

No. 1-12-0462

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 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, Illinois.
)	
)	
)	No. 10 CR 11002
v.)	
)	
SADIQ MAJID,)	Honorable
)	John T. Doody,
Defendant-Appellant.)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice McBride and Justice Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* Police officers did not violate defendant's fourth amendment right against unreasonable searches and seizures by stopping him after he ran a red light and subsequently arresting him after suspect narcotics were observed in plain view on the inside of his car door.

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¶ 2 Following a bench trial, defendant Sadiq Majid was found guilty of possession of a controlled substance and sentenced to probation. On appeal, he contends that his conviction should be reversed because the trial court improperly denied his motion to quash arrest and suppress.

¶ 3 BACKGROUND

¶ 4 The record shows that defendant was charged with possession of a controlled substance in connection with an incident on May 21 and 22, 2010, on the north side of Chicago. Before trial, defendant filed a motion to quash arrest and suppress evidence, in which he sought to exclude packets of cocaine found during his arrest, arguing that the officers lacked probable cause for the arrest. At the suppression hearing, the defense first called Chicago police officer Steve Hardiman, who testified that on the night of May 21, 2010, he and his Central Control Group Saturation team were on patrol looking for criminal activity in an unmarked vehicle. At about 11:45 pm that night, an unnamed citizen flagged Officer Hardiman and told him that there was a taxi cab, displaying the number 4050, conducting drug sales out of the vehicle in the Weed Street club district. The officer stated that the informant did not provide a description of the cab driver, the cab company, or the color of the vehicle. According to Officer Hardiman, neither he, or any other police officer in his district had ever received any information from that citizen before that night.

¶ 5 Officer Hardiman further testified that at that point, he and his team began to canvas the area in question. About 30 minutes later, he observed a marked police vehicle pull over a taxi cab, and learned over the police radio from Officer Westbrook, a member of his team, that the

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cab had the number described by the informant. At that time, Officer Westbrook was in another unmarked vehicle, and stopped right in front of defendant's cab, blocking it. According to Officer Hardiman, the cab was pulled over by Officer Simpson, who was not on his team and drove a marked police vehicle, and he did not know why the cab had been curbed. Officer Hardiman then pulled up behind Officer Simpson's vehicle and, before Officer Simpson spoke to the driver, Officer Hardiman approached defendant, who was in the driver seat, and asked him to exit the vehicle.

¶ 6 According to Officer Hardiman, he asked defendant to walk to the back of the cab, and led defendant there with his hand on defendant's shoulder. He acknowledged that, at that time, he had not seen any drugs in defendant's possession, or even seen him commit any traffic violation. The officer acknowledged, however, that Officer Simpson wrote defendant a ticket for running a red light. As Officer Hardiman began conducting a "field interview" with defendant, he saw Officer Westbrook approach the cab, look in the armrest of the driver's door and pull out a clear plastic bag with smaller knotted bags inside it, which appeared to contain a white substance. At that time, the officers placed defendant under arrest. Officer Hardiman acknowledged, on cross-examination by the State, that he "believed" that Officer Westbrook saw defendant run through a red light before he was pulled over.

¶ 7 The State then called Officer Westbrook, who testified that he was also given information about a taxi cab driver who had been selling drugs out of his vehicle, numbered 4050, but stated that, unlike Officer Hardiman, he was informed that the taxi cab was white. Like Officer Hardiman, Officer Westbrook had never spoken to that informant before. He further stated that

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when he first saw defendant's vehicle, it was going through a red light. On cross-examination, he explained that he was traveling towards defendant and was 90 feet away from the intersection, such that his vehicle was not behind defendant's, and that "it is all one intersection." Officer Westbrook took notice that the cab bore the number 4050, and stopped his car in front of defendant's, blocking it. When he approached defendant's cab, defendant had already exited it. The officer noticed that the driver's door was still open, and observed four knotted bags containing suspect cocaine inside an open compartment of an armrest on that door. Officer Westbrook did not have to open or lift anything to recover the narcotics, which were easy to observe under the artificial lighting from street lights, a construction area, a nearby train stop and Officer Simpson's Mars lights. At that time, he gave Officer Hardiman a signal to put defendant in handcuffs. As Officer Westbrook approached defendant, he was already being interviewed by Officers Hardiman and Simpson, as well as Officer Hardiman's partner Officer Moore.

¶ 8 Officer Westbrook acknowledged that he had planned on pulling the car over for a narcotics investigation, regardless of whether defendant committed a traffic violation.

Furthermore, officers Westbrook and Hardiman admitted that they did not have an arrest warrant for defendant, or a search warrant for his vehicle.

¶ 9 The trial court denied defendant's motion to quash arrest and suppress evidence, ruling that the officers properly stopped defendant for running a red light, and had the right to ask defendant to exit the vehicle for that violation. The court further found that since Officer Westbrook saw the plastic bags of suspect cocaine in plain view, defendant's motion to suppress such evidence was not warranted.

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¶ 10 At trial, the testimony introduced by both parties was substantially the same as that introduced at the suppression hearing, with a few additions. Officer Westbrook stated that he actually observed defendant go through a red light before he was curbed by Officer Simpson. He further explained that when he approached defendant's cab, Officer Hardiman was still asking him to exit the vehicle, which defendant did after opening his own door while at least three other officers stood around him. The officer also testified that he did not need to use a flashlight to see the bags of suspect cocaine in the armrest of defendant's open car door, and that after defendant was placed into custody, the officer conducted a search of the taxi cab and found \$1,584 in cash. With respect to Officer Hardiman's testimony, the officer acknowledged that when he asked defendant to exit the vehicle, he did not see any suspect drugs in the cab. The officer further added that while the informant did not provide a physical description of the cab driver, the citizen told him that the driver was male.

¶ 11 The parties stipulated that the proper chain of custody was maintained for the knotted bags recovered by Officer Westbrook, and that the substance in the bags tested positive for the presence of cocaine. The trial court found defendant guilty of possession of a controlled substance and sentenced him to 24 months of probation. Before sentencing, defendant filed a motion for judgment of acquittal arguing, *inter alia*, that the trial court improperly denied his motion to quash arrest and suppress evidence. His posttrial motion was denied and he now appeals.

¶ 12 ANALYSIS

¶ 13 Defendant now again contends that his conviction should be outright reversed, or

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remanded for a new trial, because the trial court erred in denying his motion to quash arrest and suppress evidence. According to defendant, his arrest was unlawful because it was based only on an anonymous tip, and consequently, so was the search of his cab based on that arrest.

Alternatively, defendant maintains that if his arrest was pursuant to a traffic violation, it exceeded the scope of a proper *Terry* stop (see *Terry v. Ohio*, 392 U.S. 1 (1968)) under the circumstances.

¶ 14 In reviewing a ruling on a motion to suppress, this court is presented with mixed questions of law and fact. The trial court's findings of fact are to be upheld unless they are against the manifest weight of the evidence. *People v. Jones*, 215 Ill. 2d 261, 268 (2005). However, a reviewing court undertakes its own assessment of the facts in relation to the issues presented and draws its own conclusions when deciding what relief should be granted. *Id.* Furthermore, a reviewing court may consider evidence presented at trial as well as evidence presented at the suppression hearing. *People v. Sims*, 167 Ill. 2d 483, 500 (1995).

¶ 15 Under the fourth amendment of the United States Constitution, individuals are guaranteed "[t]he right *** to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures ***." U.S. CONST. amend. IV; Ill. CONST. 1970, art. 1, § 6. Thus, the central requirement of the fourth amendment is reasonableness, and its purpose, therefore, is to impose a standard of reasonableness upon the exercise of discretion by government officials, such as police officers, to safeguard the privacy and security of individuals against arbitrary invasions. *Jones*, 215 Ill. 2d at 268-69.

¶ 16 Stopping an automobile consists of a seizure in the form of an investigatory stop, which is

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analyzed in accordance to the standards described in *Terry*. *People v. Mendoza*, 364 Ill. App. 3d 564, 569 (2006). Under this analysis, an officer may briefly detain an individual for a limited investigation based on specific and articulable facts that give the officer reasonable suspicion that the individual is about to commit or has committed a crime. *Terry*, 392 U.S. at 21. However, discovery of new evidence during the course of such an encounter will warrant an arrest of that individual if such evidence gives the officer probable cause, which is the reasonable belief that the individual has committed an offense. See, e.g., *People v. Moorman*, 369 Ill. App. 3d 187, 196 (2006) (defendant's admission that his driver's license had been revoked to the encounter outside the scope of a traffic stop and gave the officer grounds to arrest him).

¶ 17 In this case, defendant's car was stopped when he ran through a red light, as observed by Officer Westbrook. That infraction, in itself, warranted the initial *Terry* stop, effectuated when Officer Hardiman approached defendant and lead him to the back of the vehicle for additional questioning. The fact that Officer Hardiman did not observe defendant run the red light is of no consequence because when officers are acting in concert, the knowledge that they possess must be taken in their entirety. See *Moorman*, 369 Ill. App. 3d at 191. Not only was Officer Hardiman aware that Officer Simpson wrote defendant a ticket for running a red light, but he was also working with Officer Westbrook, who saw defendant commit that very same infraction. Once defendant stepped out of his vehicle, leaving his door open, Officer Westbrook observed the suspect narcotics in plain view, sitting on the inside of the driver's door, which, at that point, gave the officers probable cause to arrest defendant for the possession of those narcotics.

¶ 18 Defendant's attempt to characterize Officer Westbrook's recovery of the knotted bags as

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an illegal search of his vehicle is misplaced. Under the plain view doctrine, an officer may seize an object during an investigatory stop if: (1) the officers are lawfully in a position from which they view the object; (2) the incriminating character of the object is readily apparent; and (3) the officers have a lawful right of access to the object. *People v. Jones*, 215 Ill. 2d 261, 271-72 (2005). Since defendant had been lawfully stopped for a traffic violation and left his door open when he exited the vehicle, leaving the four clear knotted bags of suspect cocaine in the plain view of Officer Westbrook, who observed them without even the need of a flashlight, the officer lawfully seized the narcotics that gave rise to his arrest. See, e.g. *Jones*, 215 Ill. 2d at 271-74 (officers properly seized a box of narcotics observed in defendant's shirt pocket during a traffic stop); *People v. Pickett*, 39 Ill. 2d 88, 95 (1968) (where officers observed contraband in open view on the front seat of defendant's car, that gave rise to probable cause to arrest).

¶ 19 Defendant's reliance on *Florida v. J.L.*, 529 U.S. 266, 269-70 (2000) for the proposition that the tip from the anonymous informant was insufficient to justify a *Terry* stop is similarly unpersuasive. While the court in that case held that an anonymous tip was insufficient to give the officer the requisite reasonable suspicion to justify an investigatory stop, the defendant in that case was not observed committing any other infraction which would warrant a *Terry* stop. *Id.* at 269-272. In contrast, the officers in this case did not have to rely solely on the anonymous tip that the driver of a taxi cab bearing defendant's cab number was selling drugs because defendant was also observed running a red light. As noted above, that traffic infraction was in and of itself sufficient to warrant a stop.

¶ 20 Neither are we persuaded by defendant's reliance on *People v. Gherna*, 203 Ill. 2d 165,

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181-82 (2003) for the proposition that the officers' actions towards defendant unlawfully exceeded the scope of the initial traffic stop. While the officers in that case stopped defendant's vehicle under the suspicion of underage drinking, they continued to detain her after ascertaining that she was older than 21 and the beer containers in the vehicle were unopened. *Id.* at 182. In this case, however, Officer Hardiman asked defendant to exit the vehicle as soon as he was pulled over for running a traffic light, and Officer Westbrook discovered the suspect narcotics in plain view moments later, while the officers still had grounds to stop him.

¶ 21 Although defendant argues that Officer Hardiman's actions exceeded the scope of a traffic stop because asking defendant to exit the vehicle and leading him to the back of the car amounted to an arrest, that contention is similarly misplaced. First, we note that there is no bright line to determine whether an encounter is a *Terry* stop or an arrest, and usually turn to several factors, including, but not limited to: (1) the time, place, length, mood and mode of the encounter; (2) the number of officers present; (3) use of handcuffs, weapons, and other forms of restraint; (4) the intent of the officers; (5) whether defendant was told that he was free to leave or that he could refuse to cooperate; (6) whether defendant was transported by the police; and (7) whether defendant was told that he was under arrest. *People v. Vasquez*, 388 Ill. App. 3d 532, 546-49 (2009). No single factor is dispositive and courts consider all circumstances surrounding the detention in each case. *People v. Washington*, 363 Ill. App. 3d 13, 24 (2006). While defendant in this case was not told that he was under arrest or the he was free to leave and there were at least four officers present, Officer Hardiman merely lead him to the back of his car with his hand on defendant's shoulder. No handcuffs were used or weapons shown, and the encounter

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lasted only a few moments before Officer Westbrook observed the narcotics. It was only after that discovery, which gave the officers probable cause, that they officers effectively arrested defendant by handcuffing him. We further note that the Supreme Court has held, in *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001), that an officer does not violate an individual's fourth amendment rights by arresting him if the officer has probable cause to believe that the individual has committed an offense as small as a minor traffic infraction. Thus, even assuming, *arguendo*, that Officer Hardiman's conduct towards defendant constitutes an arrest, it would warrant suppression of the evidence found by Officer Westbrook during the encounter. As discussed above, the fact that only Officer Westbrook personally observed defendant run the red light is of no consequence, since he and Officer Hardiman were working in concert. See *Moorman*, 369 Ill. App. 3d at 191.

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.