

No. 1-11-1211

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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 18960
)	
SYDNEY ARTHUR,)	Honorable
)	Victoria A. Stewart and
)	Thomas M. Davy,
Defendant-Appellant.)	Judges Presiding.

JUSTICE SALONE delivered the judgment of the court.
Presiding Justice Steele and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's motion to quash his search and suppress the evidence found in that search should have been granted where the police received only a generalized description of a man with a gun. Defendant's conviction based upon the discovery of a gun on his person is reversed.

¶ 2 In a bench trial, defendant Sydney Arthur¹ was convicted of aggravated unlawful use of a weapon and defacing the identification marks of a firearm. He was sentenced to two days in

¹Although defendant at trial spelled his last name as Arthurs, the notice of appeal spells it as Arthur.

prison with that time considered served and two years' probation. On appeal, defendant contends that the trial court erred in denying his motion to quash a police *Terry* stop and a search of his person and suppress a gun found in his waistband.

¶ 3 Defendant's pretrial motion to suppress was heard by Judge Victoria A. Stewart. She retired, and Judge Thomas M. Davy presided over defendant's trial. At the hearing on defendant's pretrial motion to suppress, defendant testified that on September 21, 2008, at 5:21 a.m., he was at a reggae club at 66th and State Street in Chicago. There were approximately 150 people present. Some of the men were wearing long-sleeve shirts with designs on them. Defendant testified that he was wearing a white "button-up" shirt with designs on the sleeves and on the back, jeans, and a red, white and blue "rag" on his head and another on his hand. He was also wearing earrings and two chains. One chain was silver, with a cross on it, and the other one was gold. His hair was in braids, hanging below a bandanna that he was also wearing on his head. When defendant and his girlfriend left the club they were accompanied by others, including at least six men wearing white shirts with designs on the back. The men were about 25 yards away when defendant and his girlfriend were approached by police officers, who had their guns drawn and who said "Freeze. Get on the ground." Defendant and his girlfriend got down on the ground. The police picked defendant off the ground, put his hands behind his back, handcuffed him, and patted him down, finding a weapon inside his waistband. The police did not show defendant an arrest warrant or a search warrant and he did not consent to the search.

¶ 4 Marilyn Myvett testified that she was a friend of defendant's family. She was present when defendant was arrested. She recalled that there were approximately 100 people in the club and many of the men wore white shirts with designs on them and jeans.

¶ 5 Aaron Miles testified that he was a friend of the defendant and was also present when defendant was arrested. There were about 20 people at the club and all the men had on white or

black "button-up" shirts. Most of their shirts had designs on the back. Some of the men had braids and some had "dreads." Miles recalled that defendant was arrested inside the club.

¶ 6 Testifying for the prosecution, Chicago police officer Michael Butler stated that at the time in question he and his partner, both in civilian clothes, received a call of a man with a gun at the club. The message described the man as black, with braids, wearing blue jeans and a white shirt with a design on the back. Officer Butler and his partner went to the club and walked inside, where there were about 70 people. When they did not see anyone matching the description, they walked outside and watched as people left the club. After about 10 or 15 minutes, they saw defendant walk outside with a female companion. Defendant fit the description they had been given so they approached him, saying something to the effect of "Come here." According to Officer Butler, nobody else coming out of the club fit that exact description. The officers did not draw their guns at any time during the incident. Nor did they yell "Freeze. Get on the ground." Defendant began to run, but tripped and fell. He had pushed the woman who accompanied him in front of the officers. The officers picked defendant up and patted him down, discovering a gun in his waistband.

¶ 7 Officer Butler testified that the description they received did not include the suspect's height, weight, or skin complexion. However, defendant was the only person they observed wearing jeans and a white shirt with a design on the back. Defendant was also wearing a blue scarf with red stripes, but that article of clothing was not included in the description they received. Officer Butler admitted that the report he prepared of the incident did not state that when they approached defendant he began to run and then tripped, or that he pushed his female companion in the way.

¶ 8 At the close of the evidence in this suppression hearing, the judge stated that she found a number of inconsistencies in the testimony of the defense witnesses, including the number of

people present and the location of the arrest. She also found that Officer Butler's testimony was clear and consistent. The judge also observed that the fact that defendant fled from the police was evidence of exigent circumstances. Based upon those observations, the judge denied defendant's motion. The case then proceeded to a trial, which consisted of stipulated testimony, although that testimony has not been included in the record on appeal. At the conclusion of the evidence, defendant was convicted of aggravated unlawful use of a weapon and defacing the identification marks of a firearm. He was sentenced to two days in prison, with that time considered served, and two years of probation. This appeal ensued.

¶ 9 Defendant challenges only the denial of his motion to suppress, alleging that the police officers lacked "probable cause" to arrest and search him because he did not match the description given to the officers. However, he also contends that the motion should have been granted because of evidence that other people present at the club also matched the description of a male with braids, jeans, and white shirts with a design.

¶ 10 The fourth amendment ordinarily requires that the search and seizure of an individual must be accompanied by a warrant based upon probable cause. *Katz v. United States*, 389 U.S. 347, 357 (1967). But under the exception provided by *Terry v. Ohio*, 392 U.S. 1, 22 (1968), a police officer who has a reasonable, articulable suspicion that a person has committed or is about to commit a crime may briefly stop that person to question them. *People v. Lee*, 214 Ill. 2d 476, 487 (2005); *People v. Ledesma*, 206 Ill. 2d 571, 583 (2003). If that officer has a reasonable belief that he may be in danger during this stop, he may pat down the individual to determine whether they have any weapons in their possession. *Terry*, 392 U.S. at 23; *People v. Flowers*, 179 Ill. 2d 257, 262 (1997); *People v. Johnson*, 408 Ill. App. 3d 107, 112 (2010). But a mere hunch is insufficient to support a *Terry* stop. *Terry*, 392 U.S. at 22; *People v. Thomas*, 198 Ill. 2d 103, 110 (2001). Furthermore, when a description of a suspect describes a large number of

people who are presumably innocent, that description is insufficient to create an articulable suspicion justifying a police officer's stop of the suspect. *People v. Chestnut*, 398 Ill. App. 3d 1043, 1052 (2010).

¶ 11 Here, the testimony of Officer Butler was that he and his partner were alerted to the presence of a man with a gun at the reggae club. But the description they were furnished was a general one under the circumstances of this case. Defendant and his two supporting witnesses all testified that there were a number of men present that morning who were wearing white shirts with designs on the back. The remainder of the description furnished to the officers, a black male with braids and wearing blue jeans, was a description which could fit any number of men found at a reggae club. The description did not include the suspect's height, weight, or complexion. Nor did it include the distinctive blue scarf with red stripes which Officer Butler admitted was worn by the defendant. Indeed, defendant's uncontradicted testimony was that he was also wearing earrings and two chains, one silver with a cross on it, and one gold. Yet none of these distinctive features was included in the description given to the officers. It is significant that the officers first walked into the reggae club and did not see a person matching the suspect's description. Yet they testified that when they went outside they saw defendant emerge from the club. It is also significant that Officer Butler's testimony that defendant ran when the officers approached him was impeached by his failure to include this very significant fact in his written report of the incident.

¶ 12 Once a defendant establishes that the police stopped him without a warrant and that he was doing nothing unusual at the time of the stop, the burden of proof shifts to the prosecution to justify the stop. *People v. Ertl*, 292 Ill. App. 3d 863, 868 (1997). Defendant shifted the burden of proof to the prosecution when he testified that he was stopped and seized by the officers without a warrant and then immediately searched. Under the facts of this case, we find that the

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officers at most had information justifying a hunch that defendant was the suspect described to them; they did not have a reasonable, articulable suspicion that defendant had committed or was committing a crime when they saw him leave the club. For these reasons, we find that the trial court erred in holding that defendant's stop was justified as a *Terry* stop. Because the gun found on defendant's person by the officers was the product of an unlawful search following that illegal stop and must be suppressed, and because that gun was necessary to defendant's conviction, we reverse that conviction outright.

¶ 13 For the reasons set forth in this order, we reverse the judgment of the circuit court of Cook County.

¶ 14 Reversed.