

No. 1-12-1019

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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 11179
)	
EDWARD GARRETT,)	Honorable
)	Raymond Myles,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Reyes concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where police had probable cause to arrest defendant, the search of defendant's vehicle was a proper search incident to arrest; the trial court's order denying defendant's motion to quash arrest and suppress evidence was affirmed.
- ¶ 2 Following a jury trial, defendant Edward Garrett was found guilty of possession of 15 to 100 grams of a controlled substance (heroin) with intent to deliver and sentenced to eight years' imprisonment. On appeal, defendant contends that the trial court erred in denying his motion to quash arrest and suppress evidence where he was arrested without probable cause and, thus, the heroin found in the subsequent search of his vehicle was an invalid search incident to arrest.

1-12-1019

Defendant also maintains the trial court's ruling that he abandoned his vehicle was against the manifest weight of the evidence. We affirm.

¶ 3 Defendant was charged with possession of heroin with intent to deliver after police found heroin in his car in the area of 2900 West Carroll Avenue in Chicago on May 3, 2010. Prior to trial, defendant filed a motion to quash the arrest and suppress evidence alleging that his arrest was made in violation of the fourth and fourteenth amendments of the United States Constitution.

¶ 4 At the hearing on defendant's motion, Officer Herman Lopez testified that on the date in question he and his partner, Officer Justin Mateo, were approached by an unidentified woman who stated that a black male wearing a black leather jacket was on the corner of Francisco and Carroll Avenues selling narcotics. The officers drove to the area near 2900 West Carroll Avenue where Lopez saw defendant, who was wearing a black leather jacket, standing about four feet away from a gold car. The driver's side door was open, but there was nobody standing with defendant or inside of the car. Lopez observed defendant holding a red belt-like object, and it appeared he was about to count or tear the object. Lopez approached defendant, and when defendant looked in Lopez' direction, defendant tossed the belt into the car, closed the door, and started walking away. When Lopez called defendant over, he ran and threw his car keys. Lopez caught defendant after a short chase, handcuffed him, and recovered the keys. Officer Mateo patted defendant down and escorted him to the patrol car. Both officers returned to the gold car and saw that it was locked. Lopez looked into the car and saw the red belt-like object defendant had previously been holding. Lopez unlocked the car with the keys defendant tossed aside, and recovered the belt from the front seat. The belt was made up of red and black tape with ziploc bags of heroin between the strips of tape. Lopez was only able to see the ziploc bags after he pried apart the strips of tape.

¶ 5 Following argument, the trial court denied defendant's motion to quash and suppress evidence. In doing so, the court found that defendant failed to establish any possessory interest in the car when he ran and threw the keys. The court further explained that although the tip alone did not provide the officers with probable cause, its further corroboration and defendant's actions furnished them with probable cause to arrest defendant and search his car.

¶ 6 Defendant filed a motion to reconsider the denial of his motion to quash and suppress. During the hearing on his motion, defense counsel argued that although defendant's flight from the scene gave police reasonable suspicion under *Terry v. Ohio*, 392 U.S. 1 (1968), to stop and investigate further, the police never obtained probable cause to enter and search the locked car. Counsel specifically asserted that the contraband was not in plain view, and defendant never abandoned his car because he locked it before running away. In denying defendant's motion to reconsider, the court stated that police had a reasonable suspicion to make a *Terry* stop when defendant threw an object into his car and fled. The court further held that when defendant threw away the keys, he abandoned any ownership of the car, allowing police to check it to determine ownership and investigate what defendant threw inside.

¶ 7 At trial, Lopez testified similarly to his testimony at the hearing on defendant's motion to suppress. He also testified that he was a police officer for 19 years and participated in hundreds of narcotics investigations. He knew from his previous experience that one method of concealing narcotics from police is to "use two pieces of tape like they did here, and *** then they could lie them down on the ground or keep them along their belt line. When the police come to do a protective pat-down, sometimes you don't even notice that they have it on them and they tear up a little piece, give it up." Lopez indicated he previously recovered narcotics packaged similarly to the method used in the case at bar.

¶ 8 Officer Mateo, who was a police officer for 18 years, testified similarly to Lopez. He further described some of the packaging techniques he had seen in surveillance of narcotics sales, including narcotics in baggies attached to a strip of tape. This method allowed the baggies to be ripped off of the tape and sold one at a time. Based on his experience, Mateo thought what defendant was holding "might be a way of packaging narcotics."

¶ 9 Following trial, the jury found defendant guilty of possession of heroin with intent to deliver. On appeal, defendant contends that the trial court erred in denying his motion to quash arrest and suppress evidence where he was arrested without probable cause, and the heroin found in his vehicle was the result of an improper search.

¶ 10 Review of a trial court's ruling on a motion to suppress involves mixed questions of law and fact. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). The factual findings made by the court in connection with such a motion will not be disturbed on appeal unless they are against the manifest weight of the evidence. *Pitman*, 211 Ill. 2d at 512. The reviewing court, however, may undertake its own assessment of the facts in relation to the issues presented and draw its own conclusions in deciding what relief, if any, should be granted. *Pitman*, 211 Ill. 2d at 512. Moreover, in reviewing the denial of a motion to suppress, a reviewing court is free to look to trial testimony as well as the evidence presented at the hearing on the motion to suppress. *People v. Hopkins*, 235 Ill. 2d 453, 473 (2009), citing *People v. Stewart*, 104 Ill. 2d 463, 480 (1984). We review *de novo* the ultimate question of whether the arrest should be quashed and the evidence suppressed. *Pitman*, 211 Ill. 2d at 512.

¶ 11 The fourth amendment guarantees a person's right against unreasonable searches and seizures. U.S. Const., amend. IV. Cases have recognized three types of police-citizen encounters. The two encounters relevant to the case at bar include brief investigative stops, and arrests which require probable cause. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006).

¶ 12 During a brief investigative stop, an officer may temporarily detain an individual for questioning where the officer reasonably believes the individual has committed, or is about to commit, a crime. *Terry*, 392 U.S. at 21-22; *People v. Jones*, 215 Ill. 2d 261, 270 (2005). To justify a *Terry* stop, officers must point to specific, articulable facts which make the intrusion reasonable when considered with natural inferences. *People v. Shafer*, 372 Ill. App. 3d 1044, 1048 (2007). Although less stringent than probable cause, an officer's hunch or unparticularized suspicion is insufficient. *People v. Lampitok*, 207 Ill. 2d 231, 255 (2003).

¶ 13 Arrests require proof of probable cause. *People v. Robinson*, 368 Ill. App. 3d 963, 970-71 (2006). Probable cause consists of sufficient facts and circumstances within the arresting officer's knowledge which would warrant a reasonable person's belief that the individual who was arrested committed a crime. *Robinson*, 368 Ill. App. 3d at 970-71.

¶ 14 The determination of whether a seizure complies with the fourth amendment depends on the facts and circumstances known to the officers when the arrest is made. *People v. Krogh*, 123 Ill. App. 3d 220, 223 (1984). "The standard for determining whether probable cause, or reasonable suspicion, exists is not governed by technical legal rules, but rather by commonsense considerations that are factual and practical." *People v. Walton*, 221 Ill. App. 3d 782, 785 (1991). As such, a police officer's practical knowledge, based on prior law-enforcement experience, is relevant in determining whether probable cause exists. *People v. Bradford*, 187 Ill. App. 3d 903, 920 (1989). When officers are acting in concert in investigating a crime, probable cause to arrest, or reasonable suspicion to detain, can be established from all the information collectively received by the officers. *People v. Fox*, 155 Ill. App. 3d 256, 263 (1987).

¶ 15 Here, in denying defendant's motion to suppress and his motion to reconsider, the court explained that the tip from the unidentified informant, its corroboration at the scene, and defendant's evasive actions after making eye contact with police, furnished police with probable

cause to arrest defendant and search his car. The court also stated that police had reasonable suspicion to make a *Terry* stop when defendant threw an object into his car and fled, and, when defendant threw away the keys, he abandoned any ownership of the car allowing police to investigate it to determine what was thrown inside. We find, similarly to the trial court, that police had probable cause to arrest defendant and search his car. In so finding, we note that the trial court's discussion of *Terry* and defendant's abandonment of his car was superfluous.

¶ 16 The evidence at the hearing on the motion to suppress and at trial established that Officers Lopez and Mateo had probable cause to arrest defendant. Lopez and Mateo had each been police officers for almost 20 years, and Lopez specifically testified that he participated in hundreds of narcotics investigations. After receiving a tip from an unidentified informant, Lopez and Mateo proceeded to 2900 West Carroll Avenue where they saw defendant, who matched the informant's description, by himself near a car. See *People v. McGee*, 373 Ill. App. 3d 824, 831-32 (2007) (where the defendant was the only person in the subject area matching the description provided to the arresting officer by dispatch, probable cause existed to arrest the suspect). Defendant was observed by the officers holding a belt-like object as if he was about to count or tear it, and both officers testified at trial that they recognized the object defendant was holding as a means of packaging narcotics for sale. See *Krogh*, 123 Ill. App. 3d at 224 (finding that probable cause existed where defendant's actions were suspicious and the agents were experienced in identifying drug transactions).

¶ 17 Furthermore, after making eye contact with the officers, defendant tossed the belt-like object into the car, threw his keys, and attempted to flee from police. See *People v. Tisler*, 103 Ill. 2d 226, 252-53 (1978) (an accurate tip by a reliable informant, in conjunction with the defendant's evasive conduct when confronted by police, established probable cause for the officer to believe that the defendant was engaged in unlawful conduct); see also *People v. Jones*, 196 Ill.

App. 3d 937 (1990) ("[i]t is well established that defendant's flight from police can be considered as an additional factor in determining probable cause"). Based on the totality of the circumstances confronting Officers Lopez and Mateo during the events in question, they had probable cause to arrest defendant.

¶ 18 In so finding, we note that defendant's argument that Lopez' trial testimony was "highly suspicious" is unpersuasive. In particular, defendant points to Lopez' testimony at trial that he recognized defendant's belt-like object as a means of packaging narcotics. Defendant maintains that this statement casts doubt on the veracity of Lopez' trial testimony because Lopez failed to include any of these details in his testimony at the hearing on defendant's motion to suppress. We disagree. In fact, Lopez specifically testified at the hearing that it appeared as if defendant was about to count or tear the belt-like object. This statement is consistent with Lopez' testimony at trial that the object was being used to package narcotics.

¶ 19 In finding that Officers Lopez and Mateo had probable cause to arrest defendant, we further find the search of his car was proper as a search incident to an arrest because Lopez and Mateo reasonably believed that narcotics were inside the car. See *People v. Clark*, 394 Ill. App. 3d 344, 347 (2009) (stating that a warrantless search of a vehicle incident to an arrest may be conducted when it is reasonable to believe the vehicle contains evidence of the offense of arrest), citing *Arizona v. Gant*, 556 U.S. 332, 351 (2009). This is particularly true in this case where police saw defendant throw the belt-like object into his car before fleeing. Because we have found that police had sufficient probable cause to arrest defendant and search his car incident to the lawful arrest, we need not address defendant's contention that the trial court erred in finding he abandoned his car when he fled the scene and threw his keys.

¶ 20 Accordingly, we find no error in the denial of defendant's motion to quash and suppress, and affirm the judgment of the circuit court.

1-12-1019

¶ 21 Affirmed.