

No. 1-11-0030

---

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 8463
	)	
TRACY TUCKER,	)	The Honorable
	)	Thomas V. Gainer,
Defendant-Appellant.	)	Judge Presiding.

---

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Karnezis and Rochford concurred in the judgment.

**ORDER**

¶ 1 *HELD*: The trial court properly denied defendant's motion to quash arrest and suppress evidence because there was probable cause to arrest him. Defendant's claim of ineffective assistance of counsel must fail when he cannot establish how he was prejudiced by the complained of action.

¶ 2 After a jury trial, defendant Tracy Tucker was convicted of the delivery of a controlled substance and possession of a controlled substance with intent to deliver. He was sentenced to concurrent prison terms of five and one-half years and four and one-half years. Defendant now appeals contending that the trial court erred in denying his motion to quash arrest and suppress

evidence because there was no reasonable suspicion or probable cause to justify a seizure. He further contends that he was denied effective assistance of trial counsel because counsel elicited testimony from a State witness regarding a prior bad act by defendant. We affirm.

¶ 3 At the hearing on defendant's motion to quash arrest and suppress evidence, Officer Daniel Gomez testified that he had been a police officer for 13 years and had spent 10 years as a narcotics tactical officer. On the morning of March 26, 2008, he observed defendant, who was in a vehicle, engage in hand-to-hand contact with an African-American man later identified as Robert Watkins. Gomez, who was approximately 50 feet away, watched as Watkins gave defendant a folded green paper bill and defendant then passed Watkins a small white item the size of a quarter. Watkins then walked away. Gomez believed, based upon his experience as a police officer, that a narcotics transaction had just occurred. Therefore, he requested over the radio that Watkins and defendant, who was driving a gray Taurus, be detained. When he later arrived at the location where defendant had been stopped, Gomez observed as another officer leaned into defendant's vehicle and removed small baggies attached to each other.

¶ 4 In denying defendant's motion, the trial court stated that the testimony of one police officer about one hand-to-hand transaction, if clear and convincing, was sufficient to establish probable cause. The court rejected the notion that an officer had to watch narcotics transactions "go on" for a certain period of time in order to act. Accordingly, the court held that probable cause existed in this case because an officer watched as green paper was exchanged for a small white object, which led the officer to believe, based upon his experience, that a narcotics transaction had occurred.

¶ 5 The matter then proceeded to a jury trial. Robert Watkins testified that he was arrested on

the morning of March 26, 2008, for possessing a controlled substance, later entered a plea of guilty to that offense, and was incarcerated at the time of trial.

¶ 6 Watkins had known defendant since 2007 and would see him a few times a week "on the street." On the morning in question, he called defendant and arranged to meet. He then walked, accompanied by a friend, to the meeting spot. When defendant arrived in a car, Watkins went up to the driver's side of the vehicle and gave defendant a \$10 bill in exchange for one package of heroin. The exchange was made quickly because they were in a known drug area frequented by the police. As Watkins was walking away, the police "rode up" in an unmarked car and he dropped the package he had just purchased from defendant. He was then placed under arrest.

¶ 7 During cross-examination, Watkins explained that he had previously been held in contempt because he was expected to testify on defendant's behalf, but had not. He did not want to get involved because he had already pled guilty to possession in this case, defendant was his codefendant, and he believed that defendant wanted him to lie. Watkins admitted that he had used other names during previous arrests and had five prior narcotics convictions. In addition to his social relationship with defendant, Watkins had also purchased drugs from defendant. He admitted that he had not told the State that he had previously purchased drugs from defendant.

¶ 8 The court then excused the jury and spoke to the attorneys. The court told defense counsel that counsel had "created a horrible, horrible mess" by implying that Watkins was lying because he did not tell the State that he had previously purchased drugs from defendant when the State had not made a motion for proof of other crimes. The court indicated that it planned to instruct the jury to disregard the line of questioning concerning conversations between Watkins and the State regarding prior narcotics transactions between Watkins and defendant.

¶ 9 Defense counsel responded that when he interviewed Watkins that day, he learned for the first time that Watkins was claiming a "past purchasing relationship" with defendant. Therefore, defense counsel felt it was a reasonable line of questioning in order to impeach Watkins. The trial court disagreed, as defense counsel's actions created the impression that Watkins had withheld information from the State. When the jury returned to the courtroom, the court instructed it to disregard the line of questioning that had to do with whether or not Watkins disclosed the prior purchases of narcotics from defendant to the State.

¶ 10 The cross-examination of Watkins then continued. Watkins admitted that he had used heroin for about 17 or 18 years. He denied that he was offered any consideration by the State in exchange for his testimony and that he was the person actually selling drugs that day.

¶ 11 Officer Daniel Gomez testified consistently with his testimony at the hearing on the motion to quash arrest and suppress evidence, *i.e.*, he saw Watkins give defendant a folded green bill in exchange for a small white item the size of a quarter. He observed Officer Grobla detain Watkins and later learned that one bag of suspect heroin was recovered from Watkins. As he approached defendant's vehicle, he saw Officer Prieto remove a strip of 18 ziplock bags containing white powder from the car.

¶ 12 Officer Grobla testified that he saw Watkins on the street as he and other officers responded to Gomez's radio call. The squad car then stopped next to Watkins. As Grobla exited, he saw Watkins drop a small bag to the ground. He subsequently recovered this object, a small plastic bag containing white powder. During cross-examination, Grobla indicated that he had arrested defendant in January of 2008.

¶ 13 The court immediately excused the jury and inquired whether defendant had discussed

this strategy, *i.e.*, asking whether the arresting officers knew defendant, with his counsel.

Defendant indicated that he had and wanted defense counsel to ask these questions. Defense counsel also stated that he and defendant had discussed this strategy and defendant "signed a piece of paper indicating" defendant's agreement.

¶ 14 The jury returned to the courtroom and the cross-examination of Grobla continued. He testified that he had arrested defendant some two months and two weeks before the instant arrest pursuant to an active warrant, but did not recall that Gomez was present on that occasion.

¶ 15 Officer Salvador Prieto testified that after watching defendant exit the curbed vehicle, he looked into the car through the open driver's side door and saw a small bag protruding from the panel by the emergency brake. He pulled it out and saw that it contained 18 clear baggies. The baggies were filled with a white powder which Prieto believed was suspect heroin. A subsequent custodial search of defendant recovered \$200. During cross-examination, Prieto testified that he had arrested defendant "for a warrant" two months prior to this incident.

¶ 16 Ultimately, the jury convicted defendant of delivery of a controlled substance and possession of a controlled substance with intent to deliver. He was sentenced to concurrent prison terms of five and one-half years and four and one-half years.

¶ 17 On appeal, defendant first contends that the trial court erred by denying the motion to quash arrest and suppress evidence because he was seized and searched without either reasonable suspicion or probable cause. He argues that the object Gomez saw exchanged was "ambiguous" and that while the transaction "could" have been criminal, Gomez's hunch was insufficient to warrant the stop of defendant.

¶ 18 When reviewing a trial court's suppression ruling, this court applies a two-part standard of

review. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). The trial court's factual findings and credibility determinations are entitled to great deference and will be reversed only if they are against the manifest weight of the evidence. *People v. Slater*, 228 Ill. 2d 137, 149 (2008). However, the trial court's ultimate legal ruling as to whether suppression was warranted is reviewed *de novo*. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008).

¶ 19 Probable cause to arrest exists when the facts known to the police officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the individual to be arrested has committed a crime. *People v. Wear*, 229 Ill. 2d 545, 563 (2008). In other words, whether probable cause to arrest exists depends on the totality of the circumstances at the time of the arrest. *Wear*, 229 Ill. 2d at 564. The standard for determining whether probable cause exists is the probability of criminal activity, not proof beyond a reasonable doubt. *People v. Lee*, 214 Ill. 2d 476, 485 (2005); see also *Wear*, 229 Ill. 2d at 564 (probable cause does not require a showing that the officer's belief that the suspect has committed a crime is "more likely true than false"). A reviewing court must be guided by "common sense and practical considerations" when determining whether probable cause existed based upon the facts known to officers at the time of the arrest. *People v. Harris*, 352 Ill. App. 3d 63, 66-67 (2004). A police officer's factual knowledge, based upon his prior law enforcement experience, is relevant when determining whether probable cause existed. *Harris*, 352 Ill. App. 3d at 67.

¶ 20 Here, the parties do not dispute the facts; rather, they dispute the legal effects of those facts. Although defendant contends that the officers lacked reasonable suspicion to conduct a stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), in the instant case, the officers did not make a brief investigatory stop; rather, defendant was arrested after an officer observed a hand-to-hand

narcotics transaction. See *People v. Vasquez*, 388 Ill. App. 3d 532, 546-47 (2009) (there are three types of police-citizen encounters: (1) consensual encounters, involving no detention and therefore not implicating a citizen's fourth amendment rights; (2) brief investigatory, *i.e.*, *Terry* stops, which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) arrests, which must be supported by probable cause). Thus, the question before the trial court, on the motion to quash and subsequently, was whether there was probable cause to suspect that defendant was violating or had violated a law under which he could be arrested.

¶ 21 After examining the totality of the circumstances known to the officers at the time that defendant's vehicle was stopped, this court concludes that the officers had probable cause to believe that defendant had just engaged in a narcotics transaction. Gomez testified that he watched as Watkins walked up to defendant's car and gave defendant folded green paper in exchange for a small, white, quarter-sized object. Based upon his 13 years of experience as a police officer, Gomez believed that the green paper was currency and the white object contained suspect narcotics, and, therefore, that he had watched defendant engage in a narcotics transaction.

¶ 22 *People v. Harris*, 352 Ill. App. 3d 63 (2004), is instructive. In that case, an officer watched, from approximately 40 or 50 feet away, as a person gave the defendant an unknown amount of money in exchange for a small object about the size of a quarter that defendant took out of his pant pocket. Although the officer did not know the color of the object, he testified that based upon his three years of experience as an officer and familiarity with packaged narcotics, he believed that the defendant had engaged in narcotics transactions. After the denial of the defendant's motion to suppress and his subsequent conviction, he argued that the police lacked probable cause to arrest him.

¶ 23 On appeal, the court reiterated that a reviewing court must be guided by common sense when determining whether probable cause existed based upon the facts known to the officers at the time of the defendant's arrest and that an officer's factual knowledge, based upon his experience, is relevant to this determination. *Harris*, 352 Ill. App. 3d at 66-67. There, the court concluded that the officer had probable cause to effectuate an arrest based upon his observation of the defendant and his experience, which included observing more than 500 drug transactions. Thus, the court determined that the totality of the circumstances known to the officer at the time of the arrest would have led a reasonable, cautious person, standing in his shoes, to conclude that the defendant was engaged in a narcotics transaction. *Harris*, 352 Ill. App. 3d at 68.

¶ 24 Similarly, here, Gomez watched from approximately 50 feet away as defendant accepted currency in exchange for a small, white object the size of a quarter. Based upon his 13 years of experience as a police officer, Gomez concluded that defendant had engaged in a narcotics transaction with Watkins, and, consequently, requested over the police radio that both men be detained.

¶ 25 This court rejects defendant's contention that Gomez's experience and training, combined with his observation of defendant, were insufficient to create probable cause in this case because the exchange was ambiguous. The "touchstone" in the instant case is probability rather than certainty beyond a reasonable doubt, "common sense rather than legal pedantry." *People v. Neal*, 2011 IL App (1st) 092814, ¶ 13. "Thus, the existence of possible innocent explanations for the individual circumstances or even for the totality of the circumstances does not necessarily negate probable cause." *People v. Rodriguez-Chavez*, 405 Ill. App. 3d 872, 876 (2010). In that light, this court rejects defendant's assertion that, because he could have been exchanging something

other than narcotics for currency, Gomez, the trial court, or this court should presume that the exchange was innocent. To the contrary, in the instant case, the record reveals that Gomez formed his belief that defendant was committing an illegal act through his own observation of defendant's actions and his prior experience in policing narcotics activity.

¶ 26 Therefore, defendant was stopped and subsequently detained because based on the totality of the circumstances at the time, Gomez believed there was a probability that criminal activity had occurred, *i.e.*, defendant had just engaged in a narcotics transaction. See *Wear*, 229 Ill. 2d at 564. Because the facts at the time of defendant's arrest would have led a reasonably cautious person to believe that defendant had committed a crime, probable cause to arrest defendant existed (*Wear*, 229 Ill. 2d at 563), and the trial court did not err when it denied the motion to quash arrest and suppress evidence (*Cosby*, 231 Ill. 2d 271).

¶ 27 Defendant next contends that he was denied effective assistance of counsel by counsel's questioning of Watkins regarding prior drug purchases from defendant. He argues that although this information may have impeached Watkins, it served no strategic purpose and prejudiced him because it concerned the same offense of which he was accused in the instant case. He further argues that the jury may have been more likely to convict him of selling narcotics to Watkins in this case because he had allegedly done so in the past.

¶ 28 To show an attorney's representation was ineffective, a defendant must establish (1) the attorney's performance fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In order to succeed on an ineffective assistance of counsel claim, a defendant must overcome the presumption that the challenged conduct might be considered sound trial strategy

under the circumstances. *People v. Snowden*, 2011 IL App (1st) 092117, ¶ 70. Generally, the cross-examination or impeachment of a witness is considered to be trial strategy and does not support a claim of ineffective assistance of counsel. *People v. Pecoraro*, 175 Ill. 2d 294, 326 (1997). An attorney's decision regarding cross-examination is entitled to substantial deference because it is an exercise of his professional judgment. *Pecoraro*, 175 Ill. 2d at 326-27.

¶ 29 Here, Watkins was impeached during cross-examination with his prior criminal record and his chronic heroin addiction. Watkins also admitted that he had previously purchased drugs from defendant and denied that he was offered any consideration by the State in exchange for his testimony. Although defendant contends that there was no strategic purpose to impeaching Watkins further with evidence that he had previously purchased narcotics from defendant, the record indicates that trial counsel attempted to establish during cross-examination that the State's witnesses, particularly Watkins, were unworthy of belief. *People v. Robinson*, 349 Ill. App. 3d 622, 632 (2004) (cross-examination may concern any matter that explains, modifies, discredits or destroys the witness' testimony on direct examination). Moreover, even were this court to agree with defendant that trial counsel's decision to question Watkins regarding his previous narcotics transactions with defendant was an error, counsel's performance is not rendered deficient merely because "counsel makes a mistake in trial strategy or tactics or an error in judgment." *People v. Perry*, 224 Ill. 2d 312, 355 (2007) see also *People v. Rosemond*, 339 Ill. App. 3d 51, 65 (2003) (there mere fact that a trial strategy was unsuccessful is not enough to overcome the presumption that the strategy was sound). Although defense counsel chose an unusual trial strategy, which was ultimately unsuccessful, it was a strategy nonetheless.

¶ 30 However, even were this court to assume that trial counsel's questioning of Watkins

regarding his prior relationship with defendant, albeit brief, rendered trial counsel's performance objectively unreasonable, defendant's claim must fail as he cannot establish how he was prejudiced by the complained of action. Here, the evidence against defendant was overwhelming when a police officer testified that he observed defendant exchange suspect narcotics for currency and 18 baggies of suspect heroin were later recovered from the vehicle defendant was driving. Given these challenging facts, defense counsel attempted to attack the credibility of the alleged buyer as well as the officers who took defendant and Watkins into custody. Therefore, this court concludes, based on the overwhelming evidence against defendant, the outcome of the trial would not have been different even without defense counsel's questions regarding Watkins and defendant's prior relationship. See *Strickland*, 466 U.S. at 694 (to establish prejudice a defendant must show a reasonable probability that absent the complained of error, the result of the proceeding would have been different). Therefore, as defendant cannot establish prejudice, his claim of ineffective assistance of counsel must fail. See *People v. Edwards*, 195 Ill. 2d 142, 163 (2001) (failure to satisfy either prong of the *Strickland* test defeats an ineffective assistance claim).

¶ 31 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.