

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 allowed under Rule 23(e)(1).

2013 IL App (3d) 120335-U

Order filed November 27, 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 10 th Judicial Circuit,
Plaintiff-Appellee,)	Tazewell County, Illinois,
)	
v.)	Appeal No. 3-12-0335
)	Circuit No. 10-CF-264
)	
HUSSAIN MARRAR,)	Honorable
)	Scott A. Shore
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly denied defendant's motion to quash arrest and suppress evidence because the confidential informant's tip included sufficient indicia of reliability to support a *Terry* stop of defendant's vehicle.
- ¶ 2 After a stipulated bench trial, the court convicted defendant Hussain Marrar of unlawful possession of cannabis with the intent to deliver and unlawful possession of a controlled substance. Defendant appeals on the grounds the trial court improperly denied defendant's motion to quash arrest and suppress evidence. We affirm.

¶ 3

BACKGROUND

¶ 4 On May 20, 2010, the State charged defendant with unlawful possession of cannabis with the intent to deliver (720 ILCS 550/5(d) (West 2010)) and unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)). The State specifically alleged defendant possessed more than 30 grams but less than 500 grams of cannabis and less than 15 grams of a controlled substance, being cocaine, respectively.

¶ 5 Defendant subsequently filed a motion to quash arrest and suppress evidence alleging the police did not have reasonable suspicion or probable cause to stop his vehicle. Defendant also argued the search warrant of his home was improperly based on information resulting from the illegal traffic stop. Defendant requested the court to suppress his arrest, the contraband found during a search of his car incident to his arrest, and the contraband found in his home during the execution of the court-ordered search warrant.

¶ 6 The trial court conducted a hearing on defendant's motion on June 2, 2011. The defendant called Pekin police officer Tim Ricci as a defense witness. Ricci testified he received a phone call on May 14, 2010, and the caller requested to "[p]ossibly to work off some possible charges that were pending against" the caller.

¶ 7 The caller told Ricci defendant had "re-upped[,]” meaning defendant had “gotten more drugs the preceding night” and that when defendant “re-ups” he usually obtained a quarter of a pound of cannabis, or 120 grams, and some cocaine. The caller also specified that defendant had obtained an “eight-ball of cocaine.” The caller stated defendant would leave his place of employment and arrive at defendant's apartment, 1205 Florence Avenue, Apartment 5, in Pekin around 2 p.m. that day. Defendant would be driving a gold Buick and the caller provided Ricci

with the license plate number. The caller further stated when defendant later left his apartment between 2:30 and 3 p.m., to return to work, “he would have some drugs on him.” The officer testified the caller did not specify the quantity or whether the contraband would be on defendant's person or in his vehicle. The caller stated defendant offered to sell cannabis to the caller on a prior occasion.

¶ 8 Ricci testified he knew the caller, had met the caller on two prior occasions, but had not used this the person as a confidential source in the past. Ricci relayed the tip to officer Haney of the Pekin police department.

¶ 9 Officer Haney shared this information with officer Chad Hazelwood. Hazelwood testified that once he received the tip from officer Haney, Hazelwood “believe[d]” he telephoned Ricci to confirm the details before acting on the information. Eventually, Hazelwood began conducting surveillance of the area around defendant’s apartment building at 1205 Florence Avenue on May 14, 2010, at the corner of Willow and Florence. Hazelwood chose this location because he “was given the information that [defendant’s] vehicle would be going through there on the way to Florence Street.”

¶ 10 Hazelwood observed a 2005 gold Buick drive by and confirmed the licence plate matched the number Ricci received from the caller. Hazelwood reported his observations to Haney, who saw defendant go inside the building at 1205 Florence. Hazelwood specified that defendant arrived at the apartment complex at 2:02 p.m. and later departed at 2:50 p.m. According to Hazelwood, before defendant left the apartment complex, Haney saw defendant place something inside of his trunk.

¶ 11 After defendant drove away from his apartment, Hazelwood stopped defendant's vehicle

without witnessing a traffic violation prior to the stop. The “sole reason” for the traffic stop was based on the information provided to Hazelwood by Ricci following a phone call.

¶ 12 After Hazelwood stopped defendant, defendant exited his vehicle and another officer walked around it with a drug-sniffing canine. The canine “hit” on the vehicle, indicating the canine detected the odor of drugs from the vehicle. At that time, the canine officer searched defendant’s car and discovered one bag of cannabis in the center console and another bag of cannabis in the lid of a cooler. The two bags of cannabis had a combined weight of approximately 8.5 grams. The officers arrested defendant. A search of defendant at the Tazewell County jail resulted in the discovery of two small bags of cocaine, hidden in defendant's socks.

¶ 13 Defendant testified that on May 14, 2010, he was working for NTS in Pekin and customarily went home during his lunch hour, between 2 to 3 p.m. each day. On May 14, 2010, he left work at 1:45 p.m. to return to his apartment at 1205 Florence for lunch. After about 40 or 45 minutes, he left the building, placed the trash bags into his trunk, drove to the dumpster on the other side of the parking lot, opened his trunk, removed the trash bags, and threw them into the dumpster. Officer Hazelwood stopped defendant as defendant was driving back to work. According to defendant, after the traffic stop, he did not see the canine unit indicate there were drugs in his car. He also explained that the cannabis in his vehicle was for his own personal use.

¶ 14 The record reveals that after the traffic stop, officer Ricci obtained a search warrant to search defendant's residence. In the complaint for the search warrant, Ricci reported that the confidential informant told Ricci defendant would have some “stuff,” or drugs, when defendant left his apartment after his lunch break. Ricci also reported that the tipster told him when

defendant “re-ups,” he gets 120 grams of cannabis and some cocaine. The confidential informant “stated that [defendant] also told [the confidential informant] that he had got an 8 ball of cocaine, (3.6 grams).”

¶ 15 According to the complaint for search warrant to search defendant’s house, after acting on the tip, the police stopped defendant’s vehicle and found cannabis in the counsel of the car and inside the lid of a cooler. Thereafter, the officers discovered defendant had cocaine concealed on his person during a search conducted at the jail. Consequently, the complaint asked the trial court to issue a search warrant for defendant’s home because the police believed defendant had additional contraband located in his residence, along with currency, records of potential customers and current customers, and the amounts they owed him.

¶ 16 The trial court took the matter under advisement and, on June 13, 2011, issued an order denying defendant’s motion to quash arrest and suppress evidence. The court found that the facts presented in the case of *People v. Sparks*, 315 Ill. App. 3d 786 (2000), were analogous “but certainly not identical” to the instant case. The trial court noted that unlike *Sparks*, the confidential informant here had direct contact with defendant, discussed purchasing cannabis from defendant, and specifically referenced that defendant had acquired a particular amount cocaine. The trial court found the instant case presented “more corroboration than merely innocent details and the identification of a determinate person” providing the officers with a reasonable suspicion of criminal activity based on the confidential informant’s tip.

¶ 17 The trial court subsequently conducted a stipulated bench trial. The evidence adduced at the stipulated bench trial revealed that following defendant's arrest, the officers obtained a warrant to search defendant's apartment. Upon executing the warrant to search defendant’s

home, police discovered 141.7 grams of cannabis packaged in numerous small baggies, 6.2 grams of cocaine, and 67.9 grams of an additional plant material. The trial court found defendant guilty of unlawful possession of cannabis with intent to deliver and unlawful possession of cannabis. The court sentenced defendant to a 24-month term of probation, various fines and costs, and a 60-day jail term that was stayed pending a later hearing on defendant's compliance with the terms of his probation. Defendant appeals.

¶ 18 ANALYSIS

¶ 19 On appeal, defendant asserts the police did not have a reasonable suspicion of criminal activity to effectuate a warrantless traffic stop based only on the corroboration of the innocent details of his travels contained in the caller's tip to officer Ricci. Consequently, defendant contends the trial court erred when it denied his motion to quash arrest and suppress the evidence gathered during the traffic stop.

¶ 20 The State submits the confidential informant's tip provided more information than just innocent details pertaining to defendant's daily routine. Thus, after corroborating each detail of the tip, the police had sufficient reasonable suspicion to stop defendant's vehicle. Therefore, the State maintains the trial court properly denied defendant's motion to quash arrest and suppress evidence.

¶ 21 We review the circuit court's ruling on a motion to suppress evidence under a two-part test. *People v. Hackett*, 2012 IL 111781. 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 evidence is a question of law reviewed *de novo*. *Id.* In this case, since the parties do not dispute the facts, we review *de novo* only the trial court's ultimate

decision to deny defendant's motion to suppress. See *People v. Bunch*, 207 Ill. 2d 7, 13 (2003); see also *People v. Sparks*, 315 Ill. App. 3d 786, 790 (2000).

¶ 22 A police officer may make a valid investigatory stop if the officer has a reasonable suspicion of criminal activity to justify the stop at issue. *Terry v. Ohio*, 392 U.S. 1 (1968). Specifically, “[i]n *Terry*, the Supreme Court held that an officer may, within the parameters of the fourth amendment, conduct a brief, investigatory stop of a citizen when the officer has a reasonable, articulable suspicion of criminal activity, and such suspicion amounts to more than a mere ‘hunch.’ ” *People v. Gherna*, 203 Ill. 2d 165, 177 (2003), citing *Terry*, 392 U.S. at 27.

¶ 23 We consider the totality of the circumstances in determining whether an officer had reasonable suspicion to stop an individual for investigative purposes based on information provided under similar circumstances to the case at bar. *Illinois vs. Gates*, 462 U.S. 213 (1983) (a totality of the circumstances analysis is appropriate for probable cause determinations); *People v. Tisler*, 103 Ill. 2d 226 (1984) (a court should consider the totality of the circumstances when evaluating whether an informant's tip supplies sufficient probable cause for a search). In making this determination, relevant factors include the informant's veracity, reliability, and the basis of the informant's knowledge. *Alabama v. White*, 496 U.S. 325, 328-29 (1990). A deficiency in one factor may be compensated for by strength in another factor, or by some other indicia of reliability. *Gates*, 462 U.S. at 233.

¶ 24 In this case, the caller was not anonymous but was known to Ricci. However, the tipster had no previous history of reliability as an informant. Nonetheless, the caller provided detailed information regarding the fact that defendant had “re-upped” and would be returning to work with illegal drugs. The caller accurately described defendant's address, vehicle, license plate,

time of travel, and intended destinations on the date in question. The officers confirmed each one of the described details provided by Ricci's caller indicating the caller and his basis of knowledge were both reliable.

¶ 25 Based on the totality of the circumstances, we conclude the corroboration of every detail set out in the information provided to an officer by identified the tipster, known to the officer, provided sufficient reasonable suspicion to support the *Terry* stop of defendant. Everything the caller reported to officer Ricci was corroborated as accurate before the officers stopped defendant's vehicle. The corroborated details gave rise to a reasonable suspicion that the final detail provided by the caller, specifically, that defendant would be transporting illegal drugs in his vehicle at the time and date described, was equally accurate and truthful. Therefore, the trial court correctly found the officers had a reasonable suspicion supporting the *Terry* stop of defendant's vehicle. Consequently, the trial court properly denied defendant's motion to quash arrest and suppress evidence.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

¶ 28 Affirmed.