

2011 Ill. App. (2d) 101309-U  
Nos. 2-10-1309; 2-10-1312; 2-10-1313; 2-10-1319 cons.  
Order filed December 2, 2012

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Kendall County.
Plaintiff-Appellant,	)	
	)	
v.	)	Nos. 10-CM-660
	)	10-CM-662
	)	10-CM-672
ANTHONY R. TONELLI, JOSHUA S.	)	
GORZNEY, and JOSHUA J. MICHELSON,	)	Honorable
	)	Ronald G. Matekaitis,
Defendants-Appellees.	)	Judge, Presiding.

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Kendall County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-CM-655
	)	
GREGORY T. VOLMERT,	)	Honorable
	)	Ronald G. Matekaitis,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Zenoff and Schostok concurred in the judgment.

ORDER

*Held:* The police lacked reasonable, individualized suspicion to warrant investigatory detention of defendants.

¶1 Defendants, Anthony R. Tonelli, Joshua S. Gorzney, Joshua J. Michelson, and Gregory T. Volmert were charged with unlawful consumption of alcohol (235 ILCS 5/6-20 (West 2010)). They successfully moved to quash their arrests and suppress evidence. The State now appeals the trial court's rulings. For the reasons that follow, we affirm.

¶2 On June 23, 2010, the Yorkville police department received an anonymous tip, apparently from a neighbor, indicating that there was "a possible under-age drinking party" underway at 304 Fairhaven Drive (according to Officer Kolowski, the police did not attempt to corroborate the tip). Two uniformed police officers, Officer Kolowski and Officer Hayes, were dispatched to that address, which was where Volmert lived. As they approached the residence, they could hear a large gathering in the back yard. They walked around the house and entered the back yard. There were between 25 and 30 individuals there. The power had gone out that night, and there were no lights in the back yard. Kolowski testified that as he approached, he saw Volmert in the back yard; however, he subsequently admitted that he could not "really specifically say" whether Volmert was outside, as people were going in and out of the house. He also stated that he could not recall whether Gorzney was in the back yard. Kolowski noted several empty beer cans and beer bottles. He told everyone to stop what they were doing. Kolowski stated that he and the other officer were conducting a *Terry* stop at that time (see *Terry v. Ohio*, 392 U.S. 1 (1968)). He added that at this point, none of the partygoers were free to leave. Kolowski also acknowledged that he could not say whether Michelson was inside the house or in the back yard. Further, he could not state whether Michelson possessed any alcohol when Kolowski first observed him. Though Kolowski did see individuals with alcohol in their possession as he approached the back yard, he could not "state with specificity which individuals those were." Kolowski could not recall how many containers of alcohol were being held by people as he approached and agreed that it could have been as few as

one.

¶3 Officer Hayes testified that he asked the people that were inside the house at 304 Fairhaven Drive to come outside. Later, he acknowledged that he was yelling for everyone to come outside. He could not recall whether Tonelli or Michelson were inside the house. He also could not recall where Volmert and Gorzney were when he first arrived at the scene. Hayes never entered the house.

¶4 The trial court noted that due to the large number of people at the party, the officers could not see everyone at one time. It then noted the officers' testimony that they were unable to say where the various defendants were at when the officers first arrived; whether they had any alcohol in their hands or were otherwise in the vicinity of alcohol; and whether they exhibited any signs of alcohol consumption. The court further observed "everybody was questioned regardless of whether or not there was a particularized, individualized suspicion as it relates to that individual." It stated that it did not believe that "a group hunch works here." Accordingly, it granted defendants' motions.

¶5 The State now appeals. The parties raise various arguments. We find one, common to all defendants, particularly compelling. In fact, it is the same argument the trial court relied upon in granting the defendants' motions. As such, we will confine our analysis to that argument, with one exception. We must first address the State's contention that, outside of Volmert who resided at 304 Fairhaven Drive, the remainder of the defendants lacked standing to advance a fourth amendment claim (U.S. Const., amend. IV).

¶6 It is axiomatic that a party asserting a fourth amendment violation must show that his or her own rights were violated. *People v. Santana*, 161 Ill. App. 3d 833, 839 (1987). That is, fourth amendment rights are personal rights. *People v. Rosenberg*, 213 Ill. 2d 69, 77 (2004). Hence, for example, to have standing to challenge the search of a home, one must at least be an overnight guest. See *People v. Wimbley*, 314 Ill. App. 3d 18, 23 (2000). The State argues that Tonelli, Gorzney, and

Michelson were only social guests and thus lacked standing. If these defendants were contesting a search of Volmert's home, the State's argument would be well taken. However, these defendants contended that they were subject to an illegal seizure. As noted above, when the officers entered the back yard, they ordered everyone to "stop." Kolowski testified that they were conducting a *Terry* stop at this time and that no one was free to leave. As such, each defendant was seized. See *People v. Cosby*, 231 Ill. 2d 262, 270 (2008). Therefore, each defendant has standing because he was asserting his own right rather than any right Volmert had in the sanctity of his home. *Cf. People v. Martin*, 121 Ill. App. 3d 196, 203 (1984) ("No standing problem exists where a defendant claims that the evidence sought to be suppressed was obtained as a result of an illegal seizure of that defendant.").

¶7 We now turn to the validity of the initial seizure of the four defendants. As noted, at issue here is the propriety of the *Terry* stop in this case. The seizure commenced when the officers ordered everyone to stop and no one was free to leave. See *People v. Anderson*, 395 Ill. App. 3d 241, 248 (2009). Only information available to the officers up to this time may be considered in assessing the validity of the seizure. *People v. Ertl*, 292 Ill. App. 3d 863, 868 (1997) ("The inquiry concerns whether the officer's conduct was reasonable under the circumstances known to the officer at the time the stop was initiated."). On review, we apply the manifest-weight standard to the trial court's findings of historical fact, but the ultimate question of the constitutionality of the seizure is subject to the *de novo* standard. *People v. Lewis*, 363 Ill. App. 3d 516, 523 (2006).

¶8 In evaluating a *Terry* stop, the relevant inquiry, of course, is whether the officers had a reasonable suspicion that criminal activity was afoot. *People v. Torres*, 347 Ill. App. 3d 252, 257 (2004). A reasonable suspicion is one based upon articulable facts. *People v. Close*, 238 Ill. 2d 497, 514 (2010). Moreover, a seizure is only justified if the officers have an individualized suspicion that

the individual seized is committing, has committed, or is about to commit a crime. *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000) (“A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing.”). Here, the officers lacked individualized suspicion regarding the various defendants.

¶9 As clearly shown by the officers’ candid testimony, there was no basis for a reasonable suspicion that each individual defendant had committed a crime in this case. Quite simply, neither of the officers observed any of the defendants possessing alcohol. Furthermore, neither officer could testify that any of them exhibited signs of alcohol consumption. The only fact that could support an inference that they were consuming alcohol was that they were present at a party where alcohol was being consumed. It is well established, however, that mere presence in a high-crime area is insufficient to justify a *Terry* stop. *People v. Moorman*, 369 Ill. App. 3d 187, 193 (2006), citing *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). Analogously, mere presence at a party is an insufficient basis, in itself, for a reasonable suspicion that a person is consuming alcohol. We note that other information possessed by the officers, including the anonymous tip (subject to the many limitations the law places upon the weight that such tips are entitled (see, e.g., *People v. Allen*, 409 Ill. App. 3d 1058, 1071-72 (2011))) and that the officers could hear a large gathering as they approached, only provided a basis to conclude that a party was underway. These facts added nothing to the information that the officers had about the various defendants individually. In its reply brief, the State asserts that the seizure did not occur until after the officers observed empty beer cans and bottles as well as individuals who appeared to be under the age of 21. The State does not, however, address the fact that the officers could not testify that any of these individuals were any of the defendants. In sum, as the officers lacked individualized suspicion that any of the defendants were engaged in any criminal activity prior to their seizure, the trial court properly granted

defendants' motions.

¶10 In light of the foregoing, the orders of the circuit court of Kendall County granting defendants' motions to quash their arrests and suppress evidence are affirmed.

Affirmed.