2011 IL App (1st) 100341-U

FOURTH DIVISION
DECEMBER 22, 2011

No. 1-10-0341

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	
IN THE INTEREST OF:	)	
	)	Appeal from the
DEON J., a minor,	)	Circuit Court of
	)	Cook County.
Respondent-Appellant.	)	
	)	
	)	
	)	No. 09JD3839
	)	
	)	Honorable
	)	Carl Anthony Walker,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

ORDER

HELD: trial court's ruling on minor respondent's motion to suppress reversed where police lacked reasonable suspicion to initiate a *Terry* stop in response to a call of unknown origin that merely contained a vague claim of a purported domestic dispute and the respondent was not engaged in any suspicious behavior and did not match the description of any person that the police were searching for.

¶1 Following a bench trial, minor respondent, Deon J., was adjudicated delinquent and convicted of aggravated unlawful use of a weapon and unlawful possession of a firearm. He was

sentenced to nine months probation. On appeal, respondent argues that his convictions must be reversed because: (1) the trial court improperly denied his motion to quash arrest and suppress evidence; and (2) the aggravated unlawful use of a weapon statute is unconstitutional. For the reasons explained herein, we reverse the judgment of the trial court and remand for further proceedings.

¶2 BACKGROUND

¶3 On September 21, 2009, 16-year-old minor respondent was found in possession of a loaded .38 caliber revolver and was subsequently charged with three counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1) (West 2008)) and one count of unlawful possession of a firearm (720 ILCS 5/24-3.1(a)(1) (West 2008)).

¶4 Respondent filed a motion to quash his arrest and suppress evidence, arguing that the search and seizure of his person was unlawful. He argued that when the police stopped him, the officers lacked reasonable suspicion or probable cause to believe that he had committed or was about to commit a criminal offense and thus the search and seizure of his person violated his constitutional rights. The trial court presided over a hearing on respondent's motion.

¶5 At the hearing, respondent testified that on September 20, 2009, at approximately 10:25 p.m., he was walking home with Julisa, a 21-year old female friend of his sister. They were near the corner of 46th Street and Vincennes when respondent observed police arrive in an unmarked police car. A male and female officer then exited the vehicle and approached respondent and Julisa. The officers ordered respondent to keep his hands out of his pockets and informed the pair that they had received a call reporting a domestic disturbance and that Julisa matched the

description of the offender. Respondent was never told that he fit the description of any person that the officers were investigating that evening. Respondent was then searched twice. The female officer initially searched respondent's pockets and did not find anything. The male officer then searched respondent and recovered a firearm from his waistband. At the time that he was stopped, respondent did not feel free to leave.

¶6 Chicago Police Officer Saul Rodriguez testified that he was working with his partners Officer Thill[1] and Officer Judith Cortes on the date and time in question. He and his partners were responding to a domestic disturbance call involving a stabbing victim located at 4556 South Vincennes, which was a six-unit apartment building. The offender was described as a black female wearing an orange jacket. Officer Rodriguez arrived at that address within two or three minutes of receiving the call. At that time, Officer Rodriguez observed a black female wearing an orange jacket exit the apartment building located at 4556 South Vincennes. The woman was walking with respondent. They were approximately one foot apart and it "seemed like they were talking to each other as they were exiting." Officer Rodriguez did not observe anything in her hands or any bulges in the woman's clothing. Officer Rodriguez and Officer Cortes stopped the duo, ordered them to stand against a wall, and informed them that Julisa matched the description of a person involved in an alleged stabbing at the apartment building. Both Julisa and respondent denied they were involved in the incident the officers were investigating. Officer

[1] At the hearing on respondent's motion to suppress, Officer Rodriguez's partner is identified as "Thill." Later, at respondent's trial, the officer is referred to as "Filt." For purposes of clarity and uniformity, we will refer to the officer as "Thill" throughout this disposition.

Thill entered the building in search of the stabbing victim while Officers Roriguez and Cortes proceeded to search respondent and Julisa. Officer Rodriguez explained that Officer Cortes performed a "cursive" search on respondent and did not find any contraband. Officer Rodriguez then commenced his own search of respondent and felt a bulge in the front of respondent's waist. He recovered a .38 caliber revolver from respondent's person. Officer Rogriguez explained that both respondent and Julisa were searched because he and his partner were unsure whether either of them were carrying a knife and they were concerned for their safety. Officer Rodriguez acknowledged that at the time of the stop, respondent did not the fit the description of any person involved in the domestic disturbance call that he and his partners were investigating. Officer Rodriguez also acknowledged that it was evident from respondent's appearance that he was a minor and not someone involved in a domestic dispute.

¶7 After hearing the testimony and the arguments offered by each party, the trial court denied respondent's motion to quash arrest and suppress evidence. The parties subsequently proceeded by way of a bench trial.

¶8 Officer Rodriguez's trial testimony mirrored the testimony he provided at the earlier suppression hearing. Specifically, Officer Rodriguez confirmed that he was responding to a call at an apartment building located at 4558 South Vincennes at approximately 10:25 p.m. on September 20, 2009, when he encountered respondent. He reiterated that he performed a protective pat-down of respondent and recovered a blue steel Rossi .38 caliber firearm from respondent's waistband, which he handed to his partner, Officer Cortes. Officer Rodriguez acknowledged that he performed the search on respondent even though Officer Cortes already

performed a pat-down of respondent and had not recovered any contraband.

¶9 Chicago Police Officer Judith Cortes confirmed that Officer Rodriguez performed a pat-down of respondent and recovered a .38 caliber five-shot revolver from respondent's person. When Officer Rodriguez passed the weapon to her, Officer Cortes "secured" it by unloading the weapon. At the time the gun was recovered, there were five live rounds in the weapon. After unloading the weapon, Officer Cortes gave the gun and the ammunition to Officer Thill who was also working with them that night. When they returned to the station, Officer Thill inventoried the weapon and the bullets in accordance with police procedure and the evidence was placed in a locked locker. At the station, Officer Cortes processed respondent. She learned that he was 16 years old and that he did not possess a valid Firearm Owner Identification Card (FOID) card.

¶10 After hearing the aforementioned testimony, the trial court deemed the testimony of the officers to be "credible" and adjudged respondent delinquent. Respondent was subsequently sentenced to nine months probation. This appeal followed.

¶11 ANALYSIS

¶12 On appeal, minor respondent first argues that the trial court erred in denying his pre-trial motion to quash arrest and suppress evidence. Specifically, he argues that the police lacked reasonable articulable suspicion to justify the initial stop pursuant to *Terry v. Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Respondent observes that the State did not present any information to establish the source and nature of the initial call that triggered the stop, and thus the call lacked sufficient indicia of reliability to provide the officers with a sufficient basis to initiate the stop. In addition, respondent argues that the police officers failed to engage in the

necessary degree of corroboration to substantiate the call prior to initiating the stop, rendering the stop unlawful. Assuming *arguendo* that the stop was lawful, respondent nonetheless contends that the police officers exceeded the permissible scope of a permissible *Terry* search by subjecting him to two searches by two different officers.

¶13 The State responds that the trial court properly denied respondent's motion because the police had a reasonable articulable suspicion to justify the *Terry* stop and frisk. The State observes that the woman the respondent was with at the time of the stop matched the description of an offender involved in a domestic dispute that culminated in a stabbing at that location. Based on the totality of the circumstances known to the officers at the time, the State maintains that the officers had reasonable suspicion to stop minor respondent. Moreover, the State argues that the search was reasonable because the officers were responding to a call involving a suspected violent crime and thus, the limited search for weapons to preserve officer safety was lawful.

¶14 On a motion to suppress, a defendant bears the burden of proving that the search and seizure were unlawful. *People v. Clark*, 394 Ill. App. 3d 344, 347 (2009). If a defendant makes a *prima facie* showing that he was doing nothing to justify a warrantless search and seizure of his person, the burden then shifts to the State to present evidence to justify the search and seizure. *People v. Linley*, 388 Ill. App. 3d 747, 749 (2009). A trial court's ruling on a motion to suppress is subject to a two-prong standard of review. *Ornelas v. United States*, 517 U.S. 690, 699 (1996); *People v. Cosby*, 231 Ill. 2d 262, 271 (2008); *People v. Morgan*, 388 Ill. App. 3d 252, 259 (2009). The trial court's factual findings are reviewed for clear error and will only be

reversed if they are against the manifest weight of the evidence. *Cosby*, 231 Ill. 2d at 271; *Morgan*, 388 Ill. App. 3d at 259. In contrast, the trial court's ultimate ruling on whether suppression is warranted is subject to *de novo* review. *Cosby*, 231 Ill. 2d at 271; *Morgan*, 231 Ill. 2d at 259.

¶15 A person's right to be free from unlawful searches and seizures is protected by both the federal and state constitutions. U.S. Const., amend. IV; Ill. Const. 1970 art. I, § 6; *People v. Bartlett*, 241 Ill 2d. 217, 226 (2011). "The 'essential purpose' of the fourth amendment is to impose a standard of reasonableness upon the exercise of discretion by law enforcement officers to safeguard the privacy and security of individuals against arbitrary invasions." *People v. McDonough*, 239 Ill. 2d 260, 266-67 (2010), *quoting Delaware v. Prouse*, 440 U.S. 648, 653-55, 99 S. Ct. 1391, 1396, 59 L. Ed. 2d 660, 667 (1979). This constitutional guarantee "applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest." *People v. Thomas*, 198 Ill. 2d 103, 108 (2001).

¶16 To be reasonable, a search and seizure "generally requires a warrant supported by probable cause." *Thomas*, 198 Ill. 2d at 108. However, in its ruling in *Terry v. Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), the Supreme Court created a limited exception to the probable cause requirement and held that a police officer "may conduct a brief, investigatory stop of a citizen [unsupported by probable cause] when the officer has a reasonable articulable suspicion of criminal activity and such suspicion amounts to more than a mere 'hunch.' " *McDonough*, 239 Ill. 2d at 268; *Terry*, 392 U.S. at 27, 88 S. Ct. at 1883, 20 L. Ed. 2d at 909. Specifically, "[t]o justify a *Terry* stop, an officer 'must be able to point to specific and articulable

facts, which taken together with rational inferences from those facts, reasonably warrant [the] intrusion.' " *People v. Magalanes*, 409 Ill. App. 3d 720, 725 (2011), quoting *Terry*, 392 U.S. at 30. Whether an investigatory stop is reasonable is judged by an objective standard, and only the facts known to the officer at the time of the stop may be considered. *Linley*, 388 Ill. App. 3d at 749; see also *People v. Sparks*, 315 Ill. App. 3d 786,792 (2000) ("The fourth amendment requires some minimal level of objective justification for making the stop").[2] A totality of the circumstances approach is used to determine the reasonableness of a *Terry* stop. *People v. Jackson*, 348 Ill. App. 3d 719, 729 (2004). Under that approach, "the whole picture-must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621, 628-29 (1981).

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[2] We observe that the *Terry* ruling delineating the proper scope of an investigatory stop and subsequent frisk for weapons has since been codified by the Illinois legislature. See *Magalanes*, 409 Ill. App. 3d at 725. Specifically, Section 107-14 of the Illinois Code of Criminal Procedure of 1963 provides: "Temporary Questioning without Arrest: A peace officer, after having identified himself as a peace officer, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense as defined in Section 102-15 of this Code, and may demand the name and address of the person and an explanation for his actions." 725 ILCS 5/107-14 (West 2008).

¶17 Although an officer's personal observations may amount to reasonable suspicion, a police officer may also obtain reasonable suspicion and initiate a *Terry* stop based upon information provided by a third party, including a known or unknown informant, a victim, an eyewitness, or a concerned citizen if the specific facts provided by the third party, taken together with rational inferences from those facts, reasonably warrant the intrusion. *People v. Ewing*, 377 Ill. App. 3d 585, 593 (2007); see also *Jackson*, 348 Ill. App. 3d at 729 ("An officer may act on information provided by a third party in making a *Terry* stop, but only if the information provided is reliable and allows an officer to reasonably infer that a person was involved in criminal activity"). Ultimately, when the source of police information is a third party, " 'it matters not by what name the informant is labelled; we look rather to the informant's reliability as only one of the factors to be considered in the totality of the circumstances approach.' " *Jackson*, 348 Ill. App. 3d at 730, *quoting People v. Adams*, 131 Ill. 2d 387, 397 (1989). In evaluating the totality of the circumstances surrounding the information provided by a third party, the third party's basis of knowledge and veracity are relevant considerations. *Jackson*, 348 Ill. App. 3d at 730-31. If the party's information does not bear some indicia of reliability, a police officer may not initiate a *Terry* stop based on the communication unless the officer conducts some additional investigation to corroborate and verify the information. *Jackson*, 348 Ill. App. 3d at 731.

¶18 Specifically, when a police officer relies on information dispatched through police communication channels, he may only make a stop if the officer *issuing* the dispatch had information that amounted to reasonable suspicion to justify the stop. See, *e.g.*, *United States v. Hensley*, 469 U.S. 221, 232, 105 S. Ct. 675, 682, 83 L. Ed. 2d 604, 614 (1985) ("[I]f a flyer or

[radio] bulletin has been issued on the basis of articulable facts supporting a reasonable suspicion that the wanted person has committed an offense, then reliance on that flyer or bulletin justifies a stop[.] *** If the flyer has been issued in the absence of a reasonable suspicion, then a stop in the objective reliance upon it violates the Fourth Amendment"); see also *Linley*, 388 Ill. App. 3d at 749; *People v. Lawson*, 298 Ill. App. 3d 997, 1004-05 (1998); *People v. Brown*, 88 Ill. App. 3d 514, 519 (1980). If there is no information regarding the underlying source or nature of the dispatch information, an officer may not initiate a *Terry* stop unless the officer is able to personally observe details that corroborate the dispatch and create reasonable suspicion. *Linley*, 388 Ill. App. 3d at 751-52.

¶19 Keeping these principles in mind, we consider the circumstances of the present case. Here, the record reveals that Officer Rodriguez had no personal knowledge of a stabbing when he encountered respondent. Rather, Officer Rodriguez testified that he initiated the stop following receipt of a "call" regarding a domestic disturbance and stabbing. Based on the information relayed to him in the call, Officer Rodriguez learned that an alleged stabbing occurred somewhere in a six-unit apartment building and that the purported offender was a black woman wearing an orange coat. There was no information provided about the origin of the call. Although it is likely that Officer Rodriguez was responding to a police dispatch, given that he was on patrol in his squad car when he received the "call," the record is devoid of any information pertaining to the underlying source of the call, such as whether the underlying information was obtained via an in-person report, a known or unknown informant, or a 911 call. Indeed, it is unclear whether the caller was personally involved in the dispute, simply heard or

witnessed the altercation, or was merely relaying second-hand information. Moreover, the record is unclear whether the call was made contemporaneously with the alleged stabbing or whether it was placed well after the event occurred.

¶20 Given the lack of information about the source of the call, Officer Rodriguez did not have reasonable suspicion to stop respondent absent some degree of corroboration to substantiate the allegations made in the call. See *Linley*, 388 Ill. App. 3d at 751-52 (police officer, responding to a dispatch did not have reasonable suspicion to stop the defendant because there was no information provided about the source or nature of the underlying dispatch and the officer did not personally observe facts that gave rise to a reasonable suspicion that the defendant had committed or was about to commit a crime). Specifically, to justify the stop Officer Rodriguez must have observed circumstances that gave rise to a reasonable suspicion that defendant had committed or was about to commit a crime. *Id*. at 752.

¶21 The State emphasizes that Officer Rodriguez responded to the location identified in the call within two to three minutes of receiving the information and observed that respondent appeared to be walking with a woman wearing an orange jacket, an item of clothing the suspect of the stabbing was said to be wearing. We acknowledge that it is well-established that reasonable suspicion justifying an investigative *Terry* stop " 'can be derived, in part, from observing suspects similar to those believed to be fleeing from a *recent* crime when the suspects are located in the general area where fleeing suspects would be expected to be found, given the time and distance from the crime scene.' " (Emphasis added.) *Jackson*, 348 Ill. App 3d at 735, quoting *People v. Walters*, 256 Ill. App. 3d 231, 235 (1994); see also *People v. Ross*, 317 Ill.

App. 3d 26, 30 (2000). Here, however, there is no information regarding how closely in time the call was placed to the purported stabbing. Indeed, while Officer Rodriguez responded promptly to the call, the call itself could have been placed well after the purported stabbing.

¶22 The State also observes that the woman that respondent was with at the time of the stop matched the description of the suspect relayed to Officer Rodriguez in the call. Although the record reveals that Julisa was wearing an orange coat at the time of the stop and matched the general description of the person identified in the call, the law is clear that the mere corroboration of a suspect's readily describable appearance does not establish a reasonable suspicion of criminal activity that is required to justify a *Terry* stop. See *Florida v. J.L.*, 529 U.S. 266, 120 S. Ct., 1375, 1379, 146 L. Ed. 2d 254, 261 (2000) ("An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person"); see also *People v. Nunn*, 315 Ill. App. 3d 786, 794-95 (2000); *People v. Carlson*, 313 Ill. App. 3d 447, 448-49 (2000). Here, we find that the only corroboration was of innocent details. Notably, at the time of the stop, neither respondent nor Julisa showed any signs of having been involved in a stabbing and neither were engaged in any suspicious behavior. They did not attempt to flee from police and complied when approached by the officers.

¶23 Most importantly, the corroboration conducted by the officers pertained solely to Julisa,

not respondent. Indeed, Officer Rodriguez acknowledged that respondent did not match the description of any person he was looking for. Moreover, due to respondent's youthful appearance, Officer Rodriguez did not believe that he was a party to any domestic dispute. Although respondent was in the company of Julisa, who was wearing an item of clothing that matched the generalized description of the suspect described in the call, this did not provide police with reasonable articulable suspicion that *respondent* was involved in criminal activity. See, *e.g.*, *People v. Rhinehart*, 2011 Ill. App. (1st) 100683,¶ 17 (holding that the mere fact that the defendant was in the presence of one who engaged in suspicious activity in the presence of police did not give police reasonable suspicion to stop and search the defendant); see also *People v. Garvin*, 219 Ill. 2d 104, 110 (2006) (holding that "mere proximity to another individual is insufficient to support a finding of probable cause"); *Cortez*, 449 U.S. at 417-18, 101 S. Ct. at 695, 66 L. Ed. 2d at 628-29 (recognizing that for a *Terry* stop to be reasonable, the police must have a "particularized and objective basis for suspecting *the person stopped* of criminal activity) (Emphasis added.)

¶24 Ultimately, given the lack of information surrounding the source and nature of the call, the lack of meaningful corroboration of the scant details provided in the call, and the lack of evidence that respondent had engaged in any suspicious activity, we find that the police lacked reasonable suspicion to stop respondent. See, *e.g.*, *Linley*, 388 Ill. App. 3d at 751-52. Because we find that the stop was unlawful, it necessarily follows that the search of respondent was likewise unlawful. *People v. Harris*, 2011 Ill. App. (1st) 103382, ¶ 17. Accordingly, we reverse the order of the trial court denying respondent's motion to suppress and remand this cause for

further proceedings. Because we reverse this case on these grounds, we need not address respondent's constitutional claim. See *People v. Lee*, 214 Ill. 2d 476, 482 (2005) (reviewing court should not address a constitutional issue if the cause can be resolved on other grounds).

¶25 CONCLUSION

¶26 For the reasons contained herein, we reverse the order of the trial court and remand for proceedings consistent with this disposition.

¶27 Reversed and remanded.