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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Stephenson County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09—CF—162
)	
NARTAVIOUS PARKER,)	Honorable
)	Michael P. Bald,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

Held: The trial court properly denied defendant's motion to suppress evidence found in a search of his person; the search was valid as incident to defendant's arrest, which was supported by probable cause arising from the corroboration of a reliable informant's detailed tip.

Following a jury trial, defendant, Nartavious Parker, was convicted of possession of a controlled substance (720 ILCS 570/402 (c) (West 2008)) and possession of cannabis (720 ILCS 550/4(b) (West 2008)). The trial court sentenced him to one year's imprisonment for the controlled-substance conviction and 60 days' imprisonment for the cannabis conviction. Defendant appeals,

contending that the trial court erred in denying his motion to suppress evidence. For the reasons that follow, we affirm.

BACKGROUND

The evidence presented at the hearing on the motion to suppress tended to prove the following relevant facts. On June 25, 2009, Officer Aaron Hass of the Freeport police department received a tip from an informant that a black male of medium build, wearing a tan T-shirt, and standing near the intersection of Spring and Cherry Streets with a man named Robert Ellis, possessed crack cocaine. Hass had worked with the informant for nearly a year and, using the tips provided by the informant, had made 10 arrests, mostly involving crack cocaine. In addition, the informant had participated in controlled buys of crack cocaine for the Freeport police department. Hass proceeded to look for the unidentified male for less than half an hour and found defendant standing with Robert Ellis at the intersection of Spring and Walnut Streets, one block from the location provided by the informant. Defendant fit the description provided by the informant. Hass then radioed other officers to stop the two men.

Upon receiving the call from Hass, Officers Katherine Ludewig and Anthony Smith stopped defendant and Ellis. Shortly thereafter, Officer Timothy Weichel arrived and began to pat down defendant. While in the process of patting down defendant, Weichel paused to place defendant in handcuffs, believing defendant to be exhibiting signs of contemplating fleeing or otherwise resisting. Weichel then completed the pat down. When he reached defendant's right pants pocket, Weichel felt something he believed to be cannabis. In the pocket, Weichel found a package of cannabis, inside which were three rocks of crack cocaine.

The trial court denied defendant’s motion to suppress, and defendant was subsequently convicted by a jury. Following sentencing, defendant brought this timely appeal.

ANALYSIS

On appeal, defendant contends that the trial court erred in denying his motion to suppress, because Weichel’s frisk of defendant was not justified under *Terry v. Ohio*, 392 U.S. 1 (1968). Because the search of defendant was a proper search incident to arrest, we affirm the trial court’s denial of defendant’s motion to suppress.

Before reaching the merits of defendant’s contention on appeal, we first note that defendant acknowledges that he has forfeited this contention by failing to raise it in a timely posttrial motion. He argues, however, that we should overlook the forfeiture of this issue for a number of reasons. It is unnecessary for us to address any of these reasons, as the State agrees with defendant that we should review the issue. See *People v. Williams*, 193 Ill. 2d 306, 347 (2000) (“The rules of waiver are applicable to the State as well as the defendant in criminal proceedings, and the State may waive an argument that the defendant waived an issue by failing to argue waiver in a timely manner.”).

Turning to the merits, defendant argues that the trial court erred in denying his motion to suppress because Weichel’s search of him was not justified under *Terry*. The State responds that, even if Weichel’s search of defendant was not justified under *Terry*, it was justified as a search incident to defendant’s arrest, which, in turn, was supported by probable cause. We agree with the State.

Section 107—2(1)(c) of the Code of Criminal Procedure of 1963 (725 ILCS 5/107—2(1)(c) (West 2008)) provides that an officer may arrest a person without a warrant when the officer has “reasonable grounds to believe that the person is committing or has committed an offense.” In this

context, the term “reasonable grounds” is considered to have the same meaning as “probable cause.” *People v. Tisler*, 103 Ill. 2d 226, 236-37 (1984). If a warrantless arrest was based on probable cause, evidence found during a warrantless search incident to that arrest may be admitted to prove the defendant’s guilt. *Tisler*, 103 Ill. 2d at 237.

In deciding whether a warrantless arrest was based on probable cause, a trial court must determine whether “ ‘a reasonable and prudent man, having the knowledge possessed by the officer at the time of the arrest, would believe the defendant committed the offense.’ ” *Tisler*, 103 Ill. 2d at 237 (quoting *People v. Wright*, 41 Ill. 2d 170, 174 (1968)). A finding of probable cause may be based on an informant’s tip, so long as that tip is found to be reliable. *People v. Brannon*, 308 Ill. App. 3d 501, 505 (1999); *People v. Beck*, 167 Ill. App. 3d 412, 417 (1988). Probable cause determinations are to be made on a case-by-case basis. *Brannon*, 308 Ill. App. 3d at 505. In determining the reliability of information received from an informant, numerous factors may be taken into consideration: the level of detail in the informant’s statement; whether the informant had given past reliable tips; whether, in providing the information, the informant admits involvement in a crime; whether the informant’s information was gathered through direct contact with the defendant; whether the informant was paid for the information; and any other independent corroboration of the information. See *Illinois v. Gates*, 462 U.S. 213, 233-34 (1983) (level of detail, past tips, admitting culpability, eyewitness); *Brannon*, 308 Ill. App. 3d at 507-08 (remuneration, level of detail, independent corroboration); *People v. Meyer*, 197 Ill. App. 3d 687, 690-91 (1990) (direct contact, remuneration); *People v. Woods*, 122 Ill. App. 3d 176, 181 (1984) (level of detail, past tips); *People v. O’Dell*, 84 Ill. App. 3d 359, 367 (1980) (admitting culpability).

The tip provided by the informant in this case gave the officers probable cause to arrest defendant. Several factors point to the reliability of the informant's tip. First, the informant was able to provide a relatively high level of detail. The informant was able to provide an accurate description of defendant, provide the location of defendant, and name the person with whom defendant was standing. Second, the informant had a long-standing relationship with Hass, provided past tips that led to at least 10 arrests, and participated in controlled crack cocaine buys with the Freeport police department. Finally, the officers were able to independently corroborate the tip. Hass located defendant a mere block from the intersection the informant named, observed that defendant matched the physical description given by the informant, and identified defendant's companion as Robert Ellis, just as the informant stated. Given the level of the tip's detail, the informant's past reliability, and the independent corroboration of the tip, the informant's tip was sufficiently reliable to establish probable cause for defendant's arrest. See *Beck*, 167 Ill. App. 3d at 419 (informant's tip was sufficient to support finding of probable cause where the informant had, on four prior occasions, provided information that led to arrests and the officers were able to corroborate information provided by the informant, including the license plate number, make and color of the car, and direction of travel).

Because the officers had probable cause to arrest defendant, the search of defendant was justified as a search incident to his arrest. See *Beck*, 167 Ill. App. 3d at 419 (because the defendant's arrest was proper, the evidence seized during the search of the defendant should not have been suppressed). The fact that Weichel began the search prior to placing defendant in handcuffs is irrelevant, as a search incident to arrest may take place prior to the actual arrest. *People v. Rossi*, 102 Ill. App. 3d 1069, 1073 (1981).

As the search of defendant that produced the cannabis and cocaine was incident to a lawful arrest, the trial court correctly denied defendant's motion to suppress.

CONCLUSION

For the reasons stated, the judgment of the circuit court of Stephenson County is affirmed.

Affirmed.