2014 IL App (1st) 134026-U

FIFTH DIVISION
December 18, 2014

No. 1-13-4026



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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 13 CR 10259 |
| | ) | |
| RYAN CLARK, | ) | Honorable |
| | ) | Matthew E. Coghlan, |
| Defendant-Appellant. | ) | Judge Presiding. |

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JUSTICE PALMER delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held*: Affirming the circuit court of Cook County's denial of defendant's motion to quash arrest and suppress evidence where the encounter between defendant and the police was consensual.

¶ 2 Defendant, Ryan Clark, was arrested and charged with possession of a controlled substance after two Chicago police officers observed defendant engage in a suspected narcotics transaction. Defendant filed a pretrial motion to quash arrest and suppress evidence, arguing that a fourth amendment seizure occurred when the officers approached him and questioned him

about what was in his pocket and informed him that they had observed him reaching into his pocket, and that the police lacked reasonable suspicion to justify a *Terry* stop. The trial court denied the motion, finding that although officers lacked reasonable suspicion to justify a *Terry* stop, the encounter was consensual and probable cause to arrest arose when defendant admitted that he possessed narcotics. Following a bench trial, defendant was convicted and sentenced to two years' probation. On appeal, defendant challenges the trial court's ruling on his motion. We affirm.

¶ 3 I. BACKGROUND

¶ 4 At the hearing on defendant's pretrial motion to quash arrest and suppress evidence, Chicago police officer Martin Chatys testified that on April 19, 2013, at approximately 7:00 p.m., he was on patrol with his partner in a marked police vehicle driving through a "high narcotics area" near 8200 South Maryland. Chatys testified that he believed he observed defendant engage in a "hand-to-hand narcotics transaction" at that time. Chatys testified that he observed defendant standing in the middle of the street when two unknown males approached defendant from different parts of the intersection at Maryland and 82nd Street. Chatys testified that he observed the men have a short conversation with defendant and then defendant "stuck his hand inside the front of his pants as if he was about to retrieve items." Defendant turned his head and looked at Chatys, then removed his hands from his pants and began to walk away while the other two men walked in the opposite direction. Chatys testified that he and his partner were in their police vehicle approximately 100 to 150 feet away from defendant, Chatys could see defendant from the back and the side during the encounter, and the lighting was good. Although Chatys did not see defendant receive any items or hand any items to anyone, based on his prior experience, he testified that he believed that a "hand-to-hand narcotics transaction" had been

about to occur. Chatys testified that he had training and experience in making arrests for hand-to-hand narcotics transactions.

¶ 5 Chatys testified that he turned onto Maryland Avenue and pulled the squad car up to defendant. He and his partner excited their vehicle and approached defendant. They did not draw their weapons or instruct defendant to stop. The officers were in uniform. While approximately two to three feet from defendant, Chatys' partner asked defendant "what he had in his pants." Defendant responded that he had "nothing." Chatys testified that his partner told defendant that they observed "him reaching inside his pants to take something out." According to Chatys, defendant then admitted that he had "a little rock in his pants." Based on this admission, Chatys searched defendant's pants and discovered a knotted bag containing 23 smaller knotted baggies, which were located between two pairs of underwear that defendant was wearing. Each of the smaller baggies contained a white "rock-like substance suspect [*sic*] crack cocaine."

¶ 6 During arguments at the hearing, defendant contended that the encounter with the officers was not consensual as the officers' actions constituted a show of force when they demanded a response to the question of what defendant had in his pants and confronted him with their observations after he responded. Additionally, defendant asserted that the encounter constituted an impermissible *Terry* stop as Chatys lacked any basis for stopping defendant other than a mere suspicion of criminal activity. In response, the State argued that Chatys had a reasonable and articulable suspicion that a narcotics transaction was taking place based on Chatys' observations and his training and experience. The State also disagreed that the officers' actions amounted to a show of force as they merely posed two questions to defendant before his admission, they did not draw their weapons or tell defendant to stop, and defendant was not searched until after his admission.

¶ 7 The trial court denied defendant's motion to quash arrest and suppress evidence. Although the trial court concluded that there was insufficient articulable suspicion to justify a *Terry* stop, the trial court characterized the encounter as consensual. The trial court found that the officers' actions did not constitute a show of force as they did not have their weapons drawn or instruct defendant to stop, but, instead, they merely exited the squad car and asked defendant a question, and defendant "felt comfortable enough to deny that he had anything on his person." Additionally, the trial court found that, once defendant made the admission, probable cause to arrest arose. The trial court also denied defendant's subsequent motion to reconsider.

¶ 8 At defendant's stipulated bench trial on October 23, 2013, the parties stipulated to the admission of Chatys' testimony from the hearing. In addition, the parties stipulated that a forensic expert would testify that 12 of the 23 packets contained 1.1 grams of cocaine. As noted, defendant was convicted of possession of a controlled substance. The trial court denied defendant's subsequent motion for a new trial in which defendant reasserted that his motion to quash arrest and suppress evidence should have been granted.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant again asserts that the trial court erred in denying his pretrial motion to quash arrest and suppress evidence.

> "We apply a two-part standard of review when reviewing a ruling on a motion to quash arrest and suppress evidence. *People v. Almond*, 2015 IL 113817, ¶ 55. We afford great deference to the trial court's findings of fact and will reverse those findings only where they are against the manifest weight of the evidence. *Id.* However, we review *de novo* the court's ultimate ruling on whether the evidence should be suppressed. *Id.*" *People v. Holmes*, 2015 IL App (1st) 141256, ¶ 14.

¶ 11 In the matter at bar, the parties dispute whether defendant's encounter with the police was consensual. In the view of the trial court, fourth amendment protections were not implicated here because the officers' initial approach and questioning did not constitute a show of authority and

was, therefore, a consensual encounter; once defendant admitted to possessing a "rock," his subsequent arrest was supported by probable cause.

¶ 12 "Both the fourth amendment of the United States Constitution (U.S. Const., amend. IV) and article I, section 6, of the Illinois Constitution (Ill. Const. 1970, art. I, § 6) protect individuals from unreasonable searches and seizures." *People v. Kveton*, 362 Ill. App. 3d 822, 830 (2005). Our courts look to United States Supreme Court jurisprudence for guidance in interpreting these provisions. *Id.*

> "The supreme court has recognized that not every encounter between the police and a private citizen results in a seizure, and it has identified three tiers of police-citizen encounters. [Citation.] These are: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or *Terry* stops, which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) consensual encounters, which involve no coercion or detention and thus do not implicate fourth amendment interests." *In re Rafael E.*, 2014 IL App (1st) 133027, ¶ 15 (quoting *People v. Luedemann*, 222 Ill.2d 530, 544 (2006)).

¶ 13 A seizure for fourth amendment purposes occurs "when an officer by means of physical force or show of authority, has in some way restrained the liberty of a citizen." (Internal quotation marks omitted.) *People v. Gherna*, 203 Ill. 2d 165, 177-78 (2003) (quoting *Florida v. Bostick*, 501 U.S. 429, 434 (1991), quoting *Terry v. Ohio*, 392 U.S. 1, 19 n. 16 (1968)). The pertinent inquiry is whether "a reasonable person would feel free to disregard the police and go about his business[.]"(Internal quotation marks omitted.) *Id.* at 178. If the police conduct at issue "would lead a reasonable innocent person under identical circumstances to believe that he or she was not 'free to decline the officers' request or otherwise terminate the encounter,' " considering the totality of the circumstances, then a seizure has occurred. *Id.* (quoting *Bostick*, 501 U.S. at 436). "[T]his analysis hinges on an objective evaluation of the police conduct and not upon the subjective perception of the individual approached." *Id.* (citing *California v. Hodari D.*, 499 U.S. 621, 628 (1991).

¶ 14 "It is well settled that a seizure does not occur simply because a law enforcement officer approaches an individual and puts questions to that person if he or she is willing to listen." *Gherna*, 203 Ill. 2d at 178 (citing *United States v. Drayton*, 536 U.S. 194, 200 (2002); *Florida v. Royer*, 460 U.S. 491, 497 (1983)). However, a consensual encounter may transform into a nonconsensual seizure "if law enforcement officers convey a message, by means of physical force or show of authority, that induces the individual to cooperate." *Id.* (citing *Bostick*, 501 U.S. at 434–35; *U.S. v. Mendenhall*, 446 U.S. 544, 554–56 (1980)). "Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Mendenhall*, 446 U.S. 554.

¶ 15 On appeal, defendant likens his interaction with police to the circumstances presented in *In re Rafael E.*, 2014 IL App (1st) 113027. In that case, two uniformed officers were in a marked squad car when they observed the respondent and several other individuals standing and talking at the mouth of an alley in a "high narcotics" area, when the respondent looked in the officers' direction and then briskly walked away from the group with his hands in his pockets. *Id.* at ¶¶ 5-6. The officers drove up to the respondent and asked him to stop, and the respondent complied. *Id.* at ¶ 6. The officer asked the respondent to remove his hands from his pockets, and respondent raised his hands up in the air, revealing a plastic baggie protruding from his waistband. *Id.* at ¶ 6. In concluding that the encounter constituted a *Terry* stop and was not consensual, the court cited the fact that a marked police vehicle with two officers pulled up to the respondent, who was on foot, one officer ordered the respondent to stop walking, and, when the respondent complied, the officer ordered him to take his hands out of his pockets and "put his hands up." *Id.* at ¶¶ 20-21.

The court held that, based on the totality of the circumstances, a reasonable, innocent person would not believe that he was free to decline the officer's instructions or terminate the encounter, citing "(1) the physically intimidating act of a marked police vehicle pulling alongside a man on foot; (2) an officer then immediately exiting the vehicle and directing orders to defendant, thus indicating that he is their target; and (3) the issuance of not one but two consecutive orders." *Id.* at ¶ 20. Considering that the respondent had, pursuant to the officer's orders, stopped and removed his hands from his pockets and put them up in the air, the court determined that the respondent submitted to the officer's show of authority. *Id*. at ¶ 23. Having concluded that the encounter was nonconsensual and thus constituted a *Terry* stop, the court ultimately held that the police lacked a reasonable, articulable suspicion of criminal activity, and it reversed the adjudication of delinquency. *Id.* at ¶ 33.

¶ 16 Relying on *In re Rafael*, defendant contends that the nonconsensual nature of the encounter in the case at bar was demonstrated by the following: (1) two uniformed officers in a marked police vehicle pulled up to defendant, (2) they exited the vehicle and approached defendant, (3) they asked him what was in his pants while standing two or three feet from him, (4) they confronted him with their observations that they had seen him reaching into his pants, and (5) defendant submitted to their authority in admitting that he had a "rock" in his pants.

¶ 17 We disagree with defendant that this case is similar to the circumstances in *In re Rafael*. Although, in this case, as in *In re Rafael*, the officers approached defendant in a marked police vehicle while defendant was on foot and then exited the vehicle, several significant distinctions can be made. The officer in *In re Rafael* exited the police vehicle, immediately moved close to the respondent, and issued two consecutive orders to the respondent. In contrast, here, the officers never issued any orders or commands to defendant. They did not ask him to stop or to

remove his hands from his pants or make other requests. Instead, they inquired what was in his pants. In addition, there was no evidence that they immediately went close to defendant upon exiting their vehicle. Rather, they were two to three feet away when the questions were posed. As noted, it is well-established that a seizure for fourth amendment purposes does not occur merely because the police approach an individual and ask questions. *Gherna*, 203 Ill. 2d at 178. Significantly, defendant responded in the negative to the first inquiry. This demonstrates that he did not believe he was required to respond to the police's questions. "[A] defendant is not seized when he ignores a show of [police] authority." (Internal quotation marks omitted.) *In re Rafael E.*, 2014 IL App (1st) 113027, ¶ 23.

¶ 18 Although defendant maintains that the officer made a show of authority by "confronting" defendant with his observation of defendant reaching into his pants, we do not find that this transformed the encounter into a coercive situation. We recognize that a consensual encounter may become nonconsensual through physical force or a show of authority by the police which induces an individual to cooperate. *Gherna*, 203 Ill. 2d at 178. However, in this case, the officer merely informed defendant of his observations. He did not accompany this statement with any commands or coercive actions. The officers did not display their weapons or touch defendant, and there is no evidence that they used any language or a tone of voice that would indicate "compliance with the officer's request might be compelled." *Mendenhall*, 446 U.S. 554. See, also, *People v. Jackson*, 389 Ill. App. 3d 283, 288-89 (2009) (encounter was nonconsensual where the officer drove up to the defendant in his squad car, exited, and walked up to defendant, whom the officer had observed walking up and down the street in an area where numerous robberies had occurred, and ordered the defendant to remove his hands from his pockets three or four times before the defendant complied, dropping a gun to the ground); *People v. Smith*, 331

Ill. App. 3d 1049, 1053-54 (2002) (encounter was initially consensual where the defendant was standing in front of a known drug house and the officers exited their vehicle and asked the defendant what he was doing; however, a seizure occurred once the officers grabbed the defendant's arms after he was ordered several times to stop and remove his hands from his pockets and he began to back away from the officers). Viewing all of the circumstances in the present case from an objective standpoint, we find that a reasonable person would have felt free to disregard the questions and terminate the encounter. *Gherna*, 203 Ill. 2d at 178. Under the circumstances of this case, we conclude that the interaction between defendant and the officers was a consensual encounter and defendant was not seized within the meaning of the fourth amendment. After defendant indicated that he possessed a rock of crack cocaine, the officers properly searched and arrested him based on probable cause.

¶ 19 Defendant also likens his interaction with the police to the nonconsensual stop of a vehicle that occurred in *Gherna*. However, we find that case to be inapposite to the present circumstances. In *Gherna*, once the suspected criminal activity supporting the initial *Terry* stop of the defendant's vehicle was assuaged, the officers remained stationed on both sides of the defendant's vehicle, they did not tell the defendant (or otherwise indicate through their actions) that she was free to leave, they asked the defendant to step out of her vehicle, they questioned the defendant about her reasons for being in the area, and one officer examined the interior of her vehicle with a flashlight. *Gherna*, 203 Ill. 2d at 179-85. The court concluded that the continued detention constituted an unconstitutional seizure which rendered invalid the defendant's subsequent consent to search the vehicle. *Id.* at 183-86. In distinction, here, the officers did not order defendant to stop or otherwise physically obstruct defendant's ability to leave, they did not question him regarding his reason for being in the area, and they did not use a flashlight or other

method to look for contraband or otherwise search defendant until after he admitted that he possessed drugs, at which time the police conducted a custodial search incident to arrest supported by probable cause.

¶ 20 Accordingly, we reject defendant's fourth amendment argument challenging his arrest and the recovered narcotics evidence. In addition, because we conclude that the encounter was consensual, we need not address defendant's argument that the trial court was correct in finding that the police lacked reasonable suspicion to justify a *Terry* stop. *People v. Almond*, 2015 IL 113817, ¶ 65.

¶ 21 III. CONCLUSION

¶ 22 For the reasons explained above, we affirm the circuit court's denial of defendant's motion to quash arrest and suppress evidence. Therefore, we affirm defendant's conviction and sentence.

¶ 23 Affirmed.