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2013 IL App (3d) 110494-U

Order filed April 5, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Plaintiff-Appellee,)	Kankakee County, Illinois,
)	
v.)	Appeal No. 3-11-0494
)	Circuit No. 10-CF-232
)	
T.J. PHILLIPS,)	Honorable
)	Clark E. Erickson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Wright and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in denying the defendant's motion to suppress evidence and confession.
- ¶ 2 After a stipulated bench trial, the defendant, T.J. Phillips, was convicted of residential burglary (720 ILCS 5/19-3 (West 2010)) and sentenced to 18 years' imprisonment. On appeal, the defendant argues that the trial court erred in denying his motion to suppress evidence and confession. We affirm.

¶ 3

FACTS

¶ 4 On May 28, 2010, the defendant was charged by indictment with residential burglary.

The indictment alleged that on May 6, 2010, the defendant committed residential burglary in that he knowingly and without authority entered the victim's dwelling, located in Bonfield.

¶ 5 On July 21, 2010, the defendant filed a motion to suppress evidence and statements illegally obtained. The State filed a response, which included a statement from a witness, Adam Hayden, and police reports from officers Zeb Pfeiffer and Derrek Ryan. Hayden's statement indicated that on May 6, 2010, at approximately 12:45 p.m., he noticed an unusual car in the victim's driveway. Hayden called the police and reported that a "greenish/ blue car that look[ed] like a police car" without rims had backed into the victim's driveway. While on the telephone with the police, Hayden stated he saw a black male dressed in black clothing carrying items bunched inside of a white blanket out of the house. The suspect placed the items in the trunk of the vehicle, returned to the house, and retrieved additional items and placed them in his car. The suspect left the house and drove north.

¶ 6 Pfeiffer's report indicated that he responded to the scene and observed that the front door was open and a rear window was broken. The victim reported that a DVD player, LCD monitor, and computer were missing from her home.

¶ 7 Ryan's report stated that he responded to a dispatch of a burglary in progress on May 6, 2010, at the victim's home. The dispatcher advised that a black male was seen carrying items wrapped in a blanket from the victim's home and was driving a dark-colored vehicle. As Ryan passed the victim's home, he saw the witness, who had called the police, pointing to the north. While in pursuit, Ryan came upon a yellow pickup truck. The driver of the pickup truck pointed

to the car in front of him, which was a green Mercury Grand Marquis with Arkansas license plates. Ryan stopped the car and arrested the defendant. Ryan's report noted that his squad car dash camera video and audio recorder recorded the pursuit and stop.

¶ 8 Thereafter, the matter proceeded to a hearing. The State introduced Ryan's dash camera recording, and the case was continued for the trial court and the parties to review the video.

¶ 9 At the subsequent hearing, Ryan testified that he had reviewed the video recording and that he had stopped the defendant. The video contained a radio transmission, which described that the suspect was driving a blue Crown Victoria with black rims or plain wheels. Ryan testified that he stopped a green Mercury Grand Marquis, but noted that a "Ford Crown Victoria and a Mercury Grand Marquis are basically the same *** car." The dispatch also reported that the suspect's car had temporary license plates, but the defendant's car displayed Arkansas license plates.

¶ 10 On examination by the court, Ryan confirmed that the witness who reported the burglary pointed to the north and Ryan continued driving past the scene. Thereafter, Ryan passed a pickup truck and noticed that the driver was pointing excitedly at the dark-colored Mercury Grand Marquis in front of him. Ryan noted that the car and driver matched the descriptions provided by the dispatcher, and he assumed that the pickup truck driver was following the vehicle. The dispatched information indicated that a black male wearing black clothing had burglarized the victim's home. After the defendant's arrest, Ryan spoke with the driver of the pickup truck, who indicated that he saw the defendant leaving the victim's home.

¶ 11 The video recording showed Ryan driving to the scene, passing a yellow pickup truck that was stopped along the side of the road, and catching up to a green Mercury Grand Marquis with

black wheels. The Grand Marquis turned a corner, and Ryan initiated a stop. Ryan ordered the defendant to throw the car keys out and to place his hands outside the window. A short time later, a second officer arrived. Ryan directed the defendant to exit the car, walk backwards from the car, kneel down on the ground, and place his hands behind his head. The video recording showed a black male dressed in black clothing exit the car and comply with Ryan's orders. Two officers approached the defendant with their hands on their firearms. One officer handcuffed the defendant. Ryan asked the defendant why he was at "that house," referring to the scene of the burglary, and the defendant responded that he was turning around. The officers helped the defendant stand up and conducted a pat-down search. A plastic bag that appeared to contain electronic equipment was found on the defendant. Afterwards, Ryan escorted the defendant to his police car, and the second officer placed the plastic bag on the hood of Ryan's car. The video did not record the officers' search of the defendant's car. A police report entered into evidence stated that electronic items belonging to the victim were found in the trunk. Approximately 30 minutes into the video, the defendant admitted that he had broken into a house and stolen a computer.

¶ 12 After reviewing the evidence, the trial court denied the defendant's motion, noting in part that there was no evidence that any other vehicles in the area matched the description, and that the two witnesses directed Ryan in the direction of the defendant's vehicle. The case proceeded to a stipulated bench trial, and the trial court found the defendant guilty of residential burglary. The court sentenced the defendant to 18 years' imprisonment. The defendant appeals.

¶ 13

ANALYSIS

¶ 14 On appeal, the defendant argues that the trial court erred in denying his motion to

suppress evidence and his confession because the police did not have probable cause to arrest him.

¶ 15 We review the trial court's ruling on a motion to suppress evidence under a two-part standard of review. *People v. Harris*, 228 Ill. 2d 222 (2008). The trial court's factual findings are entitled to deference and will be reversed only if manifestly erroneous. *Id.* The ultimate ruling on whether to grant the motion to suppress is a question of law reviewed *de novo*. *Id.*

¶ 16 The federal and state constitutions protect citizens from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Stopping an automobile and detaining its occupants constitutes a seizure. *Brendlin v. California*, 551 U.S. 249 (2007); *Harris*, 228 Ill. 2d 222. Generally, the decision to stop a car is reasonable where the police have probable cause to believe that a traffic violation has occurred. *People v. Hackett*, 2012 IL 111781. Absent probable cause, an officer may conduct a brief, investigative stop when he has reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1 (1968). Traffic stops made without probable cause are subject to the *Terry* stop requirements. *People v. Cosby*, 231 Ill. 2d 262 (2008).

¶ 17 In the instant case, the parties agree that the defendant was subject to a valid *Terry* stop when Ryan stopped him on suspicion that he had previously committed a burglary. However, the defendant argues that his subsequent arrest and the search of his vehicle was not supported by probable cause. The State argues that the defendant was not arrested until after the officers had searched his car and transported him to the Kankakee County sheriff's office.

¶ 18 In determining the moment of the defendant's arrest, we look to: (1) the time, place, length, mood, and mode of the encounter between the defendant and the police; (2) the number

of police officers present; (3) any indicia of formal arrest or restraint, such as the use of handcuffs or drawing of guns; (4) the intention of the officers; (5) the subjective belief or understanding of the defendant; (6) whether the defendant was told he could refuse to accompany the police; (7) whether the defendant was transported in a police car; (8) whether the defendant was told he was free to leave; (9) whether the defendant was told he was under arrest; and (10) the language used by the officers. *People v. Gomez*, 2011 IL App (1st) 092185. Here, Ryan ordered defendant to throw the keys out of the car window, walk backwards between his car and Ryan's patrol car, kneel on the ground, and place his hands behind his head. The defendant was then approached by two officers, who had their hands on their guns. One officer handcuffed defendant, and both officers conducted a pat-down search. The totality of these facts indicated that defendant was arrested at the time he was handcuffed.

¶ 19 An arrest without a warrant is valid only if it is supported by probable cause. *People v. McGee*, 373 Ill. App. 3d 824 (2007). "Probable cause exists when the totality of the facts and circumstances known to the officers is such that a reasonably prudent person would believe that the suspect is committing or has committed a crime." *People v. Montgomery*, 112 Ill. 2d 517, 525 (1986). To determine whether an officer had probable cause to arrest the defendant, a reviewing court must examine "the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable officer, amount to' probable cause[.]" *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (quoting *Ornelas v. United States*, 517 U.S. 690, 696 (1996)).

¶ 20 In the present case, Ryan testified that he received a report of a burglary in progress. He was given a description of the suspect and his car. While responding to the call, he was pointed

in the direction of the defendant's vehicle by two witnesses. The defendant's vehicle, although it was a green Mercury Grand Marquis with Arkansas license plates, was nearly identical to the witness's description of the suspect's vehicle. Ryan testified that a Mercury Grand Marquis and a Ford Crown Victoria are similar vehicles, and the video recording showed that the defendant's car was only a color shade different than the witness's description. The video recording also corroborated the description that indicated that the suspect's vehicle had black rims or plain wheels. These facts provided probable cause to arrest the defendant for residential burglary. Furthermore, the defendant's admission that he was at the scene, the discovery of the plastic bag containing the electronic equipment on his person, and the information that led to the defendant's arrest gave the officers a reasonable belief that the trunk contained evidence relevant to the defendant's arrest, and the search of the trunk could be justified on that basis. See *People v. Bridgewater*, 235 Ill. 2d 85 (2009) (an officer may search a vehicle incident to a recent occupant's arrest when the officer reasonably believed evidence relevant to the crime of arrest may be found in the vehicle). Consequently, we hold that the trial court did not err in denying the defendant's motion to suppress evidence and his confession.

¶ 21

CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 23 Affirmed.