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2012 IL App (3d) 100627-U

Order filed March 29, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-10-0627
v.	)	Circuit No. 09-CF-836
	)	
ALAN WAYNE RICHARDS, a/k/a	)	
ALLEN WAYNE RICHARDS,	)	Honorable
	)	Glenn H. Collier,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices Lytton and O'Brien concurred in the judgment.

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**ORDER**

¶ 1 *Held:* (1) The trial court properly denied defendant's motion to quash arrest and suppress evidence. (2) The \$200 DNA analysis fee imposed on defendant should be vacated because defendant had a DNA sample on file at the time of sentencing.

¶ 2 Following a stipulated bench trial, defendant, Alan Wayne Richards, was convicted of armed violence (720 ILCS 5/33A-2(a) (West 2008)) and sentenced to 15 years' imprisonment.

Defendant appeals, arguing that: (1) the trial court erred in denying his motion to suppress

evidence and quash arrest; and (2) the portion of the trial court's sentencing order requiring him to pay a \$200 deoxyribonucleic acid (DNA) analysis fee should be vacated. We vacate the \$200 DNA analysis fee and otherwise affirm.

¶ 3

### FACTS

¶ 4 On August 18, 2009, defendant was charged by indictment with armed violence (720 ILCS 5/33A-2(a) (West 2008)), possession of a controlled substance (720 ILCS 570/402(c) (West 2008)), and two counts of unlawful possession of a firearm (720 ILCS 5/24-3.1(a)(1) (West 2008)). Defendant subsequently filed a motion to suppress evidence and quash arrest.

¶ 5 At the hearing on defendant's motion, the parties stipulated that on the date defendant was arrested, there were no outstanding arrest warrants or search warrants for defendant. Thereafter, Officer Jonathan Irving testified that on July 19, 2009, he received a dispatch that there was a man with a gun at the intersection of Missouri and Frye Streets in Peoria. Irving and his partner drove to the location, but did not find the man. Irving began to patrol the area, but received another dispatch that the man had relocated to 302 East McClure.

¶ 6 On the way to the new location, Irving was flagged down by three women. One of the women, Whitney Lewis, told Irving that a man stole \$700 from her. Lewis was at a hotel earlier that day and placed her wallet on the front seat of the car the man was driving. The man rolled up the windows, locked the doors, and removed the money from her wallet. Lewis recovered her wallet, and the man drove away.

¶ 7 Later that day, Lewis met the man at the intersection of Missouri and Frye Streets because he was supposed to return her \$700. When Lewis met the man, he pulled a firearm on her and told her he did not have her money. The man told Lewis to get back, and then left the area.

¶ 8 Lewis told Irving that the man's name was A.J. or Alan. The man was African-American, and he was 5'7" tall and weighed 160 pounds. He also had a tattoo of a bird under one eye and the initials E.B. under the other. Lewis stated that the man's mother lived at 302 East McClure. The officers were unable to locate defendant that night.

¶ 9 On July 26, 2009, Irving and his partner returned to 302 East McClure. They parked their car and approached the residence. They observed three black males standing on the front porch. Irving's partner asked to speak with Alan, and defendant stepped off the porch and identified himself as Alan. Irving and his partner observed that defendant had two tattoos on his cheeks, one with wings and the other with the initials E.B.

¶ 10 Upon recognizing the tattoos, Irving's partner handcuffed defendant. Irving patted defendant's right pocket and felt what he thought to be a pistol. Defendant was subsequently searched, and a loaded handgun and cocaine were recovered. According to the State's records, defendant was 5'10" tall and weighed 180 pounds.

¶ 11 At the conclusion of the hearing, the trial court denied defendant's motion to quash arrest and suppress evidence. The trial court found that the officers had probable cause to arrest defendant. Therefore, the subsequent search of defendant was valid as a search incident to arrest.

¶ 12 Defendant agreed to a stipulated bench trial and was found guilty of armed violence. Defendant was sentenced to 15 years' imprisonment. Defendant's motion for new trial was denied. Defendant appeals.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant first argues that the trial court erred in denying his motion to suppress evidence and quash arrest. Defendant asserts that the information Lewis provided to the

police was insufficient to provide probable cause for his arrest or reasonable suspicion to stop and frisk him. Specifically, defendant contends that Lewis's information was unreliable, insufficient, and stale. Defendant also contends that the unlawful use of a weapon and unlawful possession of a firearm statutes are unconstitutional and therefore were not a proper basis for his arrest.

¶ 15 In reviewing a trial court's ruling on a motion to suppress, we will defer to the trial court's findings of fact, unless they are against the manifest weight of the evidence; however, *de novo* review is appropriate for the ultimate determination of whether the evidence should be suppressed. *People v. Luedemann*, 222 Ill. 2d 530 (2006).

¶ 16 In order to make a valid, warrantless arrest, a police officer must have probable cause to arrest. *People v. Wear*, 229 Ill. 2d 545 (2008). Probable cause exists when the totality of the facts and circumstances known to the arresting officer is such that a reasonably prudent person would believe that the suspect is committing or has committed a crime. *Illinois v. Gates*, 462 U.S. 213 (1983); *People v. Tisler*, 103 Ill. 2d 226 (1984).

¶ 17 Probable cause to arrest can be based on information by an informant, but only if the informant's reliability has been previously established, or if the information is independently corroborated. *People v. Sturdivant*, 99 Ill. App. 3d 370 (1981). However, if the informant is an ordinary citizen, not from the criminal milieu, prior reliability or independent corroboration may be unnecessary. *Id.* Absent indications to the contrary, information provided by an ordinary citizen is presumed to be reliable. *People v. Jones*, 374 Ill. App. 3d 566 (2007). This is especially true when the information was provided by a victim or an eyewitness to the crime. *People v. Sims*, 192 Ill. 2d 592 (2000); *People v. Hall*, 164 Ill. App. 3d 770 (1987).

¶ 18 In the present case, the police relied on information provided to them by Lewis in making a warrantless arrest of defendant. We find that the facts available to the officers at the time defendant was apprehended gave rise to probable cause. Lewis, as an ordinary citizen and possible victim to a crime, provided Irving with firsthand knowledge of the crime. Furthermore, Lewis provided sufficient and accurate details of defendant's physical appearance and name. Lewis also provided the location of the home of defendant's mother, where defendant was later located. We find that these facts would lead a reasonable person in the officer's position to believe a crime had been committed by defendant.

¶ 19 Consequently, the officers had probable cause to make a warrantless arrest of defendant, and the subsequent search of his person was lawful as a search incident to arrest. See 725 ILCS 5/108-1 (West 2008). There is no need to address defendant's claim that the firearm offense statutes were unconstitutional because defendant did not receive a sentence for those offenses and there were additional offenses to support probable cause to arrest him. See *People v. Aguilar*, 408 Ill. App. 3d 136 (2011). As such, the trial court did not err in denying defendant's motion to quash arrest and suppress evidence.

¶ 20 Defendant next contends that this court should vacate the defendant's \$200 DNA assessment fee because he provided a DNA sample following a previous juvenile adjudication. Any individual convicted of an offense that is classified as a felony under Illinois law after January 1, 1998, is required to submit to the taking, analysis, and indexing of the offender's DNA, and the payment of an analysis fee. 730 ILCS 5/5-4-3(a), (j) (West 2010). However, a defendant is only required to submit and pay for a DNA assessment when he is not currently registered in the DNA database. *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 21 Here, defendant has submitted documentation indicating that his DNA profile was on file at the time of sentencing. The State agrees. We therefore vacate the defendant's DNA analysis fee, and order that if the defendant has already paid this fee that the money be refunded to him.

¶ 22 **CONCLUSION**

¶ 23 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed in part and vacated in part.

¶ 24 Affirmed in part and vacated in part.