

2014 IL App (2d) 121217-U  
No. 2-12-1217  
Order filed March 24, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 06-CF-1987
	)	
BRANDON MILLER,	)	Honorable
	)	David R. Akemann,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices Hutchinson and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court properly denied defendant's motion to quash his arrest, as the police had probable cause to arrest him for vandalism: following the tip of an identified citizen informant, an officer found defendant with a red substance on his hands and clothes, which substance matched paint that had been sprayed on the victim's house; (2) because we had found in a prior appeal only that the State had made a *prima facie* showing that, after invoking his right to counsel, defendant had initiated contact with police about the offense, the trial court erred in holding that it was precluded from ruling on that question after the close of defendant's evidence; thus, we vacated the denial of defendant's motion to suppress his statements and remanded the cause for proceedings on that motion.

¶ 2 Following a stipulated bench trial in the circuit court of Kane County, defendant, Brandon Miller, was found guilty of criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2006)) and criminal defacement of property (720 ILCS 5/21-1.3(a) (West 2006)). In a prior appeal by the State, a divided panel of this court reversed an order granting a motion by defendant to suppress statements to police while defendant was in custody. *People v. Miller*, 393 Ill. App. 3d 1060 (2009) (*Miller I*). We remanded the case for further proceedings on the motion. On remand the trial court denied the motion. Defendant filed a separate motion to quash his arrest on the grounds that it had been effected without a warrant or probable cause. The trial court denied that motion also. In this appeal, defendant challenges the trial court's ruling on each motion. We affirm the denial of the motion to quash, but vacate the denial of the motion to suppress and we remand for further proceedings on that motion.

¶ 3 We first consider whether the trial court erred in denying defendant's motion to quash his arrest. A two-part standard of review applies to rulings on such motions. *People v. Grant*, 2013 IL 112734, ¶ 12 "While we accord great deference to the trial court's factual findings, and will reverse those findings only if they are against the manifest weight of the evidence, we review *de novo* the court's ultimate ruling on a motion to suppress involving probable cause." *Id.*

¶ 4 At the hearing on defendant's motion to quash his arrest, Andrew Nelson, an officer with the South Elgin police department, testified that at about 8 a.m. on August 5, 2006, he investigated a complaint of criminal damage to a house in South Elgin owned by Patrick Tobin. When Nelson arrived at the scene, he observed graffiti in red, black, and purple spray paint. Some of the graffiti in purple paint reached as high as 9 or 10 feet off the ground. The graffiti included vulgar drawings and the words "Pat sucks dick" (or something to that effect). Nelson testified that he spoke to "Mr. Kinter," who lived in the house next door. Kinter indicated that, at

11 p.m. the night before, there was no graffiti on the house. Kinter also advised Nelson that Tobin's son, Pat Jr., was having problems with a former girlfriend. Kinter indicated that Pat Jr.'s former girlfriend's father owned a local Yamaha motorcycle dealership. Based on that information, Nelson was able to identify Amanda Smith as Pat Jr.'s former girlfriend. The same morning, Nelson spoke with Smith. She indicated that she was not responsible for the damage to Tobin's house and did not know who was. Nelson testified that Smith advised him that defendant had previously had a "fight" with Pat Jr. at school. Nelson clarified that the "fight" was "a verbal argument" about something Pat Jr. had said to Smith. Nelson asked Smith what type of vehicle defendant drove. She responded that defendant drove a black Acura. Nelson also had a chance to see that Smith's cellular telephone showed a call to or from defendant's telephone at 1:30 a.m.

¶ 5 At some time later in the day, Nelson proceeded to defendant's residence. When he arrived, he observed a black Acura in the driveway. Nelson looked for footprints on the vehicle, thinking that, because the graffiti on Tobin's house reached as high as 9 or 10 feet, someone might have stood on the vehicle while spray painting the house. Nelson saw what appeared to be a smudged footprint on the hood. Nelson then went to the door and rang the doorbell. Defendant answered the door, identified himself, and stepped out of the house. Nelson noticed red spray paint on defendant's shorts and on his hands. At that point, Nelson placed defendant under arrest. Asked how he knew that the substance in question was spray paint, Nelson responded, "Because I had just come from a red spray painted house and there was red paint that matched the same color of the spray paint."

¶ 6 It is well established that "[a] warrantless arrest is reasonable when an officer has probable cause to believe that the person has committed an offense." *People v. Walton*, 2013 IL

App (3d) 110630, ¶ 17. In determining whether a warrantless arrest was supported by probable cause, the salient inquiry is whether “the totality of the circumstances known to the police officers at the time of arrest are sufficient to lead a reasonably prudent person to believe that the suspect has committed a crime.” *People v. Serio*, 357 Ill. App. 3d 806, 814 (2005). As our supreme court has stated:

“[W]hether probable cause exists is governed by commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt. [Citation.] ‘ “Indeed, probable cause does not even demand a showing that the belief that the suspect has committed a crime be more likely true than false.” [Citation.]’ ” *People v. Jackson*, 232 Ill.2d 246, 275 (2009).

Furthermore, “[a] police officer’s knowledge of probable cause may be based on an informant’s tip and, if the facts supplied in such a tip are essential to a finding of probable cause, the tip must be reliable.” *Serio*, 357 Ill. App. 3d at 814. When police act on information received from a member of the public, “[t]he nature of the informant is relevant.” *People v. Linley*, 388 Ill. App. 3d 747, 750 (2009). Information from a concerned citizen is generally thought to be more credible than a tip from an informant who supplies information in exchange for money or other compensation or consideration. *Id.* An officer’s personal knowledge of facts tending to corroborate information received from a member of the public is a significant factor in determining the reliability of the information. *Id.* Although corroboration is especially important when the source of information is anonymous, “ ‘a minimum of corroboration or other verification of the reliability of the information is required,’ ” even when the individual supplying the information has revealed his or her identity. *Id.* at 751 (quoting *Village of Mundelein v. Rhompson*, 341 Ill. App. 3d 842, 851 (2003)).

¶ 7 We conclude that the facts known to Nelson when he arrested defendant were sufficient to establish probable cause to believe that defendant, either alone or with others, had vandalized Tobin's house in South Elgin. Nelson observed graffiti painted in red, black, and purple that targeted an individual named "Pat." Nelson was aware that Tobin had a son, Pat Jr. It was reasonable to believe that the graffiti was more likely than not the work of one or more individuals who knew and had some grievance against either Tobin or his son. If Smith was to be believed, defendant was one such individual. Although defendant was not caught "red handed" in the sense that the term is typically used, he did, in fact, have a red substance on his hands (and pants) that appeared (to Nelson) to be spray paint.

¶ 8 We acknowledge that Nelson's appraisal might have been the product of confirmation bias; his testimony indicated that he merely assumed that the red substance was spray paint because spray paint had been used to vandalize Tobin's house. In this vein, defendant notes that photographs taken after his arrest show red marks that were "very faint and small" and that "could just as easily have come from a red pen as from spray paint." Even so, it seems quite unlikely that individual with a grievance against Pat Jr. would, *by sheer coincidence*, be found with a substance that *might be* red paint on his hands and clothing.

¶ 9 Defendant also argues that Nelson knew nothing about Smith's reliability and did not verify her statement that defendant and Pat Jr. had been in a verbal altercation. Because Smith was not a paid informant and not speaking to Nelson anonymously, only minimal corroboration was necessary. Although defendant contends that Smith was, herself, a suspect with a motive to deflect suspicion onto someone else, "that fact alone is insufficient to make her statements unreliable." *People v. Jardon*, 393 Ill. App. 3d 725, 737 (2009).

¶ 10 Moreover, the fact that a red substance that could have been the spray paint used to vandalize Tobin's house was found on defendant's hands and clothing tended to bolster the reliability of Smith's statement. In effect, defendant asks us to believe that Smith falsely implicated him and that the presence of the red substance was purely fortuitous. Under the totality of the circumstances, a reasonably prudent person would have believed that defendant was involved in the act of vandalism to Tobin's house. That defendant did not have traces of black or purple paint on his hands or clothing is of little significance; at the time of defendant's arrest, there was no reason to believe that defendant necessarily acted alone.

¶ 11 We next consider whether the trial court erred in denying defendant's motion to suppress statements. In *Miller I*, the majority noted that the hearing on the motion to suppress commenced with the State's case-in-chief. Nelson testified for the State that, when defendant was arrested, Nelson arranged to have defendant's car towed. While in custody, defendant invoked his right to have counsel present during any questioning. *Miller I*, 393 Ill. App. 3d at 1062. However, while on the telephone with his father, defendant asked Nelson why his car had been towed or what was going to happen to his car. *Id.* After the State rested, the trial court ruled that it had failed to make a *prima facie* showing (as required under *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981)) that, after defendant invoked his right to counsel, he initiated contact with the police in a manner evincing his willingness to discuss the offense. *Miller I*, 393 Ill. App. 3d at 1063. The *Miller I* majority disagreed. The majority reasoned that, because the trial court ruled at the close of the State's case, it was required to view the evidence in the light most favorable to the State. *Id.* The majority held as follows:

“[W]e conclude that the State met the *threshold* under *Edwards* for admission of defendant's statements. As noted, however, an effective waiver under *Edwards* requires

not only that the accused initiate further discussion, but also that the totality of the circumstances show that the right to have counsel present was waived knowingly and intelligently. The trial court's erroneous conclusion that the State failed to meet its burden on the threshold question—initiation—made it unnecessary for the trial court: (1) to apply the totality-of-the-circumstances test or (2) to receive evidence from defendant. The State acknowledges that it is necessary to remand for further proceedings on defendant's motion. On remand, the trial court should first determine whether the State met its burden of showing that, under the totality of the circumstances, defendant 'knowingly and intelligently waived his right to the presence of counsel during questioning.' [Citation.] If the trial court concludes that the State failed to meet this burden, defendant's motion must be granted. If the State did meet its burden, the hearing should proceed to defendant's case-in-chief." (Emphasis in original.) *Id* at 1072.

¶ 12 On remand, the trial court concluded the that State met its burden of showing a knowing and intelligent waiver. After defendant presented evidence, however, the trial court concluded that *Miller I* foreclosed further consideration of the question of whether defendant initiated contact with police evincing his willingness to discuss the offense. To the contrary, we merely held that the State made a *prima facie* showing. The State concedes that the trial court's ruling was erroneous and that the case must be remanded for a finding on the issue of initiation.

¶ 13 For the foregoing reasons, we affirm the denial of defendant's motion to quash. However, we vacate the denial of defendant's motion to suppress and we remand for proceedings on that motion in conformity with this order. If, on remand, the motion is granted, defendant shall be granted a new trial.

¶ 14 Affirmed in part and vacated in part; cause remanded.