It has been nearly 40 years since the supreme court defined its contours in *People v. Young*, 82 Ill. 2d 234 (1980). In all of the intervening years, the court has never seen fit to modify its Rule 604(a)(1) to even mention either the certificate itself or the requirement it is apparently intended to implement. A plain reading of the rule entitles the State, with no constraints, to appeal any pretrial order granting a motion for suppression of evidence.

¶ 48 Those 40 years have also shown Justice Moran to be prophetic in his partial concurrence and partial dissent in *Young.* He said:

> "By today's ruling, the State, in its sole discretion and as a matter of right, will be allowed to appeal any pretrial suppression order whenever the prosecutor certifies to the trial court that such order substantially impairs the State's ability to further prosecute

> its case. In doing so, the court has intentionally and expressly refused to adopt any objective standard or define the term 'substantial impairment.'
>
> Instead, the majority relies upon (1) the good-faith evaluation of the prosecutor and (2) the State's need to allocate its heavily taxed resources as the only deterrent against possible abuse of discretion on the part of the prosecutor.
>
> Contrary to the beliefs and assumptions expressed in the opinion that only a minimal number of appeals by certification will be forthcoming, I foresee an upsurge in frivolous appeals being added to the voluminous case load presently pending in each district of the appellate court." *Id.* at 249 (Moran, J., concurring in part and dissenting in part).

¶ 49 We still have no definitions and no discernible standards. At this point, it appears that the requirement that the State file a certificate of substantial impairment in order to appeal a decision granting a motion to suppress evidence is superfluous and thus an unnecessary waste of time and effort for everyone involved.