

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).

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 11600
)	
SHANERIA STEMLEY,)	Honorable
)	Domenica A. Stephenson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

O R D E R

- ¶ 1 **Held:** Defendant's conviction for possession of a controlled substance affirmed over her contention that the trial court erred in denying her motion to quash arrest and suppress evidence.
- ¶ 2 Following a bench trial, defendant Shaneria Stemley was convicted of possession of a controlled substance, and sentenced to a one-year term of imprisonment. On appeal, defendant contends that her fourth amendment right to be free from unreasonable searches was violated

where she was searched without a warrant or probable cause.

¶ 3 Defendant was charged with possession of a controlled substance with intent to deliver within 1,000 feet of a school. Defendant filed a motion to quash her arrest and suppress the evidence, alleging that her conduct was such that no reasonable person could infer that she was in violation of any law. She further alleged that she did not consent to the unreasonable stop, search, seizure and arrest, and that police did not have a warrant.

¶ 4 At the suppression hearing, Chicago police officer Donald Wisz testified that at 5:17 p.m. on May 29, 2010, he went to the 1522 West Washburne Avenue area with his partner Officer John Czarnik to conduct a narcotics surveillance. They were in an unmarked car and in civilian dress. While there, they observed defendant standing in a vacant lot with several other individuals. Officer Wisz noted that he and Officer Czarnik knew defendant from previous meetings. Officer Wisz testified that he set up surveillance of another area while Officer Czarnik watched defendant. Officer Czarnik and Officer Wisz remained in constant contact, and Officer Czarnik notified Officer Wisz that he saw two narcotics transactions conducted by defendant.

¶ 5 Officer Wisz testified that they then drove in the same car to defendant's location, exited their car, and approached defendant. Their weapons were not drawn, they did not touch defendant, and defendant was not under arrest at the time. Officer Wisz had a short conversation with defendant which he did not recall, but noted that it did not involve the narcotics transactions observed by Officer Czarnik. Officer Wisz further testified that defendant then voluntarily removed money from her person and placed it on the officer's car. After Officer Wisz spoke to defendant, female Officers Rita Crotty and Sellers arrived to search defendant because male officers are not allowed to search females. Officer Crotty recovered a clear plastic bag from

defendant's person which contained 11 ziplock bags, each holding a white rock like substance, which Officer Wisz suspected was crack cocaine.

¶ 6 Chicago police officer John Czarnik testified that around 5:15 p.m. he observed defendant in the area of 1522 West Washburne Avenue. From 180 feet away he observed defendant approached by unknown black males, on two separate occasions, accept money in exchange for an item from a plastic bag that she kept in her waistband area, and place the money in her left front pants pocket. The two transactions occurred over a period of 20 minutes. Officer Czarnik testified that he used binoculars during the surveillance but did not include that in his police report. Officer Czarnik testified that he has made hundreds of narcotics arrests, and that based on his knowledge, training and experience as a police officer, he believed that he observed two narcotics transactions.

¶ 7 Officer Czarnik further testified that he approached defendant with Officer Wisz. He did not handcuff, search, or touch her. Officer Czarnik asked defendant to approach his car. Officer Czarnik did not tell defendant that she had to stay, and did not talk to her about the transactions he observed. Defendant then voluntarily removed money from her left front pants pocket and placed it on his car. He radioed female Officer Crotty to assist in a search of defendant, and when she arrived, she conducted a pat-down search for weapons. Officer Crotty recovered a plastic bag from defendant's "belly button" area, which contained suspect narcotics in the form of crack cocaine.

¶ 8 At the close of evidence and argument, the court denied defendant's motion to quash arrest and suppress evidence. The court found that probable cause existed for the arrest and search.

¶ 9 At trial, Officer Czarnik testified consistent with his testimony at the suppression hearing. In addition, he testified that after he approached defendant with Officer Wisz, he conversed with her, but did not tell her he contacted a female officer to assist in searching her. Officer Czarnik further testified that he has previously arrested defendant in October 2009 two blocks from the area where he observed her conduct the narcotics transactions in this case.

¶ 10 Officer Wisz also testified consistent with his suppression hearing testimony. He further testified that when he met with defendant, she voluntarily removed \$115 from her pockets and placed it on his vehicle.

¶ 11 The parties stipulated that the recovered suspect narcotics tested positive for cocaine. The parties further stipulated that the incident occurred within 607 feet of a school.

¶ 12 The defense then called Stanley Oden who acknowledged that he has a prior forgery conviction, and testified that he knows defendant from his neighborhood. At 4:45 p.m. on May 29, 2010, he saw defendant standing in the area of 1522 West Washburne Avenue doing "[n]othing." Police then arrived and approached defendant. Oden further testified that he has seen defendant talking to these officers three or four times before, and heard a rumor that defendant was dating one of them.

¶ 13 Defendant testified that she works for the Illinois Department of Human services, providing homecare services for people affected with HIV and AIDS. She testified that she has known Officer Czarnik for over six years, and that they dated and saw each other six times a week. On May 29, 2010, she was in the area of 1522 West Washburne Avenue visiting a client. Afterwards, she went to a vacant lot to pay the Avon sales man \$25 because she owed him money, and while she was talking with several people there, someone asked her for change for a

\$20 bill, and she gave him change. Defendant denied selling anyone drugs or having any drugs on her, and noted that the area was a high drug trafficking area. When Officers Wisz and Czarnik drove up, several people threw bags of marijuana on the ground and left. As defendant was leaving, Officer Wisz placed his arms around her shoulders and told her that Officer Czarnik wanted to talk to her. Officer Wisz kept his arms around her as she walked to Officer Czarnik's car. Officer Czarnik then told her to put all the narcotics on his car. She asked him what he was talking about, and he responded that he was going to send her to prison and asked her why she did not call him. She removed \$157 from her bra and placed it on the car, as well as a cell phone and charge card. Two female officers then arrived and one of them searched her. Defendant testified that the female officer said she found narcotics. Defendant, however, denied that she found it on her.

¶ 14 In rebuttal, Officer Czarnik denied having any relationship with defendant or any other contact with her other than the two arrests. The parties then stipulated that defendant had a 2002 conviction for possession of a controlled substance.

¶ 15 Officer Crotty testified in rebuttal that she was the only officer that searched defendant. She testified that she recovered narcotics from defendant's belly button area.

¶ 16 At the close of evidence, the court found defendant guilty of possession of a controlled substance. The court observed that the matter came down to a question of credibility. The court noted that defendant claimed that the drugs were placed on her by police. The court found that the officers' testimony was credible, and that defendant was incredible. The court noted that Officer Czarnik testified that he saw defendant approached by two different men on two separate occasions, receive money from these people, and then hand them an item which she removed

from her waistband. The court noted that Officer Crotty's testimony that she found the narcotics in defendant's belly button area corroborated Officer Czarnik's testimony.

¶ 17 Defendant filed a motion for a new trial, alleging, in relevant part, that the court erred in denying her motion to quash arrest and suppress evidence. The court denied the motion.

¶ 18 On appeal, defendant contends that the court erred in denying her motion to quash arrest and suppress evidence where she was searched without a warrant or probable cause. She maintains that there was no probable cause where Officer Czarnik admitted that he did not see what defendant handed to the two unidentified individuals, she did not engage in any suspicious behavior, and the area where she was observed was not a high-crime area.

¶ 19 On review of a trial court's ruling on a motion to suppress, great deference is accorded the trial court's factual findings and credibility determinations, and the reviewing court will reverse those findings only if they are against the manifest weight of the evidence. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). However, we review *de novo* the legal challenge to the denial of the motion to suppress. *Sorenson*, 196 Ill. 2d at 431.

¶ 20 In this case, the court found that Officer Czarnik's observations provided probable cause to approach defendant, and search her under the belief that she conducted narcotics transactions. Probable cause exists where the facts and circumstances known to the officers at the time of the arrest are sufficient to warrant a person of reasonable caution to believe the suspect committed an offense. *People v. Sims*, 192 Ill. 2d 592, 614 (2000). "Probable cause means less than evidence which would justify a conviction." *People v. Jones*, 215 Ill. 2d 261, 277 (2005). It requires only sufficient evidence to justify a reasonable belief that defendant has committed or is committing a crime, and "does not demand any showing that such a belief be correct or more

likely true than false.'" *Jones*, 215 Ill. 2d at 277, quoting *Texas v. Brown*, 460 U.S. 730, 741-42 (1983). As the Supreme Court stated in *Brinegar v. United States*, 338 U.S. 160, 176 (1949),

"These long-prevailing [probable cause] standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice."

Probable cause is based on the totality of the circumstances confronting the officers at the time of the arrest. *Sims*, 192 Ill. 2d at 615.

¶ 21 Here, the record shows that Officer Czarnik, with the use of binoculars, observed defendant approached by unknown black males on two separate occasions, and saw her accept money in exchange for an item from a plastic bag that she kept in her waistband area. The two transactions occurred over a period of 20 minutes. Officer Czarnik testified that he has made hundreds of narcotics arrests, and that based on his knowledge, training and experience as a police officer, he believed that he observed two narcotics transactions. We find that the totality

of these circumstances provided the officer with probable cause to believe that defendant was conducting narcotics transactions with the two individuals who approached her, thereby allowing for the search of her person. *People v. Harris*, 352 Ill. App. 3d 63, 67 (2004); *People v. Rucker*, 346 Ill. App. 3d 873, 888-89 (2003).

¶ 22 In reaching this conclusion, we note that the fact that more than one transaction occurred made it unlikely that they were innocent exchanges such as paying off a bet, splitting the cost of dinner or even a simple handshake. *Rucker*, 346 Ill. App. 3d at 888. Further, during each exchange defendant retrieved an item from a plastic bag which was hidden in her waistband, thereby making the transactions even more suspicious. When being confronted by police, defendant, without being asked to do so, removed \$115 from her pocket, and placed it on the police car. The totality of the circumstances observed by Officer Czarnik, and his experiences as a police officer support the finding that he had probable cause to believe that defendant was engaged in narcotics transactions. Although Officer Czarnik acknowledged that he could not see what was in the plastic bag, we find that probable cause is not dependent on the officer's prior visual observation of a narcotics substance. *Rucker*, 346 Ill. App. 3d at 889, citing *People v. Love*, 199 Ill. 2d 269, 280 (2002).

¶ 23 In addition, the court was aware of the deficiency in Officer Czarnik's report in failing to note that he used binoculars, considered the evidence in light of it (*People v. Scott*, 152 Ill. App. 3d 868, 872 (1987)), and clearly concluded that this minor discrepancy did not call into question his testimony regarding the transactions which proved defendant's guilt (*People v. Reed*, 80 Ill. App. 3d 771, 781 (1980)). It was the responsibility of the trial court to determine the significance of the officer's failure to include this fact in his report (*People v. Hobson*, 169 Ill.

App. 3d 485, 495 (1988)), and here, we find that this matter was not of such magnitude as to undermine the officer's credibility (*People v. Villalobos*, 78 Ill. App. 3d 6, 13 (1979)).

¶ 24 We also observe that defendant has cited a plethora of cases in support of her contention that there was no probable cause: *People v. Oliver*, 368 Ill. App. 3d 690, 697 (2006); *People v. Moore*, 286 Ill. App. 3d 649, 653 (1997); *People v. Trisby*, 2013 IL App (1st) 112552, ¶¶15, 17; *People v. Byrd*, 408 Ill. App. 3d 71, 77-78 (2011); *People v. Holliday*, 318 Ill. App. 3d 106, 111 (2001); and *People v. Blake*, 268 Ill. App. 3d 737, 738, 741 (1995). Defendant relies on *Oliver*, 368 Ill. App. 3d at 697, for her contention that an officer's observation of an exchange of unidentified items does not support probable cause to believe that a drug transaction has occurred. In *Oliver*, 368 Ill. App. 3d at 690-91, defendant was indicted, in relevant part, with two counts of possession of a controlled substance with intent to deliver, the trial court dismissed the counts based on defendant's argument that the sole witness to testify before the grand juries presented false and misleading testimony, and the State appealed. The Second District held that without the officer's testimony at the grand jury hearing that defendant delivered cocaine, which mischaracterized the observations of the officer who actually observed the transactions and did not see who gave what to whom, there was no probable cause for possession of a controlled substance with intent to deliver. *Oliver*, 368 Ill. App. 3d at 697-98. *Oliver* is thus distinguishable from the present case where defendant was observed receiving money in exchange for items hidden under her shirt, and thus, the officer's observations provided probable cause that she was the seller. *Harris*, 352 Ill. App. 3d at 67; *Rucker*, 346 Ill. App. 3d at 888-89.

¶ 25 As for the remainder of the cases cited by defendant, we find them factually inapposite as they only involved a single transaction, which could have been an innocent exchange. Here, by

contrast, we have two exchanges during which the officer observed defendant receive money in exchange for items she removed from her waistband. Defendant then placed the money in her left pants pocket, and later voluntarily removed a large sum of money from that pocket in the officers' view. The fact that there was more than one transaction made it unlikely that these were innocent exchanges, such as paying off the Avon man or providing someone change for a \$20 bill. *Rucker*, 346 Ill. App. 3d at 888. Accordingly, the evidence in this case supports the finding of probable cause, and we conclude that the trial court did not err in denying defendant's motion to quash arrest and suppress evidence.

¶ 26 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.