

No. 1-11-2911

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 C4 40564
	)	
JOHN LEWIS BLAYE,	)	Honorable
	)	Carol A. Kipperman,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE EPSTEIN delivered the judgment of the court.  
Presiding Justice Howse and Justice Lavin concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court properly denied defendant's motion to quash arrest and suppress evidence where the officer's *Terry* stop of defendant was based on reasonable suspicion. The State proved defendant guilty of burglary where the complainant made a positive and reliable identification of defendant and the State proved the elements of the offense beyond a reasonable doubt. We affirm defendant's conviction and remand the cause for imposition of mandatory fees.
- ¶ 2 Following a jury trial, defendant John Blaye was found guilty of burglary and the trial court sentenced him to 18 months of probation. Defendant appeals, contending the State failed to prove him guilty of burglary beyond a reasonable doubt where the eyewitness identification of

him was unreliable and mistaken, and the trial court erred in denying his motion to quash arrest and suppress evidence.

¶ 3 According to the State's theory of the case, defendant was attempting to remove the stereo from a parked van when he was spotted by the van's owner. Defendant's theory is that he merely stopped in an alley to relieve himself near the van and was the victim of mistaken identification. Prior to trial, defendant moved to quash his arrest and suppress evidence of his identification, arguing he was improperly subject to a *Terry v. Ohio*, 392 U.S. 1 (1968), stop because the police officer lacked reasonable suspicion.

¶ 4 During the hearing on defendant's motion to quash arrest and suppress evidence, Officer Kostka testified that on May 25, 2011, he was on patrol at about 11 a.m., traveling west on Lexington Avenue, when he observed two individuals emerging from between two houses at about Lexington and 15th Street. Kostka continued patrolling when Russell Smith flagged him down from about one block away. Kostka approached Smith and they spoke in the alley between the 1600 and 1700 blocks of Lexington Avenue. Smith told Kostka that two black men broke into his van, only one of the men was actually inside the van, and they ran eastbound. Kostka immediately made a U-turn to determine whether the two black men he saw earlier on 15th Street were still there. He saw the men within three to five minutes of leaving Smith; they were about six blocks from the scene, crossing southbound at 11th and Filmore.

¶ 5 Kostka saw the men walking; he did not remember whether they were sweating or breathing heavily. He pulled his squad car over and asked them where they were coming from. Defendant replied that he was returning from his sister's house, which was located down the block from where they spoke to Kostka. Kostka observed that defendant was the same man he had seen near 15th and Lexington, but when he asked them whether they were just at that location, both men stated that they had not been there. Kostka learned from a radio transmission

that someone entered Smith's van and tried to remove the stereo so he placed both men in custody and along with Sergeant Miller, transported them back to the scene. Kostka radioed another officer, who was with Smith, and told the officer that he had someone for Smith to identify. During the subsequent show-up, Smith positively identified defendant as the man that was inside the van trying to remove the radio. When Miller brought defendant's companion, Dwayne Crawford, to the scene, Smith did not identify him as one of the perpetrators.

¶ 6 On cross-examination, Kostka testified that while he was patrolling, defendant made eye contact with Kostka, paused, and then continued walking, which Kostka found suspicious. Seconds later, Kostka saw Russell Smith. Smith was about one block away, waving his arms. He located defendant five blocks away from the scene. When Kostka spoke to defendant at this time, he found it suspicious that defendant told him that he was not in the area of 15th and Lexington where Kostka had just observed defendant. Based on this suspicion, Kostka transported defendant to Smith to determine whether Smith could identify defendant as the person that broke into his van. Defendant and Crawford were the only two black men that Kostka observed in the area while Kostka was on patrol and five blocks from the scene after speaking with Smith. The parties rested and then argued the motion. The trial court denied defendant's motion.

¶ 7 At trial, Russell Smith, the owner of the van, testified that he owns Transmission Specialties, which is located at 1825 South 17th Avenue in Broadview, Cook County, Illinois. Defendant and his father owned the 1995 Dodge Caravan that was broken into, and they planned to repair and sell the van. The van was parked about 20 feet from Smith's garage, between a liquor store and an alley in the rear of the shop. At about 11 a.m. on May 25, 2011, Smith saw two individuals by the driver's side door of his van. When he first saw them, Smith was about 20 feet away. One of the men was inside the van. Smith walked closer to the van to see what was

happening inside the van, until he was about 10 feet away. While one man was inside the van, the other was outside "looking out." He saw defendant kneeling on the seat trying to peel the dashboard back to get the radio. When Smith asked the men what they were doing to his van, the man inside the van looked at Smith, then he "bust the door open" and both men "took off running down Lexington." Smith identified defendant as the man inside the van who looked at him. They did not have permission to be inside the van. The position that the van was parked was such that the driver's side was closest to Smith. It was a clear day and there was nothing obstructing Smith's view.

¶ 8 Smith went to Lexington to see where the men went and observed that they ran eastbound down Lexington. About 30 to 40 seconds after they ran away, Smith saw Officer Kostka approaching and waved down the officer. Kostka arrived and they spoke for "a couple seconds," with Smith telling the officer that "two black guys" broke into his van and took off running. Kostka made a U-turn and traveled down Lexington. Five to ten minutes later, Kostka returned with defendant inside the vehicle. At that time, Smith identified defendant as the person that was inside his van. Later, Smith observed that the radio and dashboard of the van were damaged.

¶ 9 On cross-examination, Smith testified that he spoke with Officer Grimm after Kostka left. While with Grimm, Smith overheard Kostka tell Grimm that the officers had a suspect and wanted to identify him. When Kostka arrived, defendant was in the back of the squad car. He was not able to identify Crawford as the second person at his van who was "looking out" because the entire incident occurred "so fast."

¶ 10 Officer Kostka's testimony at trial was substantially the same as his testimony during the hearing on defendant's motion. Prior to making the U-turn, Kostka's entire interaction with Smith lasted seconds because as soon as Smith stated that two black men broke into his van,

Kostka "had a feeling that the people [he] just saw might have been involved."

¶ 11 Defendant testified that when the police stopped him, he was walking with Crawford and was drinking an Arizona iced tea. When the officers stopped him and asked where he had just come from, defendant replied that he just came from his sister's house, and pointed at the house. Prior to being at his sister's house, defendant was near 1825 South 17th Avenue, the location of Smith's repair shop. Defendant went behind a mini-mart located near Smith's repair shop, near the van, to urinate. Crawford stood nearby. When he was about to relieve himself, he heard someone say, "Hey, hey, what are you doing." Defendant then moved to the opposite side of the alley to a more open area. However, defendant decided against relieving himself and instead walked away from the area, still carrying his iced tea.

¶ 12 Defendant also explained that earlier that morning he saw Officer Kostka near 15th and Lexington and looked at the police vehicle as he would look at any other car. He was coming from a friend's house when he initially saw Kostka.

¶ 13 When Kostka stopped him at 11th and Filmore, Kostka asked defendant where he had just come from and defendant replied he came from sister's house. Kostka then asked defendant what he was doing messing with the van and defendant stated that they did not mess with any van, and asked what Kostka was talking about. Kostka continued, asking whether defendant messed with a van on 17th and Lexington and defendant replied he did not. Kostka then said, "Well, if you didn't mess with the van, you don't mind coming with me to clear this up," and defendant replied that he did not mind. Defendant never denied that he was in the area of 16th or 17th and Lexington. Defendant denied, however, entering a van on the premises of the repair shop and attempting to steal the van's radio.

¶ 14 On cross-examination, defendant testified that when Kostka asked him what he was doing messing with the van, defendant did not "equate" this question with defendant's attempting

to urinate by the van, and simply replied that he had not messed with any van. His intentions were "totally different from messing with someone's property."

¶ 15 The parties rested and presented closing arguments. The jury found defendant guilty of burglary. Following a hearing on defendant's posttrial motions and the court's denial of the motions, the trial court sentenced him to 18 months of probation. The court determined that defendant served 136 days prior to trial and concluded that court costs and fines were satisfied by time served.

¶ 16 Defendant appeals his conviction, contending the State failed to prove him guilty beyond a reasonable doubt of burglary where defendant contends Smith's identification of him was unreliable and mistaken. Defendant further contends that Officer Kostka's *Terry* stop of him was not supported by reasonable suspicion and therefore the trial court erred in denying his motion to quash arrest and suppress evidence. We will first consider defendant's motion to suppress.

¶ 17 Our review of the trial court's ruling on a motion to suppress evidence presents a mixed question of fact and law. *People v. Novakowski*, 368 Ill. App. 3d 637, 640 (2006). "The trial court's factual and credibility determinations are accorded great deference, and we reverse only if the findings are against the manifest weight of the evidence." *Id.* However, legal conclusions are reviewed *de novo*. *Id.* "Therefore, we review the ultimate determination of whether the evidence should have been suppressed *de novo*." *Id.*

¶ 18 "Under *Terry*, a police officer may briefly stop a person for temporary questioning if the officer has knowledge of sufficient articulable facts at the time of the encounter to create a reasonable suspicion that the person in question has committed or is about to commit a crime." *People v. Lee*, 214 Ill. 2d 476, 487 (2005). Illinois has codified the law 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).

¶ 19 Reasonable suspicion may arise from a defendant's proximity to the scene of a recently reported crime. *People v. Hubbard*, 341 Ill. App. 3d 911, 918 (2003). This court has found that a law enforcement officer need not possess a detailed description of the alleged perpetrator in order to stop individuals leaving the general vicinity of the crime scene. See *e.g.*, *People v. Bennett*, 376 Ill. App. 3d 554, 556 (2007) (*Terry* stop found proper where alleged perpetrator described as a black man wearing a "hoodie").

¶ 20 When an officer has stopped a person for temporary questioning based on the officer's knowledge of sufficient articulable facts at the time of the encounter to create a reasonable suspicion that the person has committed or is about to commit a crime (*Lee*, 214 Ill. 2d at 487), the individual's false or unusual responses may raise the level of reasonable suspicion. *People v. Erby*, 213 Ill. App. 3d 657, 663 (1991); see also *People v. Richardson*, 376 Ill. App. 3d 612, 620 (2007) (where the defendant gave contradictory responses to police regarding ownership of tool boxes and could not provide information regarding the contents of the tool boxes, the responses gave rise to reasonable suspicion of criminal activity). Further, an officer may briefly detain an individual subject to a *Terry* stop in order to perform an immediate show-up with the victim for purposes of identification. *People v. Lippert*, 89 Ill. 2d 171, 183 (1982); and *Ross*, 317 Ill. App. 3d at 31.

¶ 21 Because defendant matched the description of the alleged perpetrator and was observed near the scene both before and after the burglary was reported, Kostka was entitled to stop defendant and investigate his suspicions. The evidence showed that Kostka first saw defendant at about 11 a.m. at 15th and Lexington. Minutes later, Smith flagged him down and reported

that two black men had just tried to break into his van. Kostka suspected that defendant and Crawford were the perpetrators and immediately returned to the area where he had just seen them. Kostka testified that his suspicion was based on the way that defendant looked at him and hesitated before continuing on his way at 15th and Lexington. Further, when Kostka asked defendant whether he was just at 15th and Lexington, defendant denied it, which Kostka knew to be a falsehood. Additionally, defendant and Crawford were the only black men that Kostka saw near the crime scene. Based on this, Kostka had reasonable suspicion to briefly detain and question defendant. See *People v. Bennett*, 376 Ill. App. 3d 554 (2007) (Reasonable suspicion found where officer received a radio transmission that there was a "man down" in store parking lot and the alleged offender was described as a black male wearing a black "hoodie" whom the officer observed running down the street within minutes of the crime); see also *People v. Ross*, 317 Ill. App. 3d 26, 30 (2000) (the court found the police had reasonable suspicion to stop the defendant where the police officer passed an individual matching the limited description of the alleged perpetrator near the victim's residence while en route to respond to the home invasion call); *People v. Hubbard*, 341 Ill. App. 3d 911, 920 (2003) (noting that "the very purpose of a *Terry* stop is to allow the officers involved to investigate their suspicions"). We therefore conclude that the trial court properly denied defendant's motion to quash arrest and suppress evidence where Kostka's *Terry* stop of defendant was based on reasonable suspicion.

¶ 22 We now consider defendant's contention that the State failed to prove him guilty of burglary beyond a reasonable doubt. In reviewing defendant's claim, we determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Maggette*, 195 Ill. 2d 336, 353 (2001). This court must carefully examine the record and only reverse if the evidence is so unreasonable, improbable, or

unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). As the trier of fact in the instant case, it was the jury's responsibility to determine witness credibility, weigh evidence, and resolve conflicts therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). The trier of fact also draws reasonable inferences from the evidence in order to resolve conflicting inferences. *People v. Moore*, 365 Ill. App. 3d 53, 58 (2006).

¶ 23 Direct testimony of a single eyewitness may be sufficient to sustain a conviction where the testimony is positive and the witness is credible. *People v. Smith*, 185 Ill. 2d 532, 545 (1999). An identification is considered positive and reliable where the witness (1) had a sufficient opportunity to view the accused, (2) showed an adequate degree of attention to the characteristics of the accused, (3) described the accused with a reasonable degree of accuracy, (4) displayed a sufficient amount of certainty in identifying the accused and (5) identified the accused within a reasonable period of time following the crime. *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972); *People v. Malone*, 2012 IL App (1st) 110517, ¶ 27.

¶ 24 Regarding the first factor, Smith had a sufficient opportunity to view defendant where Smith testified that it was a clear day, his view was unobstructed, and defendant turned to face him when Smith called out to the perpetrators. Second, Smith showed an adequate degree of attention where the evidence showed that he first saw two individuals in and by his van while he was 20 feet away, then walked closer, and called out to the perpetrators. At no point did Smith testify that his attention was diverted. The third factor, however, weighs in defendant's favor because Smith provided a generic, though accurate, description of the burglars, merely as two black men. We note, however, that the circumstances surrounding the description Smith provided were not conducive to the provision of a detailed description because both Smith and Kostka testified that they only spoke for seconds before Kostka turned his vehicle around and

pursued defendant and Crawford. The last two factors weigh in the State's favor. Smith presented no uncertainty in identifying defendant when Kostka brought him to the scene and Smith identified defendant during the show-up within five to ten minutes of the burglary. Based on the totality of the circumstances, we find that Smith's identification of defendant was positive and reliable.

¶ 25 In order to sustain a conviction for burglary, the State must prove that without authority defendant knowingly entered Smith's van with the intent to commit therein a felony or theft. 720 ILCS 5/19. As discussed above, Smith testified that he saw defendant inside his van, without authority, trying to remove the radio from the dashboard. This evidence was sufficient to sustain defendant's burglary conviction.

¶ 26 Finally, the State asks this court to remand to the trial court for the imposition of mandatory fees and costs where the trial court erroneously determined that such assessments were considered "satisfied" by defendant's presentence incarceration credit. There is no order in the record reflecting a determination of fines and fees. The State asks this court to remand to the trial court with directions that the trial court impose \$585 in mandatory fees and costs that are not subject to presentence credit offset. Defendant argues that because the State raises this issue for the first time on appeal, it is procedurally defaulted. However, failure to impose mandatory fees and costs is outside the trial court's statutory authority, is void *ab initio* and may be attacked at any time. *Cf., People v. Burney*, 2011 IL App (4th) 100343, ¶ 42 (agreeing with the defendant that "a fine or fee imposed without proper statutory authority is void *ab initio* and may be attacked at any time). While the State would like this court to remand with directions that the trial court impose \$585 in specified mandatory fines and fees, we believe that although certain fines are mandatory, the initial imposition of fines and fees is best left to the trial court. Accordingly, we remand to the trial court with directions to impose the appropriate fines and

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fees against defendant.

¶ 27 Based on the foregoing, the judgment of the circuit court of Cook County denying defendant's motion to quash arrest and suppress evidence and finding defendant guilty of burglary is affirmed. We also remand to the trial court with directions to impose appropriate fines and fees.

¶ 28 Affirmed in part; remanded with directions.