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2026 IL App (3d) 250554-U

Order filed September 21, 2026

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2026

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 21st Judicial Circuit,
	)	Iroquois County, Illinois,
Plaintiff-Appellant,	)	
	)	Appeal No. 3-25-0554
v.	)	Circuit No. 22-CF-63
	)	
ANTONIO D. BALLARD,	)	Honorable
	)	Michael C. Sabol,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE BRENNAN delivered the judgment of the court.
Justices Davenport and Anderson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred in granting defendant's motion to suppress evidence, where it misapplied the burden of proof. Reversed and remanded.
- ¶ 2 On October 21, 2025, the trial court granted defendant's, Antonio D. Ballard's, motion to suppress evidence, finding that there was not sufficient evidence presented at the hearing to justify a traffic stop based on illegally tinted windows or following too closely. The State appeals, arguing that the trial court misapplied the burden of proof. We agree with the State that defendant never

made a *prima facie* showing that his vehicle was improperly stopped so as to shift the burden of proof to the State. Accordingly, we reverse and remand for further proceedings.

¶ 3

I. BACKGROUND

¶ 4

On June 19, 2022, the Illinois State Police performed a traffic stop to investigate two possible traffic violations: illegally tinted windows and following too closely. Upon asking defendant for his license and registration, the officers learned that defendant's license was suspended and he was unable to provide proof of insurance. Accordingly, the officers decided to tow the vehicle and conducted an inventory search prior to impoundment. See *People v. Hundley*, 156 Ill. 2d 135, 138 (1993) (inventory search prior to lawful impoundment). During the pre-tow inventory search, the officers found a gun and ammunition. On June 21, 2022, defendant was charged with aggravated unlawful use of a weapon, possession of a loaded machine gun in a passenger compartment, driving while license suspended, operating an uninsured motor vehicle, following too closely, and failure to wear a seat belt.

¶ 5

A. Written Motion to Suppress

¶ 6

On May 13, 2025, defendant moved to suppress evidence. As to the legality of the traffic stop, he argued in total: “[At the time of the stop], said officers were without authority to stop [defendant] and place him under arrest, as there existed no probable cause to believe that [he] had committed any offense.”

¶ 7

As to the legality of the subsequent inventory search, he argued:

“[At the time of the search], the officers were without authority to conduct a search of the defendant or his vehicle for one or more of the following reasons:

a. The officers did not possess a warrant to search the defendant or his vehicle, and the circumstances of the arrest did not authorize them to conduct a warrantless search;

- b. There existed no exigent circumstances which justified a warrantless search of the defendant or the vehicle;
- c. The defendant did not consent to the search;
- d. At the time of the arrest the defendant was not violating any Federal, state, or local laws;
- e. The said search and seizure was not incident to or contemporaneous with a lawful arrest of the defendant.”

¶ 8 B. Hearing on the Motion to Suppress

¶ 9 On July 9, 2025, the trial court conducted a hearing on the motion to suppress. The court first addressed the State’s DVD video of the traffic stop, asking if “anybody want[ed] to address anything that’s on the video.” The defense answered that it did *not* plan to use it, unless the State implicated it during its cross-examination of the officer. The State represented that the trial court had viewed the video in a prior proceeding, where the parties agreed that it would be tendered to the court. It further represented that its cross-examination would be confined to testimony only.

¶ 10 The defense called Illinois State Police officer Nick Retherford as its only witness. During direct examination, Retherford testified that, on June 19, 2022, he conducted a traffic stop on defendant’s vehicle, which had been driving south on Interstate 57 (I-57). The defense did not question Retherford about why he initiated the traffic stop. After the stop, another trooper on the scene performed a pre-tow inventory search of the vehicle. The defense did not question Retherford as to why the pre-tow inventory search was performed. The officers did not have a warrant. Defendant did not consent to the search. The defense asked whether, *after* the stop, Retherford observed defendant violating any law:

“Q. And at the time you approached that vehicle *after* you stopped it you didn’t observe this defendant violate any [law]?”

MR. PARSONS [for the State]: Objection, calls for conclusion.

THE COURT: Okay. Why don’t you reword your question. ***.

Q. My question then was *after* you stopped that vehicle and approached it, you didn’t see [defendant] violating any [law]; is that correct?

A. *After* getting him to stop?

Q. *After* you stopped the vehicle.

A. I did note some laws being broken, yes.” (Emphases added.)

Retherford proceeded to testify that he suspected defendant to possess raw cannabis unfit for transport. Retherford understood that cannabis is supposed to be transported in a sealed, odor proof, child proof container. However, Retherford smelled the odor of raw cannabis and saw a rolling tray commonly associated with cannabis sitting on the floorboard. Defendant was not charged with a cannabis-related offense.

¶ 11 During cross-examination, Retherford testified that he first noticed defendant’s vehicle because the side and rear windows had “dark colored tint.” The defense objected:

“MR. SOMMERS: I’m going to interpose an objection, your Honor. My examination [did] not explore the *stop* of the vehicle but rather what [precipitated] the *search* of the vehicle.

MR. PARSONS: Your Honor, this goes to—he made several questions regarding why this person was searched and why this person was stopped. I’m trying to ascertain exactly why he was searched, exactly why he was stopped and exactly why he was arrested. That is within the scope of the direct examination.

THE COURT: Mr. Sommers.

MR. SOMMERS: Well, judge, the evidence that was given by the trooper had to do with the search of the vehicle and had to do with what his observations were from the time that he approached the vehicle, not when he stopped the vehicle, what caused him to stop the vehicle—

THE COURT: Are you conceding there was probable cause to stop the vehicle? That is not basis of your motion.

MR. SOMMERS: I’m not conceding that, judge.

THE COURT: That’s not basis of your motion though.

MR. SOMMERS: The motion speaks to that.

THE COURT: Okay. Well, I mean, Mr. Parsons.

MR. PARSONS: Your Honor, the motion is a standard motion, covers everything. He is saying he has no probable cause to stop, search or seize him based on anything. It is well within the bounds of the law for an officer to make a temporary investigative stop of a vehicle which he reasonably suspects is in violation of a vehicle code. This officer is prepared to testify today here that there were [two] vehicle code infractions that he personally witnessed and I’m trying to get to that as to the means to the second step in the search and stop, which was the [defendant’s] driving status, which I will not repeat [a]loud yet as I do not have a foundation for it. But I’m not there yet because *I have to lay the*

foundation as to why he pulled him over, why he stopped him, why he was temporarily detained lawfully to get his driver's information and then we can get to the basis of the search, which is the heart of the motion. And we are entitled to respond to that motion now that he has established that there was no warrant and there was no consent. We are entitled to establish why there was probable cause and a reasonable, articulable suspicion of criminal activities.

THE COURT: Mr. Sommers, your objection, anything further?

MR. SOMMERS: Nothing further.

THE COURT: All right. I will overrule the objection.” (Emphases added.)

¶ 12 As to the stop, Retherford testified that he noticed defendant's car on I-57 because the side windows were tinted. Retherford did not recall if the front windshield was tinted. Defendant was in violation of the three-second following standard set forth by the National Traffic Safety Administration. Based on these observations, Retherford decided to pull over defendant. When Retherford approached the vehicle, he could see the form of a single person, defendant, but he could not “tell anything apart from that because of the tint.”

¶ 13 Retherford asked defendant for his identification and proof of insurance. With defendant's identification, Retherford learned that defendant's driver's license was suspended. Defendant was unable to provide proof of insurance. It took Retherford “[e]asily within five minutes” to determine that defendant was driving while his license was suspended and had no proof of insurance. Retherford explained that state law, as well as department policy, required him to tow the vehicle from the roadway when a driver's license is suspended and he is unable to provide proof of insurance. The reason for the policy is that the department would incur liability if it allowed defendant to drive an uninsured vehicle. Additionally, the department conducts a pre-tow

inventory search on every vehicle that it tows. The inventory search protects the department against claims of broken or missing property within the vehicle. During the inventory search, in addition to the cannabis tray, the officers recovered “a loaded Glock pistol with 31 round mag that also had a fully automatic switch and then a second magazine.” The weapon had “live rounds,” was found in the passenger compartment, and was otherwise uncontained.

¶ 14 During redirect examination, Retherford again testified about the bases for the stop. Regarding defendant’s speed while following too closely, Retherford testified that defendant was “moving.” To determine that a vehicle is following too closely, Retherford:

“A. “[P]ick[s] a landmark that’s on the roadway and when the first vehicle crosses it[,] I start counting 1001, 1002, 1003, and if that same—if it’s within that window, if the vehicle, second vehicle crosses that same landmark then we’re following too closely.

Q. And that was the basis for this stop; is that right?

A. That and the dark window tint.”

Regarding the tinted windows, Retherford could not recall whether defendant’s window was up or down when he approached the stopped vehicle. The back window was tinted, but not as darkly as the side windows. Retherford further testified that, when he decided to tow the vehicle, he placed defendant in the squad car. He agreed that defendant was not free to leave and was detained.

¶ 15 During recross-examination, Retherford repeated his testimony concerning pre-tow inventory searches.

¶ 16 The trial court then asked the defense if it had any other witnesses, and the following exchange occurred:

“THE COURT: Any other witnesses, Mr. Sommers [for defendant]?

MR. SOMMERS: No, judge, we are fine. That would be the extent of our evidence.

THE COURT: All right. Mr. Parsons [for the State].

MR. PARSONS: We have no further evidence to argue. We have argument and caselaw for the court.

THE COURT: Okay. *** I'm going to give [both] counsel a chance to file written [closing] arguments[.]”

The trial court gave each party 30 days to file an argument, plus 30 days to reply to the other's argument.

¶ 17 C. Written Closing Argument for the Motion to Suppress

¶ 18 The State's written closing argument argued that “an inventory search, conducted in good faith according to reasonable and standardized police procedures, was constitutionally permissible where a police officer performed a lawful traffic stop and found reason to arrest [defendant] for driving on a suspended license.” It explained that, when the police lawfully seize a vehicle, they are permitted to perform an inventory search of the vehicle without a warrant. *Hundley*, 156 Ill. 2d at 138. In this case, Retherford stopped defendant's vehicle to investigate traffic violations. Retherford had a reasonable, articulable suspicion to stop defendant for these traffic violations. Retherford could not see the driver of the vehicle clearly through the tinted windows, and his training indicated that the driver of the vehicle did not keep a safe distance from the car in front of him. Upon asking for defendant's license and registration, Retherford learned that defendant was driving while his license was suspended and was unable to provide proof of insurance. Accordingly, state law and department policy required Retherford to tow the vehicle and, per department policy, a pre-tow inventory search was warranted.

¶ 19 Defendant’s written argument asserted that “the stop here was pretextual to conduct further investigation of the vehicle through a warrantless search.” In support, defendant observed that defendant’s detention “had nothing to do with the initial stop,” and was unreasonably prolonged so as to “excee[d] the time needed to handle the matter for which the stop was made.” In addition, defendant challenged the legitimacy of the stop at its inception, arguing that Retherford “lacks any semblance of credibility.” As to the allegation that defendant was following too closely, Retherford explained that he “counted the number of car lengths between [defendant’s] vehicle and the vehicle in front of it” but did not present video or physical evidence in support of his testimony. As to the allegation of tinted windows, defendant argued that, if the windows were open when he stopped the vehicle, Retherford would have no way of knowing whether they were tinted. Defendant did not address *Hundley* or the legality of pre-tow inventory searches.

¶ 20 The State’s response argued that defendant’s claim that the stop was pretextual “ignored the evidence” that “shows conclusively that the Defendant was lawfully arrested for driving while [license suspended] and the police conducted a procedurally permissible inventory search of the vehicle afterward.”

¶ 21 D. The Trial Court’s Ruling on the Motion to Suppress

¶ 22 On October 21, 2025, the trial court granted the motion to suppress evidence. Its ruling turned on its finding that *the State* did not establish that the initial traffic stop was justified. It noted that it had viewed the DVD video of the “arrest,” and it found Retherford credible. It clarified, however, that the video was not played at the hearing and Retherford was not asked questions about it. Retherford “just wasn’t asked the right *** follo[w]-up questions *by the State* as to the [purported traffic] violations *** that were the purpose of the stop.” (Emphasis added.) The court reiterated: “I’m not doubting [Retherford’s] truthful testimony, but *the State* simply

didn't ask enough questions to show even by [a] reasonable suspicion standard that the stop was justified." (Emphasis added.)

¶ 23 On October 22, 2025, the State filed a notice of appeal pursuant to Illinois Supreme Court Rule 604(a)(1) (eff. April 15, 2024) (allowing the State to appeal orders suppressing evidence). It also filed a corresponding certificate of impairment, noting that the suppression of the evidence substantially impaired its ability to prosecute the case.

¶ 24 II. ANALYSIS

¶ 25 On appeal, the State contends that the trial court erred in granting the motion to suppress evidence on the ground that the traffic stop was not justified at its inception. Here, the trial court's ruling turned entirely on the legality of the stop at its inception, as do the parties' arguments on appeal. The State argues more specifically that the trial court misapplied the burden of proof when it did not require defendant to first make a *prima facie* showing that the stop was not justified at its inception before requiring the State to provide evidence to counter defendant's *prima facie* evidence. For the reasons that follow, we agree.

¶ 26 The fourth amendment to the United States Constitution protects people against unreasonable searches and seizures. *People v. Timmsen*, 2016 IL 118181, ¶ 9. "The touchstone of the fourth amendment is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 19, 88 S. Ct. 1868, 1878-79 (1968)). A traffic stop is a "seizure" within the meaning of the fourth amendment. *Id.* During a traffic stop, a police officer may conduct a brief, investigatory stop of a vehicle where the officer has a "reasonable, articulable suspicion" that criminal activity is afoot. *Id.* "Reasonable, articulable suspicion" is a less exacting standard than probable cause, but the officer's suspicion must amount to more than a hunch. *Id.* "The investigatory stop must be

justified at its inception and the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the governmental intrusion upon the constitutionally protected interests of the private citizen.” *Id.* In addition, “an otherwise lawful seizure ‘can become unlawful if it is prolonged beyond the time reasonably required’ to complete the purpose of the seizure.” *People v. Reedy*, 2015 IL App (3d) 130955, ¶ 27.

¶ 27 We apply a two-part standard of review to a trial court’s ruling on a motion to suppress. *Id.* ¶ 16. We accept the trial court’s determinations of historical fact unless they are against the manifest weight of the evidence. *People v. Jones*, 215 Ill. 2d 261, 267-68 (2005). However, we review the trial court’s ultimate ruling on the motion *de novo*. *Id.* Here, while we of course defer to the trial court’s credibility determinations, our review primarily turns on legal questions concerning the burden of proof.

¶ 28 The defendant bears the burden of proof on a motion to suppress evidence. 725 ILCS 5/114-12(b) (West 2022); *People v. Cregan*, 2014 IL 113600, ¶ 23. A defendant makes a *prima facie* case that the seizure violated the fourth amendment by showing that he was doing nothing unusual to justify the stop. *People v. Bianca*, 2017 IL App (2d) 160608, ¶ 21. In making a *prima facie* case, a defendant has the “primary responsibility” for establishing the factual and legal bases for the motion to suppress. *People v. Brooks*, 2017 IL 121413, ¶ 22. Only if the defendant makes a *prima facie* showing that the seizure was illegal does the burden shift to the State to provide evidence to counter the defendant’s *prima facie* case. *Reedy*, 2015 IL App (3d) 130955, ¶ 22. Even then, the ultimate burden of proof remains with the defendant. *Brooks*, 2017 IL 121413, ¶ 22.

¶ 29 With this understanding of the burden process in mind, we turn to the hearing at issue. The defense informed the trial court as a preliminary matter that it did not intend to use the State's DVD video showing defendant's vehicle just prior to and during the stop, but it reserved the right to use the video on redirect if necessary to refute the evidence brought out during cross-examination. The defense noticeably avoided addressing the legality of the stop at its inception during its direct examination of Retherford, thrice clarifying that it was focusing on defendant's conduct *after* the stop. The defense did not question Retherford during direct examination regarding tinted windows or following closely or why Retherford stopped defendant to investigate non-compliance with those laws. Certainly, the defense did not make a *prima facie* showing that the stop was not justified at its inception during the direct examination of its witness.

¶ 30 During the State's cross-examination of Retherford, defendant *objected* to the State's questions concerning the basis for the stop, arguing that they were beyond the scope. The State explained: "I have to lay the foundation as to why he pulled him over, why he stopped him, why he was temporarily detained lawfully to get his driver's information *and then we can get to the basis of the search, which is the heart of the motion*. And we are entitled to respond to that motion now that he has established that there was no warrant and there was no consent [to search the vehicle]." (Emphasis added.) Indeed, the State's theory of the case was that, upon asking for defendant's license and proof of insurance and learning that defendant was driving while his license was suspended and was unable to provide proof of insurance, Retherford was *required* to tow the vehicle and perform a pre-tow inventory search. The State sought to introduce some evidence of the legality of the stop, primarily for foundational purposes to explain the request for defendant's license, which ultimately led to the tow and pre-tow inventory search. Doing so in no

way excused defendant's obligation to make a *prima facie* showing that there was no basis for the stop before that burden shifted to the State.

¶ 31 At the conclusion of Retherford's testimony, the defense informed the court that it would not be introducing any additional evidence. The trial court never made a finding, either at the end of Retherford's direct testimony, or at the overall conclusion of Retherford's testimony and defendant's case, that the defense made a *prima facie* showing that the stop was not justified at its inception, so as to shift the burden of proof to the State. *Cf. Bianca*, 2017 IL App (2d) 160608, ¶ 22 (trial court expressly shifted the burden to the State). Arguably, the trial court made an implicit finding that defendant made a *prima facie* showing that the search was not justified, where Retherford conceded that he did not have a warrant for the search and defendant did not consent to the search. See *People v. Gipson*, 203 Ill. 2d 298, 307 (2003) (a defendant presents *prima facie* evidence of an unjustified search when he shows that there was no search warrant). As to the search, the State established through its cross-examination that, upon learning that defendant was driving while his license was suspended and that he could not provide proof of insurance, Retherford was required to tow the vehicle and conduct a pre-tow inventory search. In closing, defendant failed to address the State's evidence supporting the legitimacy of the pre-tow inventory search and instead changed tack to argue that the stop had been pretextual (an argument that implicitly *accepts* the legality of the stop at its inception but challenges the officer's subsequent actions) or, alternatively, the stop had not been justified in the first place. The trial court accepted this last argument but, as discussed, defendant had never introduced *prima facie* evidence to establish the factual and legal basis for his position that he was doing nothing unusual to justify the stop.

¶ 32 The cases cited by the State provide further support for our holding. In *People v. Liekis*, 2012 IL App (2d) 100774, ¶ 4, the defendant testified that she was “ ‘pulled over,’ ” asked to “ ‘do a sobriety test,’ ” and subsequently placed under arrest for driving under the influence. Defense counsel noted that the defendant had been arrested without a warrant and moved for the trial court to shift the burden to the State “ ‘to prove the statutory warrant requirements.’ ” *Id.* ¶ 5. The trial court granted the oral motion and directed the State to “ ‘assume the burden.’ ” *Id.* The State then cross-examined the defendant, who acknowledged telling the officers, after she had been stopped, that she had six beers. *Id.* ¶ 6. The State also introduced a video of the sobriety tests. *Id.* ¶ 7. After the trial court denied the State’s motion for a directed verdict, the trial court again stated that the State had the burden of proof. *Id.* ¶ 8. The State presented additional evidence that it stopped the defendant’s vehicle because it matched the description, which had included a license plate number, of a vehicle that had been reported in a hit-and-run accident. *Id.* ¶ 9. An odor of alcohol emanated from the defendant’s person and breath, the defendant’s eyes were glassy and bloodshot, and she failed the horizontal gaze nystagmus test. *Id.* The trial court determined that there was “probable cause” and denied the defendant’s motion to quash arrest and suppress evidence. *Id.* ¶ 10. On appeal, the defendant argued that the trial court erred when it denied her motion to quash and suppress, because the State failed to show that the *traffic stop* was justified by reasonable suspicion. *Id.* ¶ 19. The appellate court rejected the defendant’s argument, noting that the defendant had failed to establish a *prima facie* case that she was doing nothing unusual to justify the traffic stop. *Id.* ¶¶ 21-22. In considering *Liekis*, we observe that the defendant argued at trial that the *arrest* violated the fourth amendment but later argued that the *stop* violated the fourth amendment. Like the instant defendant, the defendant in *Liekis* failed to acknowledge that she neglected to first set forth a *prima facie* case in support of her argument concerning the stop.

¶ 33 In *Reedy*, 2015 IL App (3d) 130955, ¶ 1, the trial court granted the co-defendants’ dual motions to suppress evidence following their arrest for possession of heroin. It explained that, following an initial traffic stop for crossing a fog line on an entrance ramp, the stop “ ‘changed’ ” into “ ‘an all-out [dog] sniff and search[.]’ ” *Id.* ¶ 12. The State appealed, arguing that the traffic stop was not unreasonably prolonged by the arrival of the narcotics dog, which performed the sniff before the initial purpose of the stop had been completed. *Id.* ¶¶ 13, 30. The co-defendants responded that the stop was unnecessarily prolonged. *Id.* ¶ 13. The co-defendants also argued that the officers lacked probable cause (or reasonable suspicion) to effectuate the traffic stop. *Id.* The appellate court agreed with the State that the arrival of the narcotics dog did not unreasonably prolong the stop. *Id.* ¶ 33. It also rejected the co-defendants’ argument that the officers lacked reasonable suspicion to effectuate the traffic stop at its inception, explaining that the co-defendants were required to make a *prima facie* showing that their multiple breaches of the fog line were justifiable under the improper lane usage statute, before the burden would shift to the State to show otherwise. *Id.* ¶ 22. It noted that the co-defendants “neither offered nor induced” any evidence to that effect. *Id.*

¶ 34 As in *Liekis* and *Reedy*, defendant here presented no evidence during direct examination that the traffic stop was unlawful at its inception, nor at any point in his case in chief. He only raised the theory as an alternate argument in closing. The trial court chose to accept it, not recognizing that defendant had never presented *prima facie* evidence in support of the theory. This misapprehension caused the trial court to improperly shift the burden of proof to the State as it relates to the initial basis for the stop. We thus reverse its decision to grant defendant’s motion to suppress evidence and remand for further proceedings consistent with this disposition.

¶ 35

III. CONCLUSION

¶ 36 The judgment of the circuit court of Iroquois County is reversed and the case is remanded for further proceedings consistent with this disposition.

¶ 37 Reversed and remanded.