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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. 09 CR 10487
)	
ANDREW DORTCH,)	Honorable
)	Colleen A. Hyland,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Lavin and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in denying defendant's motion to quash arrest and suppress evidence.

¶ 2 Following a bench trial, defendant Andrew Dortch was convicted on four counts of home invasion while armed with a firearm and was sentenced to 33 years' imprisonment. On appeal, Dortch contends that the trial court erred in denying his pretrial motion to quash his arrest and suppress evidence because there were no specific and articulable facts to justify his detention and he was arrested without probable cause.

¶ 3 We affirm. The police officer acted on reasonable suspicion when he observed individuals with similarities to individuals believed fleeing from the crime scene in the general area where they would be expected, given the time of the crime and the distance from the scene.

¶ 4 Background

¶ 5 Dortch's conviction arose from events that transpired in the early morning hours of May 15, 2009. Dortch and co-defendant Marcus Simpson, who is not a party to this appeal, were detained in connection with a home invasion that had occurred nearby. Before trial, Dortch and Simpson moved to quash their arrests and suppress evidence, alleging insufficient probable cause for the stop, and thus, that any evidence found after their arrests should be suppressed. (We note that Simpson filed a separate appeal, in which he also contested the propriety of the trial court's ruling on his motion to quash arrest and suppress evidence. On March 11, 2015, this court issued an opinion in which we affirmed Simpson's conviction and sentence. *People v. Simpson*, 2015 IL App (1st) 130303.)

¶ 6 At a hearing on the motion, Officer Vaccaro testified that on May 15, 2009, he received a dispatch at about 3:20 a.m. that a home invasion was in progress. On his way to the address, a second dispatch informed him that the suspects had fled the scene. The dispatcher said the suspects were two black males, wearing black clothing and black masks, armed with guns, and driving a late-model black car heading southbound on Roberts Road. Officer Vaccaro saw a car matching that description and driving in that direction on Roberts Road but could not see who was in the car. No other cars were on the road and Vaccaro did not see the car commit any traffic violations at this point.

¶ 7 Officer Vaccaro followed as the car made a left-hand turn onto 111th Street. After about 75 feet, the car's lights went off, and Officer Vaccaro activated his siren to attempt to stop the car. Officer Vaccaro said that the car traveled about 100 yards with its lights off and then, without signaling, made a right-hand turn onto Westwood Drive, pulled into the first residential driveway, and turned off the engine. Officer Vaccaro waited for backup and when Officer Brad

Fletcher arrived, both officers approached the car with their guns drawn. Officer Vaccaro saw two black men in the front seat wearing black clothes. Dortch and Simpson were placed in handcuffs. Officer Vaccaro performed a pat down on both men and found half a roll of duct tape in Dortch's pocket but did not find any weapons. Officer Vaccaro placed Dortch and Simpson in different squad cars. Vaccaro did not search but looked inside the men's car and saw a black mask on the passenger side floorboard. He testified that after he found the duct tape and black mask, Dortch and Simpson were placed under arrest for investigation into home burglary. The car was towed to a secure lot, and after obtaining a signed release from its owner, police searched the car and recovered evidence in the trunk that they intended to use at trial.

¶ 8 The trial court denied the motion to quash arrest and suppress evidence. Relying on *Terry v. Ohio*, 392 U.S. 1 (1968) and *People v. Johnson*, 387 Ill. App. 3d 780 (2009), the court found that Officer Vaccaro acted properly because "an officer may make a proper, investigatory stop and may conduct a limited protective search of the individual's outer clothing for weapons if the officer reasonably believes the individual is armed and presently dangerous to the officer or others." The court concluded that Officer Vaccaro, who knew a home invasion had been reported in the vicinity, made a proper *Terry* stop of a car matching the suspects' car and properly conducted a pat down search for his own safety because he knew the suspects were armed. The duct tape Vaccaro found in Dortch's pocket and the mask on the passenger side floor indicated that Dortch and Simpson may have been involved in a crime and led to a proper arrest.

¶ 9 The case proceeded to a joint bench trial. Nicholas Voutiritsas testified that on May 15, 2009, he arrived home from work at about 3:15 a.m. As he entered his home, a man came up behind him, told him to be quiet, pushed him inside, and hit him in the back of the head with a gun. Once inside, Voutiritsas turned around and saw a man dressed in black, holding a gun, and

1-13-0301

wearing a mask and black gloves. He also saw a second man walking through the entryway into the kitchen. Voutiritsas fought with the man holding the gun. He pulled up his mask halfway to his nose and punched him in the face three or four times. Voutiritsas saw that the man was black.

¶ 10 Voutiritsas's son was in his room watching television when he heard a commotion downstairs. He opened his door and saw an armed masked man dressed in black coming up the stairs. He put his hands up, and the man made him lie facedown on the floor in his bedroom and pointed the gun at the back of his head. The son heard what sounded like duct tape and thought the man was trying to tape his hands because he felt something sticky on his wrists. The man then left the bedroom and the son ran to his sister's bedroom. She was on the phone with the police and the son got on the phone and told the police what was happening.

¶ 11 Voutiritsas's wife testified she was sleeping when she heard her husband screaming her name. She ran into the hallway and saw a black man coming up the stairs and go into her son's bedroom. The man was wearing all black, but she could not see if he had anything on his face and could not remember if he had a gun. She ran back to her bedroom and called 911.

¶ 12 Voutiritsas testified that after he fought with the first man, both men ran out the front door and through the backyard. Voutiritsas chased them for a while but it was dark and he could not see anything so he ran back to the front of the house. He called 911 and told the dispatcher what happened and that he saw a small, dark-colored car turn south onto Roberts Road.

¶ 13 Officer Vaccaro's trial testimony mirrored his testimony at the suppression hearing. Sergeant Heather Poerio, a crime scene investigator with the Illinois State Police, testified that on the morning of the incident, she searched the car Dortch and Simpson were driving and found a black and gold Adidas bag, which contained two pairs of black gloves, a black knit hat, two loaded guns, one black mask, and a roll of duct tape. The bag was in the trunk and accessible

from the backseat. The State also presented expert forensic evidence consisting of footprint and DNA analysis which placed Dortch at the scene.

¶ 14 Neither Dortch nor Simpson testified. Mark Sanders, a private investigator, testified on Dortch's behalf. Sanders testified that he conducted a test of the 2009 Honda Accord Dortch was driving the night he was arrested and observed that the car's running lights, which are below the headlights, could not be turned off while the car was running.

¶ 15 After closing arguments, the trial court found Dortch and Simpson guilty of four counts of home invasion. Dortch filed a motion for a new trial, which the trial court denied. The court sentenced Dortch to 33 years in prison on count I and merged the remaining counts.

¶ 16 Analysis

¶ 17 Dortch contends that the trial court erred in denying his motion to quash his arrest and suppress evidence. Specifically, he asserts that the State failed to establish reasonable suspicion to justify a *Terry* stop and the absence of probable cause for his arrest.

¶ 18 The State first argues that Dortch has waived this issue because he failed to include it in his motion for a new trial. But, the record shows that in his motion for a new trial, Dortch argued, among other things, that "the trial court erred in its rulings of the evidence." The record further shows that at the hearing on the motion, defense counsel stated "all of my argument has to do with the issue of my client's arrest, his seizure and all of the evidence that came into evidence after his seizure," and "we're asking your Honor to reconsider your findings with regard to our motion to suppress the seizure of [defendant] and to quash his arrest." In turn, the trial court stated that it stood on its prior ruling on Dortch's motion to quash and suppress and the case law on which it relied. Accordingly, the record shows that Dortch did not waive this issue, and we now turn to the merits of his argument.

¶ 19 In reviewing an order denying Dortch's motion to quash arrest and suppress evidence, mixed questions of law and fact are presented. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). Factual findings made by the trial court will be upheld unless they are against the manifest weight of the evidence, whereas we apply *de novo* review regarding the trial court's application of the facts to the issues presented and the ultimate question of whether the evidence should be suppressed. *Id.* On appeal, we may consider the evidence presented at the hearing on the motion to quash and suppress, as well as the evidence presented at trial to the extent that it supports affirming the trial court's judgment. *People v. Butorac*, 2013 IL App (2d) 110953, ¶ 14, citing *People v. Brooks*, 187 Ill. 2d 91, 127-28 (1999).

¶ 20 The fourth amendment to the United States constitution guarantees the right to be free from unreasonable searches and seizures. U.S. Const., amend, IV; *People v. Gherna*, 203 Ill. 2d 165, 176 (2003). Although reasonableness under that amendment generally requires a warrant supported by probable cause, under the *Terry* exception, a police officer may briefly stop a person for questioning if the officer reasonably believes that the person has committed or is about to commit a crime. *People v. Flowers*, 179 Ill. 2d 257, 262 (1997), citing *Terry*, 392 U.S. at 22. To justify a *Terry* stop, the officer must point to specific, articulable facts which make the intrusion reasonable when considered with rational inferences. *People v. Shafer*, 372 Ill. App. 3d 1044, 1048 (2007). In determining the reasonableness of a *Terry* stop, we consider the totality of the circumstances, taking the whole picture into account. *People v. Baskins-Spears*, 337 Ill. App. 3d 490, 499 (2003).

¶ 21 Facts forming the basis of reasonable suspicion need not rise to the level of probable cause and do not require an officer to actually observe the commission of a crime. *People v. Estrada*, 394 Ill. App. 3d 611, 616 (2009). That said, the necessary quantum of suspicion must

exist before the stop or detention. *Id.* at 619. "[T]he determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior." *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000). An officer also may conduct a pat down search for a weapon when he or she justifiably believes that the individual exhibiting suspicious behavior is potentially armed and dangerous, *Terry*, 392 U.S. at 24; *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001).

¶ 22 Dortch contends that at the time he effectuated the *Terry* stop, Officer Vaccaro knew only that "a home invasion had occurred and the suspects had fled southbound on Roberts Road," and did not know how many people were in the car he stopped, whether that car was the one in which the suspects had fled, whether any occupants of the car was a black person, how the car's occupants were dressed, or if anyone had a mask. He thus argues that there were no specific and articulable facts to justify a *Terry* stop under these circumstances. We disagree.

¶ 23 Reasonable suspicion can be partly based on police observation of individuals similar to those believed fleeing from a recent crime scene when the individuals are located in the general area where the fleeing suspects would be expected to be, given the time of the crime and the distance from the scene. *People v. Rivera*, 272 Ill. App. 3d 502, 506 (1995). Officer Vaccaro saw a late-model black car heading southbound on Roberts Road immediately after receiving a dispatch that suspects from a home invasion were fleeing in a late-model black car southbound on Roberts Road. The crime occurred in the early morning hours and Officer Vaccaro testified that there were no other cars on the road. This created the reasonable suspicion for a brief *Terry* stop. Suspicion was further heightened by the headlights having been turned off, the driver making a right-hand turn without signaling, and the driver pulling into a driveway before shutting off the engine.

¶ 24 In his opening brief, Dortch argued that Officer Vaccaro's credibility is in question because it conflicted with the trial testimony of Sanders, the private investigator, on whether the car's lights were on or off. But, in his reply brief, Dortch acknowledged that we may only consider trial testimony to the extent it supports affirming the trial court's judgment. *Butorac*, 2013 IL App (2d) 110953, ¶ 14. Moreover, Sanders testified that the car's running lights, which are below the headlights, cannot be turned off while the car is running, which does not contradict Officer Vaccaro's testimony that the headlights were turned off. Further, Vaccaro testified that the driver made a right-hand turn without signaling, which constitutes a separate traffic violation. A stop based on an officer's observation of a traffic violation is valid at its inception. *People v. Moss*, 217 Ill. 2d 511, 527 (2005). Thus, Officer Vaccaro's decision was permissible absent the other indicia indicating the occupants may have been involved in the home invasion.

¶ 25 Although Dortch attempts to distinguish *People v. Johnson*, 387 Ill. App. 3d 780 (2009), on which the trial court relied, we find the facts there similar to the facts here. In *Johnson*, a police officer responding to a call of a shooting at 3:30 a.m. saw two men get into a car in a parking lot near the scene of the shooting. The officer followed. There were no traffic violations committed or attempts to flee. *Id.* at 782. After several blocks, the car pulled into the parking lot of a public housing project and parked. When the occupants got out, the officer conducted a protective pat down search and found nothing. The officer also searched the car and, after finding a gun, arrested both men. *Id.* at 782-83. The trial court denied the defendant's motion to quash his arrest and suppress evidence, and the appellate court affirmed, finding that the officer responding to a crime in progress, conducted a proper investigative stop. *Id.* at 789-90. In addition, the court found that the officer conducted a permissible protective pat down because it was reasonable to believe the men were armed and dangerous. *Id.*

¶ 26 Also, *Johnson* involved a shooting, which is an inherently dangerous crime, and a home invasion by two armed perpetrators involves an inherently dangerous crime justifying Officer Vaccaro's pat down. We thus find that the totality of the circumstances, including the time the crime occurred, the proximity of the car to the crime scene, the description of the car, the fact that defendant's car was heading in the same direction on Roberts Road as the suspects' car, and the actions by the driver, all indicate Officer Vaccaro could reasonably infer that the occupants were involved in criminal activity and to stop the car. Further, because the perpetrators of the home invasion were armed, it was reasonable to conduct a protective pat down search.

¶ 27 Dortch also contends that the trial court erred in denying his motion to quash his arrest and suppress evidence because he "was arrested without probable cause prior to the search of him and the vehicle." Dortch asserts that he was under arrest when he was handcuffed immediately on exiting the car, and that because the duct tape and mask were not discovered until later, they cannot be used to find probable cause to arrest.

¶ 28 Generally, the use of handcuffs to restrain the person being detained indicates the detention is an arrest rather than a *Terry* stop, however, a detainee may be handcuffed during the duration of an investigatory *Terry* stop when necessary for safety of the officer or the public. *People v. Arnold*, 394 Ill. App. 3d 63, 70-71 (2009); see also *People v. Colyar*, 2013 IL 111835, ¶ 46 ("handcuffing does not automatically transform a *Terry* stop into an illegal arrest"); *People v. Starks*, 190 Ill. App. 3d 503, 509 (1989) ("paradoxical to give police the authority to detain pursuant to an investigatory stop yet deny them the use of force that may be necessary to effectuate the detention"). Therefore, "the difference between an investigatory stop and an arrest does not necessarily lie in the initial restraint of movement. Rather it lies in the length of time the suspect is detained and the nature and scope of the investigation which follows the initial stop. If

the officer's suspicions are not allayed within a reasonable time, the suspect must be allowed to leave or an arrest must be made." *People v. Walters*, 256 Ill. App. 3d 231, 237 (1994).

¶ 29 Officer Vaccaro knew that the suspects fleeing the scene of the home invasion were armed with guns. After making a stop, suspecting the occupants might be involved in that crime and seeing that the men inside matched the description of the perpetrators, he handcuffed both men and quickly conducted a pat down search. Under the circumstances, handcuffing alone did not constitute an arrest, as it was permissible to ensure the officers' safety.

¶ 30 After conducting the search and finding the black mask on the passenger side floor, Vaccaro had probable cause to arrest. Probable cause exists where the facts and circumstances known to the arresting officer at the time of the arrest would lead a reasonable person to believe that a crime had occurred and the suspect had committed it. *People v. Grant*, 2013 IL 112734, ¶ 11. The duct tape, the black mask and the similarities between Dortch and the victims' descriptions of the perpetrators, their clothing, and their car provided Officer Vaccaro a reasonable belief that Dortch and Simpson were involved in the home invasion, and thus, probable cause to arrest them. Accordingly, we find that the trial court did not err in denying Dortch's motion to quash his arrest and suppress evidence.

¶ 31 In reaching this conclusion, we have considered *People v. Washington*, 269 Ill. App. 3d 862 (1995), on which Dortch relies, and find it distinguishable. In *Washington*, this court found that because no testimony had been provided at the hearing on the motion to quash and suppress regarding the specific description of the suspect, including their gender, physical characteristics or clothing, the trial court had no opportunity to determine whether the description of the offender and the defendant's physical characteristics were similar enough to justify detention. *Id.* at 866-67. In contrast, Officer Vaccaro testified that the dispatcher informed him that the

1-13-0301

suspects were black males wearing all black, and also told him that they were driving a late-model black car southbound on Roberts Road. Accordingly, the reasoning in *Washington* is inapplicable.

¶ 32 We affirm the judgment of the circuit court of Cook County.

¶ 33 Affirmed.