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2013 IL App (3d) 120056-U

Order filed March 4, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Circuit Court |
| |) | of the 14th Judicial Circuit, |
| Plaintiff-Appellant, |) | Henry County, Illinois, |
| |) | |
| v. |) | Appeal No. 3-12-0056 |
| |) | Circuit Nos. 11-CF-205 and 11-CF-208 |
| |) | |
| HUSAN COLEMAN, |) | Honorable |
| |) | Ted J. Hamer, |
| Defendant-Appellee. |) | Judge, Presiding. |

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice Schmidt specially concurred.

ORDER

¶ 1 *Held:* The trial court's order granting defendant's motion to suppress evidence in case No. 11-CF-205 is reversed, as the record shows the officer acted reasonably in arresting defendant. However, the order granting defendant's motion to suppress in case No. 11-CF-208 is affirmed, as in that case the officers arrested defendant without probable cause.

¶ 2 Defendant, Husan Coleman, was charged with numerous violations in Henry County case Nos. 11-CF-205 and 11-CF-208. Defendant filed a motion to suppress evidence in both cases.

The trial court, finding that the initial arrest was illegal, granted defendant's motions. The State appeals, arguing that the initial arrest was not illegal and that the evidence obtained in both cases should not be suppressed. We affirm the trial court's suppression order in case No. 11-CF-208 but reverse its order granting defendant's motion to suppress in case No. 11-CF-205.

¶ 3

FACTS

¶ 4 In June of 2011, the State charged defendant in two separate cases. In case No. 11-CF-208, defendant was charged with obstructing justice (720 ILCS 5/31-4(a) (West 2010)) and resisting and obstructing a peace officer (720 ILCS 5/31-1(a) (West 2010)). In case No. 11-CF-205, the State charged defendant with possession with intent to deliver (720 ILCS 570/407(b)(1) (West 2010)), manufacture and delivery of cocaine (720 ILCS 570/401(c)(2) (West 2010)), possession with intent to deliver cannabis (720 ILCS 550/5.2(c) (West 2010)), manufacture and delivery of cannabis (720 ILCS 550/5(c) (West 2010)), possession of cannabis (720 ILCS 550/4(c) (West 2010)), possession of a controlled substance (720 ILCS 570/402(c) (West 2010)), obstructing justice (720 ILCS 5/31-4(a) (West 2010)), resisting and obstructing a peace officer (720 ILCS 5/31-1(a) (West 2010)), possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2010)), criminal trespass to real property (720 ILCS 5/21-3(a)(2) (West 2010)), and two counts of escape (720 ILCS 5/31-6(c) (West 2010)).

¶ 5 As the cause proceeded toward trial, defendant filed a motion to suppress evidence in each case. The trial court held a joint hearing on the motions. At the hearing, Andrew Newman, an officer employed by the Kewanee police department, testified that on June 11, 2011, he and another officer were on patrol when they learned that an individual by the name of Thomas Walker needed to be served a bar notice for Fairview Homes. They were told that Walker was a

male wearing a yellow shirt and blue jeans. As they were driving, they spotted defendant, who was wearing clothes that matched the description. The officers exited their car and requested defendant to produce an identification card (ID), hoping that he was Walker. Defendant informed the officers that he did not have an ID and told them he had done nothing wrong. Newman assured defendant that he had done nothing wrong and they simply wanted to check his ID. Defendant refused to cooperate and eventually ran away from the officers. Newman and his partner chased defendant and placed him under arrest for resisting and obstructing a peace officer. After he was placed under arrest, defendant told the officers that his name was Courtney Twyman.

¶ 6 When questioned about the reason for the arrest, Newman testified that he believed defendant committed a crime when he ran away from the officers. However, Newman admitted that defendant was not under arrest at the time he ran off and there was no reason he could not leave the encounter with the police. In fact, Newman testified that prior to the arrest, the officers did not have any reasonable suspicion that defendant had committed a crime.

¶ 7 As a result of the arrest, defendant was fingerprinted. A few days later, information came back through the department's live scan system indicating that defendant was wanted on two warrants that had been issued before the arrest. Officer Roy Carpenter testified that on the night of June 16, 2011, he was briefed about defendant's identity and the fact that he was wanted on two outstanding warrants. In the early morning hours of June 17, Carpenter spotted defendant while he was working his shift. After Carpenter approached him, defendant told Carpenter that his name was Courtney Twyman. Carpenter, knowing that Twyman was an alias name, handcuffed defendant and informed him that after June 11, the police discovered his real name,

and learned there were two warrants out for his arrest under his real name.

¶ 8 After sharing this information with defendant and informing him that he was under arrest, Carpenter began to search defendant's clothing. At that point, defendant pulled away from the officer and started running. Officers eventually caught up with defendant after he discarded a plastic bag from the back of his pants. Inside the bag was suspected cannabis and cocaine.

¶ 9 At the conclusion of the hearing, the trial court found that the June 11 arrest of defendant was illegal. The court further found that the arrest on June 17 was predicated solely upon information obtained during the illegal arrest of defendant, and thus that arrest was also unconstitutional based on the fruit of the poisonous tree doctrine. Therefore, the trial court granted defendant's motions to suppress in both cases. The State appeals.

¶ 10

ANALYSIS

¶ 11 The State argues that the trial court erred by granting defendant's motions to suppress in case Nos. 11-CF-205 and 11-CF-208. We review a trial court's ruling on a motion to suppress evidence pursuant to a two-part test. *People v. Absher*, 242 Ill. 2d 77 (2011). First, we will uphold the court's factual findings unless they are against the manifest weight of the evidence. *Id.* Second, we assess the established facts in relation to the issues presented and review the ultimate legal question of whether suppression is warranted *de novo*. *Id.* The United States Supreme Court has recently held that suppression is warranted only when police conduct is sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the judicial system. *Herring v. United States*, 555 U.S. 135 (2009). Thus, in order for a court to suppress evidence, it must find that police conduct was intentional and patently unconstitutional. *Id.*

¶ 12 In this case, evidence established that on June 11, defendant ran from two police officers who stopped him to ask for his ID. The officers chased defendant even though he was not under suspicion for the violation of any law and was, according to the arresting officer, free to leave the encounter. Still, after the officers caught defendant, they placed him under arrest for resisting and obstructing a peace officer. Flight from a police officer amounts to probable cause for an arrest for resisting and obstructing only if, before the offender fled, the officer was justified in detaining him. *People v. Johnson*, 408 Ill. App. 3d 107 (2010). Because the officers did not have any legal justification to detain defendant when they first stopped him, the officers' arrest of defendant was illegal, as it was not supported by probable cause. See *People v. Grant*, 2013 IL 112734 (an arrest without a warrant is valid only if supported by probable cause). Applying the *Herring* standard, we conclude that the officers' actions were patently unconstitutional and exclusion would deter such behavior. Therefore, suppression is warranted in case No. 11-CF-208, and we affirm the trial court's ruling on defendant's motion to suppress in that case.

¶ 13 With regard to case No. 11-CF-205, Carpenter testified that he approached defendant on June 17 because he was briefed on his identity and the fact that he had two outstanding warrants for his arrest. Importantly, Carpenter was not party to the June 11 arrest and was acting solely based on information given to him during a preshift briefing. It is also significant that the warrants were issued prior to June 11 and did not relate to that evening's unlawful arrest. Based on his knowledge of defendant's identity and the outstanding warrants, Carpenter acted lawfully when he arrested defendant. See *United States v. Green*, 111 F.3d 515 (1997) (discovery of an arrest warrant purged evidence of the taint of the initial improper stop). Even though Carpenter's knowledge was based on information obtained following an unlawful arrest, Carpenter was not

aware of the unconstitutional nature of the arrest, and therefore he was not acting deliberately against the constitution. Further, we do not believe that suppression would, or should, deter an officer from arresting a known suspect who is wanted on a valid warrant. Therefore, we conclude suppression is not warranted in case No. 11-CF-205, and reverse the trial court's order granting defendant's motion to suppress in that case.

¶ 14 CONCLUSION

¶ 15 The judgment of the circuit court of Henry County is affirmed in part and reversed in part, and the cause is remanded for further proceedings.

¶ 16 Affirmed in part and reversed in part.

¶ 17 Cause remanded.

¶ 18 JUSTICE SCHMIDT, specially concurring.

¶ 19 I concur in the judgment.