

2013 IL App (1st) 112018-U

FIFTH DIVISION
April 19, 2013

No. 1-11-2018

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. 10 CR 15207
)	
RENARD BROOKS,)	Honorable
)	Michael J. Howlett, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Justices Howse and Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* We reverse defendant's conviction for possession of heroin because the heroin was discovered by an unlawful *Terry* search, where the police officer conducting the search had no basis for fearing for his own safety or that of others.

¶ 2 In a bench trial, defendant Renard Brooks was convicted of possession of a controlled substance (less than 15 grams of heroin) and sentenced to one year in prison. On appeal defendant contends that the trial court erred in not suppressing the heroin discovered during a *Terry* search, where the officer who conducted the search had no basis for fearing for his safety or the safety of others when he patted down defendant. He also contends that the trial court

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should not have credited a police officer's testimony that defendant voluntarily admitted that a bulge in his pocket was a bag of heroin.

¶ 3 Defendant was charged with possessing less than 15 grams of heroin. He filed a motion to quash arrest and suppress evidence, which was heard on October 6, 2010. At the hearing on that motion, Chicago police officer Reyes Sanjuanero was called as a witness for defendant. Officer Sanjuanero testified that on July 28, 2010, he was on patrol with his partner, Officer Appel, in the vicinity of 1400 South Komensky Avenue in Chicago. At about 12:30 p.m. that day, he and Officer Appel stopped at a residential building located at 1352 South Komensky¹, because they saw three men loitering in front of the building. From previous experience, Officer Sanjuanero knew that the building was in an area of high narcotics activity. He also knew that the first floor and the basement of this two-story building were vacant. Officer Sanjuanero walked to the back of the building, where he saw defendant leaving the building. Officer Sanjuanero did not draw his weapon as he approached defendant. He conducted a "field interview," ascertaining that defendant did not live in the building and did not know anybody there.

¶ 4 Defendant did not attempt to flee and was cooperative with Officer Sanjuanero. The officer testified that based on knowing that defendant did not live in the building and did not have permission to be there, he conducted a "pat down for officer safety" to make sure that defendant had no weapons which would injure him or others. In this search, Officer Sanjuanero felt a bulge in defendant's right front pocket. He suspected this was narcotics, so he asked defendant what it was. Defendant stated "some blows," which Officer Sanjuanero recognized as a slang term for heroin. Officer Sanjuanero retrieved the item, which he found was a plastic

¹ At trial, Officer Sanjuanero testified that the building was at 1252 South Karlov, which was one block away from South Komensky.

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baggy containing 12 smaller baggies of suspected heroin. Defendant was arrested and charged with possession of heroin.

¶ 5 On cross-examination, Officer Sanjuanero testified that he knew that the building was used for drug activity. He had previously gone into the basement and had seen drug paraphernalia, including empty baggies, some with white powder residue.

¶ 6 The trial court found that the pat down of defendant was "reasonable given the information that the officer had at that time." It cited Officer Sanjuanero's knowledge that the building was in a high crime area and had been used for drug activity. It also cited defendant's admission to the officer that he did not live there and did not know anybody who lived there. For these reasons, the court denied defendant's motion to quash and suppress. Defendant filed a motion for reconsideration, which the trial court also denied.

¶ 7 Trial was conducted before a different judge than the one who presided over defendant's motion to quash arrest and suppress evidence. At trial, Officer Sanjuanero testified to substantially the same facts as he did at the hearing on the motion. He added that before he went to the back of the South Karlov building that day, he heard a loud noise from the basement. When he went to the back of the building, he saw defendant leaving through the back door. He questioned defendant and found out that defendant did not live in the building and did not know anybody there. He then conducted a "protective" pat down in which he discovered a bulge in defendant's right front pants pocket. When asked, defendant told Officer Sanjuanero that the bulge in his pocket contained "some blows," which was street slang for heroin. Officer Sanjuanero retrieved the heroin from defendant's pocket and gave it to Officer Appel to process. Defendant was arrested and taken to the police station.

¶ 8 Officer Appel testified that at the time in question, he and Officer Sanjuanero noticed three men loitering in front of the South Karlov building. As they were questioning these men, a

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noise came from the basement of the building. Officer Sanjuanero went to the back of the building to investigate, while Officer Appel stayed with the three men in front. Within several minutes, Officer Sanjuanero returned with defendant and showed Officer Appel a baggy which appeared to contain heroin, packaged in twelve smaller baggies. Officer Appel testified to the procedures he followed in inventorying the baggies at the police station and then placing them into an evidence safe. The parties stipulated that the Illinois State Police crime lab tested the contents of the baggies and found that they weighed 5.05 grams and tested positive for heroin.

¶ 9 Testifying on his own behalf, defendant stated that at the time in question he was taking a shortcut through the gangway of the South Karlov building when Officer Sanjuanero stopped him at gunpoint, handcuffed him and searched him. The officer took several items of personal property from defendant's pockets, but did not find any heroin. At trial, defendant denied that he had any heroin that day. He also denied having been inside the South Karlov building.

¶ 10 Following closing arguments, the trial court found defendant guilty of possession of a controlled substance and sentenced him to one year in prison. Defendant has now appealed.

¶ 11 Defendant first contends that the *Terry* frisk performed by Officer Sanjuanero was illegal and therefore the heroin discovered as a result of that search should have been suppressed. Our review of the trial court's ultimate finding on a motion to suppress is *de novo*. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). We will affirm the court's findings of fact if they are not against the manifest weight of the evidence. *People v. Harris*, 228 Ill. 2d 222, 230 (2008). Under *Terry v. Ohio*, 392 U.S. 1, 22 (1989), a police officer may briefly detain an individual for questioning if the officer has a reasonable suspicion that the individual has committed or is about to commit a crime. *People v. Linley*, 388 Ill. App. 3d 747, 749 (2009). However, only if the officer has a reasonable suspicion that the individual possesses a weapon and presents a danger to the officer or to others is the officer permitted to make a limited "pat down" of the individual's

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outer clothing to determine whether the individual has any weapons. *Id.*; 725 ILCS 5/108-1.01 (West 2010) (The officer must reasonably suspect "that he or another is in danger of attack."). It is not sufficient for the officer to cite generalized concerns for his safety. *People v. Flowers*, 179 Ill. 2d 257, 266-67 (1997). He must cite "specific and articulable facts" supporting a reasonable suspicion of danger. *Terry*, 392 U.S. at 21.

¶ 12 The State contends that Officer Sanjuanero was justified in patting down defendant in a search for weapons because the officer knew that defendant had just emerged from the vacant part of a building where drug transactions occurred and because defendant admitted that he did not live in the building and did not know anybody else who lived there. At most, these facts support the suspicion that defendant was engaged in some form of drug activity. See *People v. Harper*, 237 Ill. App. 3d 202, 205-206 (1992) (No basis for *Terry* stop where defendant briefly entered residence which had been used as a drug house.) But even where an officer has a reasonable suspicion that an individual is a drug dealer, a *Terry* search for weapons is not supported merely by the officer's belief that drug dealers carry weapons. *People v. Rivera*, 272 Ill. App. 3d 502, 509 (1995). Officer Sanjuanero testified that he patted down defendant to see if he had any weapons which might harm the officer or others. But this was a generalized claim, as the officer cited no basis for believing that defendant did possess a weapon. Defendant did not attempt to flee, and he cooperated with Officer Sanjuanero by answering his questions. The State cites to no authority which permits a *Terry* search for weapons solely based upon the belief that a defendant is involved in drug transactions. Based upon our *de novo* review, we find that the trial court erred in failing to suppress Officer Sanjuanero's seizure of heroin from defendant. We do not reach defendant's second contention that the trial court should not have believed Officer Sanjuanero's testimony that defendant voluntarily admitted to possessing heroin when the officer asked him what was in the bag detected in his pocket. Because the defendant cannot be

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convicted of possession of drugs where the seizure of those drugs has been suppressed, we reverse defendant's conviction outright. *People v. Christmas*, 396 Ill. App. 3d 951, 960 (2009).

¶ 13 Reversed.