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2012 IL App (3d) 110844-U

Order filed August 10, 2012

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 14th Judicial Circuit,
Plaintiff-Appellee,)	Mercer County, Illinois,
)	
v.)	Appeal No. 3-11-0844
)	Circuit No. 10-CF-35
)	
BRIAN McWADE,)	Honorable
)	Greg G. Chickris and James G. Conway, Jr.,
Defendant-Appellant.)	Judges, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's consent to search was given voluntarily during a valid seizure that was justified by the investigating officer's reasonable suspicion of theft.

¶ 2 Following a bench trial, defendant, Brian McWade, was found guilty of unlawful possession of methamphetamine precursors (720 ILCS 646/20(a)(1) (West 2010)). Defendant now appeals the trial court's denial of his motion to quash arrest and suppress evidence. We affirm the trial court's denial of the motion.

¶ 3

FACTS

¶ 4 At approximately 12:30 a.m. on April 12, 2011, Deputy Jesse Doty of the Mercer County sheriff's department conducted a routine check of the Crop Production Services Facility (CPS) in a rural area of Mercer County. Officers regularly checked CPS for thefts of anhydrous ammonia, a chemical known to be used to manufacture methamphetamine. CPS was known as a magnet for ammonia thieves, especially at night. Within 24 hours previous of Doty's check on CPS, a different officer had conducted a check and found nothing out of the ordinary. While investigating CPS, Doty noticed a bicycle inner tube attached to one of the ammonia tanks and, on the ground nearby, a fresh wet spot containing some liquid. Doty testified that bicycle inner tubes were commonly used by thieves to transfer anhydrous ammonia from the tanks to smaller containers. Based on his training and experience, Doty concluded that someone had recently stolen anhydrous ammonia from the tank.

¶ 5 Shortly after discovering the theft, Doty heard an engine start and exited the facility to investigate. He later testified that individuals who steal anhydrous ammonia often park a distance away from the facility and then infiltrate the facility on foot to steal the chemical. While exiting CPS, Doty saw a vehicle with its headlights on parked on the side of the road, approximately one-half mile south of the facility. Doty testified that the vehicle was located in an area often used for parking by ammonia thieves of CPS. Doty drove towards the vehicle, activated his cruiser's lights, and effectuated a traffic stop. Doty testified that he initiated the traffic stop based upon a "hunch" that the vehicle was involved in the theft and a belief that the car was illegally parked.

¶ 6 As Doty approached the vehicle, he saw its passenger, Curtis Wright, standing next to the

truck. Wright closed the lid on a toolbox in the truck's bed and then returned to the passenger seat. Doty then observed Wright reaching into the truck's backseat. Doty approached the driver's side of the vehicle and asked the two men why they had parked there. Defendant, who was behind the wheel, stated that they had pulled over to secure a loose ratchet strap in the truck's bed. Doty testified that he did not believe defendant's answer because he saw a ratchet strap buried out of reach under other objects in the back of the truck, and he had witnessed Wright closing a toolbox, not tightening a ratchet strap. Doty testified that Wright appeared nervous and his hands were trembling.

¶ 7 Doty requested identification from the passengers and returned to his cruiser to run warrant checks. While running the checks, he called a fellow deputy to ask whether he was familiar with either of the passengers. Doty testified that the check and phone call took 5 minutes; defendant testified it took 20 minutes. According to Doty, the entire stop took approximately 20 minutes.

¶ 8 After the warrant checks came back clear, Doty returned to the vehicle and asked defendant to step outside. Defendant complied, and Doty conducted a pat-down search for weapons. Doty then moved defendant to the back of the vehicle and resumed questioning him. During this questioning, Doty requested defendant's consent to search the vehicle, and defendant granted it. Upon searching the vehicle, Doty found methamphetamine precursors and arrested defendant.

¶ 9 Defendant was charged and filed a motion to quash arrest and suppress evidence, challenging the voluntariness of the consent to search his vehicle. The trial court denied the motion. Defendant filed a motion to reconsider, which was also denied. At a bench trial,

defendant was found guilty of unlawful possession of methamphetamine precursors and sentenced to 120 days in the Mercer County jail, 36 months of probation, and a \$1,000 fine.

¶ 10 Defendant now appeals the trial court's denial of his motion to quash arrest and suppress evidence.

¶ 11 ANALYSIS

¶ 12 Defendant argues that the trial court erred when it denied his motion to quash arrest and suppress evidence. He contends that his consent to search was involuntary because it resulted from an unreasonable seizure. Defendant presents two alternative theories to explain why the seizure was unreasonable: (1) the vehicle stop was not justified by reasonable suspicion at its inception; and (2) even if the stop was justified at its inception, the scope of the detention exceeded that justified by the initial stop.

¶ 13 I. Reasonable Suspicion and Scope of Seizure

¶ 14 Review of a trial court's decision on a motion to quash arrest and suppress evidence provides mixed questions of fact and law. *People v. Bennett*, 376 Ill. App. 3d 554 (2007). The trial court's factual and credibility determinations are reversed only if against the manifest weight of the evidence (*id.*), while *de novo* review applies to the ultimate legal conclusion of whether the evidence should be suppressed. *People v. Pitman*, 211 Ill. 2d 502 (2004).

¶ 15 Consent to search justifies a warrantless search, so long as the consent is given freely and voluntarily. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). Consent to search can become tainted and invalid when given during an illegal or unreasonable seizure. *People v. Brownlee*, 186 Ill. 2d 501 (1999). Therefore, in order to determine whether defendant's consent was given voluntarily, we must first determine whether the seizure that produced the consent was

reasonable.

¶ 16 The constitutions of both the United States and Illinois prohibit unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I § 6. The temporary detention of an automobile during a traffic stop constitutes a seizure. *People v. Vasquez*, 388 Ill. App. 3d 532 (2009). Under *Terry v. Ohio*, 392 U.S. 1 (1968), an officer may conduct such a seizure without probable cause in order to investigate criminal conduct.

¶ 17 For an officer to validly execute a *Terry* stop, he needs only reasonable suspicion that the suspect has committed or is about to commit a crime. *Id.* Reasonable suspicion is defined as "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Id.* at 21. Illinois has codified the holding of *Terry* in section 107-14 of the Code of Criminal Procedure of 1963:

"A peace officer *** may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense *** and may demand the name and address of the person and an explanation of his actions." 725 ILCS 5/107-14 (West 2010).

¶ 18 Even when justified by reasonable suspicion, a *Terry* stop cannot continue indefinitely; it is justified only to further the ends for which the stop was initiated. Therefore, analyzing a *Terry* stop involves "a dual inquiry: (1) whether the officer's action was justified at its inception, and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *People v. Al Burei*, 404 Ill. App. 3d 558, 562-63 (2010) (internal quotation marks omitted), quoting *Terry*, 392 U.S. at 20. The stop should last no longer than

necessary to effectuate the purpose of the stop. *People v. Brown*, 343 Ill. App. 3d 617 (2003).

¶ 19 "The purpose of a *Terry* stop is to allow a police officer to investigate the circumstances that provoke suspicion and either confirm or dispel his suspicions." *People v. Ross*, 317 Ill. App. 3d 26, 31 (2000). Once the officer's suspicions have been quelled, the officer must end the detention, or else it becomes unreasonable. However, in some circumstances, an officer's questioning of a suspect may foster the officer's suspicions. In that case, the officer may continue questioning: "The answers to the initial inquiries may arouse further suspicion or dispel the questions in the officer's mind. *** [If] the former is the case, the stop may be prolonged and the scope expanded." *People v. Smith*, 208 Ill. App. 3d 44, 50 (1991). Thus, if a suspect's answers arouse an officer's suspicions, he need not immediately cease the investigation because its purpose has not been fulfilled.

¶ 20 However, an officer's suspicions cannot justify continuing a stop indefinitely. At a certain point, the officer must either arrest the suspect or allow him to leave. *People v. Roberts*, 96 Ill. App. 3d 930 (1981). Determining whether the stop was unreasonably extended requires an evaluation of the totality of the circumstances. Factors to be considered include the brevity of the stop and the officer's diligence in conducting the investigation. *Smith*, 208 Ill. App. 3d 44.

¶ 21 *A. Reasonableness of Initial Seizure*

¶ 22 In the present case, the first prong of the *Terry* analysis is satisfied. The initial stop of defendant's vehicle was justified by Doty's reasonable suspicion that the vehicle's passengers had committed a theft at CPS. His suspicion was based on several specific and articulable facts. Doty observed the bicycle inner tube attached to the anhydrous ammonia tank and the puddle of liquid on the ground. He was familiar with the infrastructure of CPS and anhydrous ammonia

thefts in general, and knew that the bicycle inner tube was a foreign object used to steal anhydrous ammonia. These observations and inferences alone established a reasonable suspicion that a recent theft had occurred.

¶ 23 Additional facts created a reasonable suspicion that the occupants of defendant's vehicle, in particular, were the individuals who had committed the theft. CPS had been searched by another officer within the previous 24 hours, and because that officer did not report any evidence of a theft, Doty knew that the theft was recent. The fresh pool of liquid next to the anhydrous ammonia tank also pointed toward the recency of the theft. CPS is located in a rural part of the county that has little vehicle traffic but is known as a magnet for anhydrous ammonia thefts. Doty testified that he was aware of previous thefts at CPS, most of which occurred at night. On this particular night, Doty had not observed a single vehicle in the area during his check of CPS until hearing defendant's truck's engine start shortly after discovering the bicycle inner tube and liquid.

¶ 24 The location of the vehicle one-half mile from CPS also indicated that the vehicle was involved in the theft. Doty testified that based on his experience, he knew that anhydrous ammonia thieves often park a distance away from a facility and then approach on foot to commit the theft. Doty testified that defendant's vehicle was parked in an area typically used by anhydrous ammonia thieves while committing the thefts.

¶ 25 When considered together, the fact that defendant's truck was the only vehicle present in the area, the apparent recency of the theft, the starting of defendant's vehicle minutes after Doty discovered the theft, and the location of defendant's vehicle in an area known to be used by thieves combined to create a reasonable suspicion in Doty that the occupants of defendant's

vehicle had committed the theft. Because Doty had reasonable suspicion that the occupants of the vehicle had committed the theft, his initial seizure of the vehicle was valid, and the first prong of the *Terry* analysis is satisfied.

¶ 26 The fact that Doty testified he initiated the stop based on merely a "hunch" that a theft had occurred is irrelevant. It is true that a "mere hunch" that criminal activity has occurred is insufficient to justify a seizure. *People v. Thomas*, 198 Ill. 2d 103, 110 (2001). However, reasonable suspicion is an objective standard; the subjective characterizations of the officer are not at issue. *Whren v. United States*, 517 U.S. 806, 813 (1996) ("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis"). Because the objective facts surrounding this search created a reasonable suspicion that criminal activity had occurred, the seizure was reasonable.

¶ 27 *B. Scope of the Seizure*

¶ 28 The second prong of the *Terry* inquiry is satisfied because the scope of the seizure was reasonable in relation to its justification—the investigation of a theft at CPS. The defense claims that the seizure exceeded its justified scope when Doty engaged in further questioning of defendant after asking him to step out of the vehicle. To the contrary, Doty's further questioning of defendant was reasonably necessary considering the nature of the crime and defendant's and Wright's behavior during the stop.

¶ 29 When Doty approached the truck, he noticed Wright closing a toolbox in the bed and then reentering the truck through the passenger door. Doty asked the occupants why they had pulled over at this location. Defendant responded that they pulled over to secure a ratchet strap that had come loose in the truck's bed. This response raised Doty's suspicions because it contradicted his

observations that Wright had been dealing with the toolbox and not a ratchet strap. In addition, Wright appeared nervous and had reached behind the backseat while Doty approached the truck. These actions aroused rather than dispelled Doty's suspicions that defendant was involved in the theft at CPS. Because his initial suspicions had not been dispelled, Doty was justified in investigating further. See *Smith*, 208 Ill. App. 3d 44.

¶ 30 Doty responded by again questioning defendant—now outside the presence of his companion—about his purpose for being in the area. This further inquiry was necessary to "confirm or dispel his suspicion[]" that defendant was involved in the theft and had initially responded dishonestly about his true purpose for being in the area. *Ross*, 317 Ill. App. 3d at 31. The additional questioning was not unreasonably extensive, and lasted only as long as necessary for Doty to address his suspicions. The additional questioning therefore satisfied the brevity and diligence factors from *Smith*, 208 Ill. App. 3d 44. The questioning was a reasonable continuation of Doty's initial purpose in executing the seizure.

¶ 31 Defendant cites three cases in support of his argument that the seizure exceeded its permissible scope. All three cases involve seizures resulting from traffic stops, and all three are distinguishable. In *People v. McQuown*, 407 Ill. App. 3d 1138 (2011), the court held that a seizure exceeded its scope when a traffic stop was prolonged by 38 minutes while officers waited for a canine unit to arrive and search the defendant's vehicle. In *People v. Baldwin*, 388 Ill. App. 3d 1028 (2009), a traffic stop was held unreasonable when it was extended unnecessarily by 10 minutes after the purpose of the stop had been concluded. And in *People v. Ruffin*, 315 Ill. App. 3d 744 (2000), the scope of a traffic stop was unreasonable where the officer prolonged the stop in an attempt to elicit incriminating information from the defendant. In all three cases, the

arresting officer prolonged the stop for a reason unrelated to the stop's initial purpose.

¶ 32 Unlike in *McQuown*, *Baldwin*, and *Ruffin*, Doty continued his investigation of defendant in order address his unwavering suspicions concerning the reason for the initial seizure. Doty's questions were necessary to his theft investigation because he had reason to believe that the answers given by defendant were dishonest. The questioning lasted only as long as necessary to address Doty's suspicions and did not extend for an unreasonable period of time. Therefore, the scope of the seizure was reasonable.

¶ 33 Defendant's consent to search was given during a valid seizure, and the consent is therefore voluntary.

¶ 34 Because the seizure was justified by Doty's reasonable suspicion of theft, an analysis of whether reasonable suspicion of a traffic violation would have justified the seizure is unnecessary.

¶ 35 **CONCLUSION**

¶ 36 Defendant's consent to search was given freely and voluntarily because it occurred during a seizure justified by reasonable suspicion of theft. The Mercer County circuit court's decision to deny defendant's motion to quash arrest and suppress evidence is affirmed.

¶ 37 Affirmed.