2012 IL App (1st) 102199-U

FOURTH DIVISION
January 19, 2012

No. 1-10-2199

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

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 14653
	)	
DOMINIC THOMPSON,	)	Honorable
	)	Thomas Joseph Hennelly,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE JAMES FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice LAVIN and Justice STERBA concurred in the judgment.

O R D E R

¶ 1 *Held*: Where defendant's illegal stop and seizure led directly to search and seizure of drugs on his person the next day at Cook County jail, and where the State failed to prove that the taint of that original illegality had been so attenuated as to dissipate it, evidence discovered at the jail should have been suppressed and defendant's conviction based on possession of that discovered evidence, cocaine, would be reversed.

¶ 2 Defendant Dominic Thompson appeals from his bench trial conviction for possession of less than 15 grams of cocaine and the one year sentence imposed for that offense. Defendant contends that the evidence against him should have been suppressed as the fruit of the poisonous

tree because that evidence was found in a search of him at the Cook County jail, where he was being held as the result of an arrest the prior day which was ultimately quashed.

¶ 3 At the hearing on the first motion to quash arrest and suppress evidence, Chicago police officer Frigo testified that on July 8, 2009, at about 3 p.m. he was working for the gang enforcement unit at 322 North Pine Avenue in Chicago. Frigo received a call about a black male with a gun, running eastbound without a shirt on. When he saw defendant, who matched that description and who was running eastbound, Frigo stopped him and patted him down. Frigo observed that defendant had a large bulge in his right front pocket, about the size of a baseball. Believing the ball contained narcotics, he seized it from defendant.

¶ 4 Frigo's partner, Chicago police officer Kroll, added that part of the description they received was that the man was wearing black jeans, as was the defendant. Because defendant appeared to be trying to evade the pat down search, by twisting his body, he was handcuffed. Neither officer testified that defendant was patted down because the officers suspected that he had a weapon.

¶ 5 Based upon this testimony the trial court found that the officers had exceeded their authority beyond a *Terry* stop and the court quashed the arrest and suppressed the evidence recovered from defendant. That ruling has not been challenged by the State, which subsequently *nolle prossed* the charges arising from this first arrest.

¶ 6 The defense then filed a motion to quash a subsequent arrest of defendant while he was in custody for the prior offense and to suppress evidence recovered from him at that time. In that motion the defense noted that the evidence now at issue was recovered when defendant was searched at the Cook County jail while being processed for the offense which was subsequently the subject of defendant's successful motion to quash arrest and suppress evidence. The defense argued that this new evidence was the fruit of the original arrest and search and therefore should

be suppressed. It also argued that the new evidence recovered in the jail had been in defendant's possession when he was first stopped and frisked, but had not been found at that time by the officers who searched him and ultimately arrested him. For that reason, the defense contended that the State had failed to establish that defendant had committed a separate crime by possessing this new evidence. In response, the State argued that defendant had committed a new and separate offense by possessing illegal drugs in the jail. No testimony was heard on defendant's motion and it was denied by the trial court.

¶ 7 The court subsequently entertained another motion by defendant to quash arrest and suppress the evidence recovered from defendant in jail. At the hearing on that motion, Cook County sheriff's officer Nick Carlos testified that on July 9, 2009, at about 5:40 p.m. he was conducting random searches of detainees in the Cook County jail, including those coming back from bond court. Defendant was standing in a line of five detainees who had been randomly selected to be searched. When the first detainee was taken to be searched, Carlos saw defendant reach into his pants. Carlos grabbed defendant's arm and when defendant withdrew it he was holding a bag containing five bags of cocaine and five pink bags of marijuana. Carlos also testified that as part of the admissions process, all detainees were ultimately searched.

¶ 8 As part of this motion to quash arrest and suppress evidence, defendant also asked the court to consider the evidence adduced in support of the motion to quash defendant's original arrest on July 8, and the court agreed to do so. Defendant argued that the drugs found on defendant in the jail were present when that first arrest of defendant was made, but were overlooked by the police in their search of defendant. The court noted that this was a possibility but there was no evidence to support that theory, just as there was no evidence to support what the court described as the more unlikely possibility that defendant acquired these drugs after his

arrest. Based on this lack of evidence, the court denied the motion to quash the arrest and suppress the evidence found in the jail search.

¶ 9 The case then proceeded to a bench trial at which the parties stipulated to the prior testimony of Officer Carlos. Additionally, Carlos testified that after he found the bags of suspected drugs in defendant's possession he put them in an evidence bag, sealed that bag, and placed it in a safe. From there it would picked up by the sheriff's police, who would send it to the State police crime lab. The parties stipulated that Pela S. Johnson, a forensic chemist at the crime lab would testify that she received these items and tested the contents of one of the five bags of a white substance, determining that it contained cocaine and weighed .1 gram. The parties also stipulated that a proper chain of custody was maintained at all times.

¶ 10 Defendant called Officer Kroll to testify to his search of defendant pursuant to the original arrest. Kroll testified that he did not perform a strip search or a body cavity search of defendant and to his knowledge nobody else in the department did so either. He also testified that the drugs found on defendant were cannabis and cocaine. In final argument defense counsel again argued that the drugs found at the jail were in defendant's possession when he was first arrested and searched by the police the previous day. The court found defendant guilty of possession of cocaine, noting that it was not going to attempt to determine how defendant had obtained possession. Defendant subsequently filed a motion to reconsider in which he argued that the court should have granted his motion to quash arrest and suppress evidence found in a search of defendant at the jail. This motion was denied and defendant was subsequently sentenced to one year in prison. This appeal ensued.

¶ 11 In our review of a trial court's ruling on a motion to suppress we apply a two-part standard: we give deference to the trial court's factual findings, reversing them only if we find them to be contrary to the manifest weight of the evidence; but we review *de novo* the trial

court's legal ruling on whether suppression is warranted by those facts. *Ornelas v. United States*, 517 U.S. 690, 699 (1996); *People v. Johnson*, 237 Ill. 2d 81, 88-89 (2010). Here the parties do not dispute the facts or the trial court's legal conclusion regarding the initial stop and arrest of the defendant and the seizure of contraband from him. The trial court found that the police exceeded the bounds of a proper *Terry* stop when they handcuffed him and patted him down without a reasonable articulable basis to suspect that he had a weapon. *Terry v. Ohio*, 392 U.S. 1, 22 (1968). As the result of that search and the seizure of cocaine and marijuana from his person, defendant was arrested and the next day he was sent to the Cook County jail where he was again searched and additional controlled substances, also cocaine and marijuana, were found on him.

¶ 12 The question before the trial court was whether the evidence recovered at the jail was obtained by exploitation of the original illegality or by means which were distinguishable enough that they were purged of the initial taint of the illegal seizure and search. *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963); *People v. Wells*, 403 Ill. App. 3d 849, 861-62 (2010). Once the primary illegality, in this case the original search and seizure, is shown to be connected to subsequently discovered evidence, it is the State which has the burden of showing sufficient attenuating factors to remove the taint of that initial illegality. *People v. Jackson*, 374 Ill. App. 3d 93, 102 (2007); *People v. Watson*, 315 Ill. App. 3d 866, 881 (2000). The connection between the original illegality and the subsequently discovered evidence is a clear one here. The only reason the State had an opportunity to search defendant in the Cook County jail was because he was being held there in relation to charges stemming from the initial stop, search, and seizure the previous day. But the trial court did not hold the State to its burden of establishing an attenuation of the taint of the original illegality. Instead it evaluated the defense argument that the drugs discovered at the jail were part of the same cache of drugs found on the

defendant the prior day, but that the police had simply overlooked this portion of the drugs. The court ruled:

> "I suspect that there is some logic to that; however, there is no evidence to that. I can only rely on the evidence that I heard. I heard no evidence at all that that's where this derived from. That is a possibility. It's also a possibility, however more unlikely, that he acquired it at some point in time afterwards. I don't know, but I don't have to guess or speculate because there is no evidence to support that.
>
> The evidence that I heard, he had narcotics on his possession when he was searched in Cook County jail and that was the testimony of Officer Carlos. That's the testimony that I heard. That's the testimony I'm going to base my ruling on.
>
> The motion to quash arrest and suppress evidence based on the fruits of the poisonous tree from the prior arrest is considered and denied."

The court effectively shifted the burden to the defense to disprove any attenuation rather than requiring the State to prove attenuation. The State's only effort to prove attenuation was to speculate that defendant had obtained these drugs sometime after his initial arrest. But there was no proof or even any evidence of that. Under these circumstances, the court should have ruled that the State failed to prove that the taint of the original illegality had been attenuated so as to dissipate that taint. Therefore, the court should have suppressed the evidence discovered on the defendant at the jail. Because that evidence was the sole basis of defendant's conviction, we hold that defendant's conviction for possession of cocaine must be reversed.

¶ 13 Reversed.