

No. 1-10-0791

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 18861
)	
LUIS RAMIREZ,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE EPSTEIN delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court erred in denying defendant's motion to quash arrest and suppress evidence where police failed to point to specific, articulable facts that gave rise to a reasonable suspicion that defendant was engaged in criminal activity prior to initiating an investigatory stop; judgment entered on conviction of possession of cannabis reversed.
- ¶ 2 Following a bench trial, defendant Luis Ramirez was found guilty of possession of more than 30 grams of cannabis and sentenced to 12 months' probation and 40 hours of community service. On appeal, defendant contends that the trial court erred in denying his pretrial motion to quash arrest and suppress evidence because there was no probable cause or exigent

circumstances to justify the police officers' warrantless entry into his basement or the seizure which followed.

¶ 3 In his pretrial motion to quash arrest and suppress evidence, defendant alleged that his initial detention was unlawful because it was not based on reasonable suspicion, nor was there a warrant authorizing police to enter the premises. Defendant thus sought suppression of any evidence "seized as a result of a search of his person."

¶ 4 At the suppression hearing, Chicago police officer David Lopez testified that on September 6, 2008, he was assigned to the 10th District Gang Team. About midnight, he was working in plain clothes and in an unmarked vehicle with his partner, Officer Romero, and Sergeant Leibas. As they neared 3345 West 23rd Street in Chicago, he saw defendant standing outside the side door of the apartment building at that address talking to two individuals, neither of whom were doing anything illegal. Rather, he described defendant as "just holding a box in the alley" at midnight, in an area of high gang and drug activity.

¶ 5 As he and Officer Romero approached the men for a field interview, defendant retreated inside, the two individuals ran away, and no one complied with his announcement, "Police, stop." With Officer Romero behind him, Officer Lopez entered the open side door of the apartment building and proceeded into the basement where he saw defendant place the box that he was holding on top of a speaker. He detained defendant, while Officer Romero opened the box, which appeared to be for a cell phone, and found 48 small bags of suspect cannabis. Defendant was placed in custody and a custodial search of his person revealed \$134.

¶ 6 On cross-examination, Officer Lopez stated that, based on his experience, "narcotic sales are done either through plastic bag[s], box items, whatever it's contained in," and "it just looks looked [*sic*] suspicious when I saw two subjects and an individual with a box in the middle of the

alley at midnight." He added that the basement was not a residence, but there were couches and stereo equipment being used for a party.

¶ 7 Following arguments of counsel, the trial court denied defendant's motion to quash arrest and suppress evidence, and also denied his subsequent motion to reconsider that ruling. In denying defendant's motion to reconsider, the trial court stated that exigent circumstances existed to justify the officers' warrantless entry into the basement, that they did not specifically enter the building to arrest defendant, but to question his unprovoked flight upon their approach. The court stated that defendant was briefly detained inside the basement, and he was arrested only after the contents of the box "that got the officer's attention" were discovered. The court found that the officers had a valid basis to investigate what was inside the box given "the suspicious conduct of the defendant, and running and evading the police officer, as he was chased, *** placing a box on top of the speaker." Thus, the court concluded, "the detention – the search and the arrest were valid."

¶ 8 At trial, Officer Lopez provided testimony similar to that given at the hearing on defendant's motion to quash arrest and suppress evidence. He added that when he approached defendant and the two individuals in the alley, his jacket opened, revealing his police badge and name tag. He also described the box that got his attention as "a cardboard box, size of five to ten inches like a cell phone box, within that range, ten inches." When he and his partner followed defendant into the basement, defendant's girlfriend and another individual were present, but neither of them touched the box that defendant placed on the speaker.

¶ 9 Defendant presented testimony from Miguel Uribe, who stated that three police officers knocked on the basement door and when defendant answered it, they entered with guns drawn. They told defendant's girlfriend to have a seat, then handcuffed and searched him, defendant, and their friend Edwin, but found no contraband. Additional officers arrived on the scene and

searched the basement, porch, and first and second floors of the apartment building. Afterwards, the officers said they found a cell phone box, arrested defendant and released everyone else. Uribe added that defendant lived in the first-floor rear apartment and that the basement was primarily used by the tenants for storage. The trial court found defendant guilty of possession of more than 30 grams of cannabis.

¶ 10 In this appeal of that judgment, defendant contends that the trial court erred in denying his pretrial motion to quash arrest and suppress evidence because there was no probable cause or exigent circumstances to justify the officers' warrantless entry into his basement without consent. He argues that he had a reasonable right to privacy in the basement, which was a common area not open to the public and, thus, probable cause and exigent circumstances were necessary to justify the officers' warrantless entry.

¶ 11 The State maintains that the trial court properly denied defendant's motion because the officers had a reasonable, articulable suspicion to conduct an investigatory stop based on the fact that defendant was observed in an area known for heavy narcotics trafficking, holding an object commonly used in narcotic sales, and defendant fled the instant he saw the officers approaching him. The State further maintains that the officers had probable cause to arrest defendant after they found cannabis in the box that he "abandoned while fleeing," and that he had no expectation of privacy in the basement because it was separated from the residential portion of the building and the door was open.

¶ 12 When reviewing a trial court's ruling on a motion to quash an arrest and suppress evidence, we accord great deference to the trial court's factual findings unless they are against the manifest weight of the evidence, but review *de novo* the legal question of whether suppression is warranted under those facts. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009). In this case, defendant does not contest the credibility of the witnesses but challenges the trial court's ultimate

legal conclusions based on undisputed facts; accordingly, our review is *de novo*. *People v. James*, 365 Ill. App. 3d 847, 850 (2006).

¶ 13 We first address whether the officers had a reasonable, articulable suspicion to conduct an investigatory stop as that determination is dispositive of the issue before this court. *People v. Johnson*, 387 Ill. App. 3d 780, 788 (2009). The fourth amendment to the United States Constitution (U.S. Const., amend. IV) and article I, section 6, of the Illinois Constitution (Ill. Const. 1970, art. I, § 6) protect individuals from unreasonable searches and seizures. In *Terry v. Ohio*, 392 U.S. 1, 27 (1968), the Supreme Court held that a police officer may, within the parameters of the fourth amendment, briefly stop and question an individual based on a reasonable, articulable suspicion of criminal activity, and that suspicion is more than a mere hunch. The *Terry* standard has been codified in section 107-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/107-14 (West 2008)), which provides that a peace officer, after having identified his office, may stop any person in a public place for a reasonable period of time if he reasonably infers from the circumstances that the person is committing, is about to commit or has committed a crime.

¶ 14 It is well established that the facts forming the basis of reasonable suspicion need not rise to the level of probable cause and do not require an officer to actually observe the commission of a crime. *People v. Estrada*, 394 Ill. App. 3d 611, 616 (2009). However, precedent dictates that the necessary quantum of suspicion exist prior to the stop or detention. *Estrada*, 394 Ill. App. 3d at 619 (*construing Delaware v. Prouse*, 440 U.S. 648 (1979)).

¶ 15 The State argues that the present case is factually similar in every relevant way to *Illinois v. Wardlow*, 528 U.S. 119 (2000), and should therefore be decided accordingly. In *Wardlow*, 528 U.S. at 121-22, uniformed police officers conducting a special narcotics operation and patrolling in a four-car caravan, observed defendant standing next to a building in a high drug-trafficking

area, holding an opaque bag. Defendant looked in the direction of the officers and ran. *Id.* at 122. The officers cornered defendant on the street, stopped him, and, in the ensuing protective search, found a loaded handgun in the opaque bag. *Id.* at 122. The Supreme Court found that these circumstances justified the investigatory stop of defendant. *Id.* at 125. Specifically, the Supreme Court stated:

"An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime. [Citation.] But officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation. Accordingly, we have previously noted the fact that the stop occurred in a 'high crime area' among the relevant contextual considerations in a *Terry* analysis. [Citation.]

In this case, moreover, it was not merely respondent's presence in an area of heavy narcotics trafficking that aroused the officers' suspicion, but his unprovoked flight upon noticing the police. Our cases have also recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. [Citations.] Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Id.* at 124-25.

¶ 16 The State points out that, as in *Wardlow*, defendant here was observed in a high narcotics trafficking area and he fled upon seeing the police. Additionally, the State notes that the police

officer testified that he has commonly seen boxes, like the one defendant was holding, used to store narcotics for sale. These circumstances, the State argues, justified the investigatory stop of defendant.

¶ 17 To justify an investigatory stop, however, the officer must still point to specific, articulable facts that give rise to a reasonable suspicion of criminal activity. *People v. Rhinehart*, 2011 IL App (1st) 100683, ¶ 14. In determining whether an officer had reasonable suspicion, we consider the totality of the circumstances known to the officer. *People v. Byrd*, 408 Ill. App. 3d 71, 87 (2011).

¶ 18 Here, Officer Lopez stated that prior to initiating the investigatory stop, he saw defendant standing outside the side door of an apartment building talking to two individuals and no illegal activity. He further stated that defendant was "just holding a box in the alley" at midnight, in an area of high gang and drug activity. He explained that, based on his experience, "narcotic sales are done either through plastic bag[s], box items, whatever it's contained in," and "it just looks looked [*sic*] suspicious when I saw two subjects and an individual with a box in the middle of the alley at midnight." He described the box that caught his attention as "a cardboard box, size of five to ten inches like a cell phone box, within that range, ten inches." Officer Lopez decided to investigate defendant based on these circumstances, and defendant retreated into the basement when Officer Lopez and his partner approached him.

¶ 19 We recognize that, unlike *Wardlow*, the officers here were in plain clothes. In addition, it was not readily apparent from the record that defendant was "fleeing" when he took two steps inside upon seeing two strangers approach, or that he was in "an area of high gang and drug activity," and the officers were not responding to any report of a crime. See *People v. Harris*, 2011 IL App (1st) 103382, ¶ 15 (similarly distinguishing *Wardlow*). We also find it noteworthy that in *Wardlow*, the police had not decided to stop and investigate defendant until he attempted

to flee (*In re D.W.*, 341 Ill. App. 3d 517, 526 (2003)), whereas here, the decision to make the investigatory stop preceded defendant's retreat and was based on the officer's observation of defendant at midnight holding a box that could be related to drug activity.

¶ 20 Stopping an individual because "it just looks suspicious," without more, is insufficient to establish reasonable suspicion. *People v. Croft*, 346 Ill. App. 3d 669, 676 (2004); accord *People v. F.J.*, 315 Ill. App. 3d 1053, 1059 (2000) (no basis for finding of reasonable suspicion when the officers describe seemingly innocent activity and merely assure the court that he "looked suspicious"). Although the training and experience of the officer are considered as part of the totality of circumstances, the basis of the officer's action must be such that it can be judicially reviewed by an objective standard. *People v. Leggions*, 382 Ill. App. 3d 1129, 1135 (2008). Thus, even if Officer Lopez testified, based on his training and experience, that drug dealers often met their clients in alleys, the fact remains that pedestrians commonly and in perfect innocence encounter other pedestrians in alleys. *Leggions*, 382 Ill. App. 3d at 1135. The same can be said with regard to the cardboard box that defendant was simply holding. Officer Lopez did not see defendant attempt to conceal the object or act in some way that aroused criminal suspicion (*Rhinehart*, 2011 IL App (1st) 100683, ¶ 14), and the lateness of the hour is only significant when there is no legitimate basis for an individual to be in the location at that hour (*People v. Kipfer*, 356 Ill. App. 3d 132, 138-39 (2005)).

¶ 21 Additionally, this court has rejected the argument that testimony regarding a defendant's presence in a high-crime area is a legally sufficient basis for performing a *Terry* stop and frisk without some specific facts known to police that tie defendant to the crime in that area. *People v. Surles*, 2011 IL App (1st) 100068, ¶ 39 (citing *Harris*, 2011 IL App (1st) 103382, ¶¶ 14-15). As a result, the unsubstantiated statement of Officer Lopez that defendant was observed in a high narcotics trafficking area, is insufficient to establish that consideration for purposes of justifying

an investigatory stop. *Harris*, 2011 IL App (1st) 103382, ¶ 14. Thus, we find that the observations of defendant by Officer Lopez established nothing more than innocuous behavior on defendant's part that do not support a reasonable suspicion that he was committing a crime to warrant the intrusion. *Kipfer*, 356 Ill. App. 3d at 138.

¶ 22 The State's further argument that the officers had reasonable grounds to stop defendant when he fled is unavailing because, as noted, the basis for the stop must exist prior to the stop and cannot arise after the fact or be judged in hindsight. *Estrada*, 394 Ill. App. 3d at 619-20. Moreover, flight alone is not necessarily indicative of criminal activity (*People v. Peete*, 318 Ill. App. 3d 961, 966 (2001)), and the fact that the cardboard box turned out to contain contraband does not mean that it provided Officer Lopez, prior to pursuing defendant, with a reasonable basis for suspecting him of unlawful conduct (*In re D.W.*, 341 Ill. App. 3d at 524). Subsequent discoveries or justifications are insufficient to resuscitate an encounter that lacked justification at the outset. *Estrada*, 394 Ill. App. 3d at 621. Because there was no reasonable, articulable suspicion to support the investigatory stop at its inception in this case, all that followed was tainted by that illegality. *Estrada*, 394 Ill. App. 3d at 620, *and cases cited therein*. We therefore conclude that the trial court erred in denying defendant's motion to quash arrest and suppress evidence. *Rhinehart*, 2011 IL App (1st) 100683, ¶ 18. Without the suppressed evidence, the State cannot prove that defendant was in possession of the cannabis, and we therefore reverse his conviction for that offense. *Surles*, 2011 IL App (1st) 100068, ¶ 42; *Rhinehart*, 2011 IL App (1st) 100683, ¶ 20.

¶ 23 For the reasons stated, we reverse the judgment of the circuit court of Cook County.

¶ 24 Reversed.