

No. 1-11-3019

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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 Cook County
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11 CR 3885
	)	
LAMONT FRAZIER,	)	Honorable
	)	Neil J. Linehan,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Presiding Justice Neville and Justice Hyman concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial counsel was not ineffective for failing to file a motion to quash arrest and suppress evidence. The trial court improperly assessed a \$200 DNA Indexing fee.

¶ 2 Following a bench trial, defendant Lamont Frazier was convicted of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010) and was sentenced to three and one-half years' imprisonment. Defendant now appeals and argues: (1) trial counsel was ineffective for failing to file a motion to quash arrest and suppress evidence; and (2) the trial court

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improperly assessed a \$200 DNA Indexing fee, where defendant's DNA had already been taken, analyzed and indexed. For the following reasons, we affirm the judgment of the circuit court, as modified.

¶ 3

### BACKGROUND

¶ 4 Chicago Police Officer Keshawn Williams testified that on March 1, 2011, he and his partner were patrolling the area on 81<sup>st</sup> Street and Hermitage Avenue in Chicago in an unmarked squad car. The officers were in plain clothes. The officers turned down an alley east of Hermitage, going north, and observed a car parked in the alley facing south. The car was blocking the alley so that the police could not proceed any further into the alley. Officer Williams testified that the car was parked "a little ways away from the garage, like towards the middle of the alley." Officer Williams observed that the car was occupied, with one person in the driver's seat and one person in the passenger's seat.

¶ 5 As the officers drove toward the parked car and were about 10 to 15 feet away, the occupants "jumped out of the vehicle" and fled on foot, leaving the keys in the ignition. Officer Williams identified defendant as the person who exited the driver's side of the parked car. Defendant ran toward the rear of the car, scaled a fence, and entered a backyard. Officer Williams chased defendant and defendant "pretty much gave up" near the front of a house near the alley.

¶ 6 Officer Williams asked defendant if he had a driver's license or proof of insurance for the car and defendant responded that he did not. Officer Williams then handcuffed defendant and brought him back to the police car to "run him." Officer Williams discovered that defendant did

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not have a valid driver's license. Defendant was then transported to the 6<sup>th</sup> District by an assisting police unit for the purpose of issuing him traffic tickets for blocking the alley and not having a valid driver's license. Pursuant to Chicago police department requirements, Officer Williams drove the car to the 6<sup>th</sup> District. At the station, Officer Williams checked the registration and found that the car belonged to someone other than defendant. In the process of doing an inventory of the contents of the car, Officer Williams found a shotgun and a single shotgun shell in the trunk.

¶ 7 Officer Williams went to the processing room where defendant was waiting and gave him his *Miranda* warnings. Defendant stated that he understood his rights. Officer Williams asked defendant if he was aware of the shotgun in the trunk. Defendant responded yes. Officer Williams asked defendant what he was going to do with the gun. Defendant responded he was going to sell it. Officer Williams did not record defendant's statement or request defendant to sign a written statement.

¶ 8 The parties stipulated that defendant had a prior felony conviction for possession of a controlled substance on June 2, 2010. Defendant's motion for a directed verdict was denied.

¶ 9 The court found defendant guilty. After a sentencing hearing, the court sentenced defendant to three and one-half years' imprisonment. It is from this judgment that defendant now appeals.

¶ 10 ANALYSIS

¶ 11 Defendant first contends that he received ineffective assistance of trial counsel when counsel failed to file a motion to quash his arrest and suppress his alleged statement prior to trial.

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Defendant asserts he was arrested without probable cause because he was simply sitting in a car that was stopped in an alley and then fled on foot when police approached. Defendant claims that sitting in a car in an alley does not constitute illegal conduct and the police had no articulable suspicion to justify a stop. Therefore, trial counsel should have moved to quash his arrest and suppress his subsequent statements to police.

¶ 12 Claims of ineffective assistance of counsel are evaluated under the two-prong test in *Strickland v. Washington*, 466 U.S. 668 (1984). To support a claim of ineffective assistance of trial counsel, defendant must demonstrate that counsel's representation was deficient, and as a result, he suffered prejudice that deprived him of a fair trial. *Strickland*, 466 U.S. at 687; *People v. Givens*, 237 Ill. 2d 311, 331 (2010). If defendant cannot prove that he suffered prejudice, this court need not determine whether counsel's performance was deficient. *Givens*, 237 Ill. 2d at 331.

¶ 13 The decision to file a motion to quash and suppress is generally a matter of trial strategy that will not give rise to an ineffective assistance claim. To establish that he was prejudiced by counsel's failure to file a motion to suppress evidence, defendant must show that a reasonable probability exists that: (1) the motion would have been granted, and (2) the outcome of the trial would have been different if the evidence had been suppressed. *Givens*, 237 Ill. 2d at 331. If a motion to suppress would have been futile, then counsel's failure to file that motion does not constitute ineffective assistance. *Givens*, 237 Ill. 2d at 331.

¶ 14 Defendant argues that trial counsel would have been successful on a motion to suppress because defendant was arrested without probable cause where there was no reason to believe that he was committing or had committed any crime at the time he was arrested.

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¶ 15 The fourth amendment to the United States Constitution protects persons from unreasonable searches and seizures. *People v. Jones*, 215 Ill. 2d 261, 268 (2005). As a general rule, a person is “seized” for fourth amendment purposes only when, “by means of physical force or a show of authority, his freedom of movement is restrained.” *United States v. Mendenhall*, 446 U.S. 544, 553 (1980). Encounters between police and citizens have been divided by the courts into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, commonly referred to as “*Terry* stops,” which must be supported by a police officer’s reasonable, articulable suspicion of criminal activity; and (3) consensual encounters that involve no detention or coercion by the police, and thus, do not implicate fourth amendment interests. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006).

¶ 16 The fourth amendment is implicated in a traffic stop because stopping a vehicle and detaining its occupants constitute a seizure within the meaning of the fourth amendment, even if only for a brief period and for a limited purpose. *Jones*, 215 Ill. 2d at 270. 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. 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

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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).

¶ 17 In this case, Officer Williams testified that he was driving toward defendant's vehicle, which was parked in the alley, preventing other cars from passing. As the officers were approaching the vehicle, defendant exited the vehicle and ran from the scene, leaving the vehicle unattended in the alley. The arrest report in this case indicates that defendant violated section 9-64-130(b) of the City's municipal code (Code) (Chicago Municipal Code § 9-64-130(b) (amended Jan. 12, 2000)). Section 9-64-130(b) states that "[i]t shall be unlawful to park a vehicle in an alley in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for the free movement of vehicular traffic or to block the entrance to any abutting property." Chicago Municipal Code § 9-64-130(b) (amended Jan. 12, 2000).

¶ 18 Here, when defendant and his passenger fled from the car and left it blocking the alley in violation of section 9-64-130(b) of the Code, Officer Williams had grounds for an investigative detention of defendant. See *People v. Fitzpatrick*, 2013 IL 113449 ¶ 19; *People v. Bivens*, 163 Ill. App. 3d 472, 479 (1987)(an officer's reasonable belief that a person has violated an ordinance justifies a *Terry* stop of that person). Because Officer Williams saw defendant in the driver's seat of the car in the alley, he could reasonably conclude that defendant had driven the car into the alley. See *Rawls v. Peters*, 45 N.C. App. 461, 466 (1980); *Risner v. Director of Revenue*, 2013 Mo. App. Lexis 140. Once Officer Williams detained the fleeing defendant, he had a reasonable

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basis for asking to see defendant's driver's license, especially because someone needed to move the car to allow traffic to move through the alley. See *People v. Murray*, 137 Ill. 2d 382, 393 (1990), *overruled in part on other grounds*; *People v. Luedemann*, 222 Ill. 2d 530 (2006); *People v. Gilbert*, 347 Ill. App. 3d 1034, 1039 (2004). Defendant's admission that he had no driver's license gave Officer Williams probable cause to arrest defendant. See *People v. Symmonds*, 18 Ill. App. 3d 587, 592-93 (1974); 625 ILCS 5/6-101 (West 2010) (No person, except those with exemptions, shall operate a vehicle in Illinois unless they have a valid license). Officer Williams subsequently discovered that defendant did not own the car, and that discovery warranted the decision to seize the car and inventory its contents. See *United States v. Balanow*, 392 F. Supp. 200, 201-02 (N.D. Ind. 1975)(discusses general rationale for inventory of seized cars); *Tinsley v. Wight*, 2012 U.S. Dist. Lexis 159810 (D.C.S.C. 2012) at 26. Accordingly, with the police having a reasonable, articulable suspicion for the detention and probable cause for the arrest, we find that defendant suffered no prejudice as a result of the trial counsel's failure to file a motion to quash arrest and suppress evidence, where the trial court would not have granted the motion.

¶ 19 Defendant also contends, and the State agrees, that this court should vacate the \$200 DNA Indexing fee assessed in the trial court because defendant's DNA was taken and indexed in the Illinois State Police record in conjunction with another case.

¶ 20 The DNA analysis fee is imposed on any defendant convicted of a felony in order that the defendant's DNA sample be obtained and analyzed and the information maintained in a State Police database. 730 ILCS 5/5-4-3(j) (West 2010). A defendant who is already registered in the DNA database is not required to resubmit a DNA sample or pay the fee. *People v. Marshall*, 242

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Ill. 2d 285, 303 (2011). Defendant is already registered in the DNA database as a result of a prior conviction. Therefore, he cannot be assessed the DNA analysis fee again. Accordingly, we vacate the \$200 DNA Indexing fee.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court but vacate the \$200 DNA Indexing fee.

¶ 23 Affirmed as modified.