

No. 1-13-0541

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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
)	Cook County
Plaintiff-Appellee,)	
)	
v.)	No. 09 CR 20066
)	
VICTOR BILBREW,)	
)	Honorable
Defendant-Appellant.)	Clayton J. Crane,
)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was convicted of armed robbery with a dangerous weapon other than a firearm. The appellate court affirmed the decision of the circuit court of Cook County denying the defendant's motion to quash his arrest and suppress evidence.

¶ 2 Following a bench trial in the circuit court of Cook County, defendant Victor Bilbrew (Defendant) was convicted of armed robbery with a dangerous weapon other than a firearm (720 ILCS 5/18-2(a)(1) (West 2008)) and sentenced to 15 years in the Illinois Department of

Corrections. On appeal, defendant argues that the circuit court erred in denying his motion to quash arrest and to suppress evidence. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 On November 4, 2009, defendant was charged by information with attempted first degree murder, armed robbery with a bludgeon, and three counts of aggravated battery. The State charged that defendant struck Brendan Lester (Lester) about the head and body with a metal pipe, and seized Lester's camera and laptop computer.

¶ 5

Motion to Quash Arrest and Suppress Evidence

¶ 6 On June 28, 2010, defendant filed a motion to quash his arrest and to suppress evidence. Defendant argued his statement to the police, lineup identification, pipes, jacket and glove should be suppressed because he was arrested without probable cause.

¶ 7

On September 21, 2010, the circuit court conducted a hearing on defendant's motion to quash his arrest and to suppress evidence. Chicago police officer Sherry Dailing testified that on October 21, 2009, at approximately 10:45 a.m., she responded to a call regarding a robbery at 1046 Kinzie Street. Officer Dailing interviewed Lester and Jessica Wagner (Wagner) regarding the incident.

¶ 8

Lester informed Officer Dailing that he had been walking and wearing headphones when someone struck him from behind and grabbed his camera and laptop computer. Lester chased the offender, who then beat Lester severely with a "gray to silver" metal pipe approximately two feet in length. Lester described the offender as an African-American male, approximately six feet tall, wearing a three-quarter length black leather jacket and a dark knit cap over his short black hair.

¶ 9 Wagner informed Officer Dailing that she was near Lester at the moment of the incident, which occurred very quickly. Wagner did not see the face of the man who struck Lester, but described him as an African-American male, approximately six feet tall and weighing approximately 200 pounds. According to Officer Dailing, Wagner's description matched Lester's description, including the three-quarter length leather jacket. Both witnesses also described the individual as being in his thirties.¹

¶ 10 On October 22, 2009, Chicago police officer Sherry Kotlarz informed Officer Dailing that on the date of the incident, she had a conversation with an employee of a health club located one block away from the incident. The employee informed Officer Kotlarz that he had observed an African-American male, approximately six feet tall, wearing a three-quarter length leather jacket. The employee also described a small, silver sport utility vehicle, possibly an Isuzu, with a Florida license plate including the partial number "H58." The vehicle also had a red and black bumper sticker, stating something to the effect of "stop killing people" or "stop the violence," on the body of the vehicle to the left of the license plate. The employee reportedly exited the health club to observe the vehicle, which was parked in front of the building and blocking customers from using parking spaces.

¶ 11 After receiving this information from Officer Kotlarz, Officer Dailing went on patrol. Officer Dailing then received information from Officer Kotlarz via the police vehicle's computer that the health club employee had observed the silver sport utility vehicle cruising in the area of the incident. Officer Dailing proceeded to patrol the area of the incident, but did not observe the vehicle.

¶ 12 At approximately 10:45 a.m., Officer Dailing responded to a radio call of a disturbance at

¹ The record on appeal indicates defendant was born on February 2, 1967.

a McDonald's restaurant located at 23 North Western Avenue. As Officer Dailing entered the restaurant parking lot, she observed a vehicle pull out and exit from the drive-thru lane without completing an order. The vehicle was a small, silver sport utility vehicle with a Florida license plate including the partial number "H58." The vehicle also had a red and black bumper sticker stating "Stop. Killing. People." to the left of the license plate. The vehicle, a Chevrolet Tracker, had two male occupants.

¶ 13 Officer Dailing followed the vehicle, which crossed Warren Boulevard to enter a gas station, at which time both occupants exited the vehicle. The passenger fled on foot down Warren Boulevard.² The driver also exited the vehicle, but remained at the scene. The driver matched the description of the offender provided to Officer Dailing and was wearing a three-quarter length black leather jacket, but no hat. Officer Dailing identified the driver in court as defendant. According to Officer Dailing, defendant would not remain still and was in constant motion, causing her to fear for her safety. Officer Dailing described defendant as pacing back and forth and waving his arms around. She instructed defendant to place his hands on the vehicle, which he would do, but then remove them. Officer Dailing did not know what might be under defendant's jacket. She drew her weapon for her own safety and requested defendant to remain still and keep his hands where she could observe them. Officer Dailing then radioed for assistance from other officers.

¶ 14 Another police officer arrived at the scene approximately three minutes later, whereupon Officer Dailing handcuffed defendant and placed him in the rear of her police vehicle. Officer

² Officer Dailing later issued a radio dispatch regarding the passenger, an African-American male approximately five feet, eight inches tall. Officer Dailing did not know whether the passenger was ever located by the police.

Dailing testified she handcuffed defendant for her safety, noting he was a large man. Officer Dailing proceeded to the silver sport utility vehicle, where she observed two metal pipes resting between the driver and passenger seats. The pipes, "silver-grayish" in color and approximately two feet long, were easily viewed through the open door of the sport utility vehicle. Defendant was then transported to the 13th District police station.

¶ 15 Officer Kotlarz testified that on October 21, 2009, she learned of the incident by police radio, but was not assigned to the case at that time. At approximately 3:30 or 4 p.m., Officer Kotlarz went to her health club, the West Loop Gym, to exercise. While at the health club, Officer Kotlarz overheard an employee, Valentino Ortiz (Ortiz), mention there had been police vehicles nearby earlier, and that he observed a vehicle outside the health club on Carpenter Street at approximately 10:30 to 11 a.m. When Officer Kotlarz mentioned there had been a robbery in the area, Ortiz stated that he had observed an African-American male jump out of the vehicle and run, as though the individual was abandoning a stolen vehicle. Ortiz informed Officer Kotlarz he initially observed the vehicle through his office window, but exited the health club to further observe the vehicle and noticed another individual remained in the vehicle. Ortiz further noticed the engine was running. Ortiz then described the vehicle, as well as the vehicle's license plate and bumper sticker, to Officer Kotlarz. Ortiz also described the male who ran as wearing a leather jacket, but provided no further description. Officer Kotlarz did not recall whether Ortiz mentioned any information about a crime being committed. Officer Kotlarz telephoned an Officer Via³ to convey Ortiz's information to her police station.

¶ 16 On October 22, 2009, Officer Kotlarz had a conversation about Ortiz's information with Officer Dailing. Subsequently, at approximately 9:20 a.m., Officer Kotlarz received a telephone

³ Officer Via's first name does not appear in the transcript of proceedings.

call from Ortiz stating that the vehicle he had described had just driven past the health club on Kinzie Street. Ortiz also stated two males were inside the vehicle. Officer Kotlarz used her computer to transmit this information to the police dispatcher, then proceeded to patrol the area, but did not locate the vehicle. At approximately 10 to 10:30 a.m., Officer Kotlarz learned the vehicle had been located at the McDonald's restaurant near the corner of Western Avenue and Warren Boulevard.

¶ 17 At the conclusion of the hearing, the circuit court denied defendant's motion to quash his arrest and to suppress evidence. The circuit court, examining the totality of the circumstances, including the descriptions of the offender and the suspicious vehicle, determined that the credible evidence established the police had engaged in a valid investigative stop, pursuant to the United States Supreme Court decision in *Terry v. Ohio*, 392 U.S. 1 (1968). The circuit court ruled that defendant was not under arrest when he was handcuffed and placed in the rear of the police vehicle. The court noted defendant was acting nervously and suspiciously during the investigative stop. The court also concluded the police had probable cause to arrest defendant when Officer Dailing observed the metal pipes inside the sport utility vehicle.

¶ 18 Trial

¶ 19 On April 19, 2012, defendant waived his right to a jury trial and proceeded to a bench trial, which spanned several nonconsecutive dates through September 28, 2012. At trial, the State's evidence was substantially similar to the evidence presented at the hearing on the motion to quash arrest and suppress evidence. Lester testified to the circumstances of the incident. Lester also identified defendant's jacket and pipe from photographs and identified defendant in a police lineup. Lester further identified defendant in court. Wagner⁴ testified that she witnessed

⁴ Wagner testified under the name of Jessica Wagner Stolze at trial.

the incident and telephoned 911 for emergency services. Wagner also identified defendant's jacket and pipe from photographs, but acknowledged she did not identify defendant in a police lineup. Ortiz testified to his observations of the small, silver sport utility vehicle at the approximate time of the incident, the individual who ran from that vehicle, and the person who remained in the vehicle. Officer Dailing testified regarding the investigation of the incident leading to defendant's arrest. Wendy Gruhl, a forensic biologist employed by the Illinois State Police, testified that she collected DNA samples from the pipes and defendant's jacket, as well as from buccal swabs taken from defendant and Lester. Ruben Ramos, a forensic scientist employed by the Illinois State Police, testified there was insufficient material in the sample collected from the pipe to generate a DNA profile, but the sample collected from defendant's jacket generated a DNA profile that matched Lester's DNA profile.

¶ 20 Defendant testified that on October 21, 2009, at 9:30 or 10 a.m., he was seeking employment at the Randolph Market, and returned home approximately one hour later. Defendant also testified that on October 22, 2009, he was at the McDonald's restaurant seeking to speak to a truck driver about a job and drove his vehicle⁵ across the street to the gas station in order to provide space for the truck driver to maneuver in the crowded parking lot. Defendant further testified that he was confronted by the police at the gas station after purchasing a quart of juice and a granola bar. Defendant denied observing Lester prior to the trial or being involved in any altercation with Lester.

¶ 21 Defendant acknowledged that on October 21, 2009, he parked his vehicle in front of a health club, and exited to proceed to his destination, but returned when he noticed there was parking at his destination. Defendant admitted he wore his black leather jacket on both dates, but

⁵ Defendant testified the vehicle he drove belonged to his fiancée.

denied that he wore a skull cap or had a passenger in the vehicle on either date. Defendant additionally testified that the objects in the vehicle were not pipes but parts of a hydraulic jack handler and extension.

¶ 22 At the conclusion of the evidence, including the introduction of defendant's prior convictions (for felony retail theft, and manufacture and delivery of a controlled substance), the trial judge indicated that he had no doubt that defendant was responsible for a "particularly violent armed robbery with the use of a pipe." The trial judge, however, was not convinced beyond a reasonable doubt that defendant intended to kill Lester. Accordingly, the trial judge acquitted defendant of the charge of attempted first degree murder, but found defendant guilty of the remaining charges of armed robbery with a weapon other than a firearm, and three counts of aggravated battery.

¶ 23 On October 26, 2012, defendant filed a posttrial motion for a new trial, which alleged in relevant part that the trial court erred in denying the motion to quash his arrest and suppress evidence. On November 30, 2012, the trial court denied defendant's posttrial motion and proceeded to a sentencing hearing. After hearing evidence in aggravation and mitigation of the offense, the trial court merged the aggravated battery counts into the armed robbery count and sentenced defendant to 15 years in the Illinois Department of Corrections for armed robbery with a dangerous weapon other than a firearm, with 3 years of mandatory supervised release. On December 24, 2012, defendant filed a motion to reconsider his sentence. On January 17, 2013, the trial court denied defendant's motion to reconsider. Later on that date, defendant filed a timely notice of appeal to this court.

¶ 24

ANALYSIS

¶ 25 The sole issue defendant raises on appeal is whether the circuit court erred in denying his

motion to quash arrest and suppress evidence. "In reviewing a ruling on a motion to quash arrest and suppress evidence, we apply a two-part standard of review." *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.*

¶ 26 Defendant asserts the police lacked probable cause to arrest him. The fourth amendment to the United States Constitution and the Illinois Constitution of 1970 guarantee the right of individuals to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6; *People v. Colyar*, 2013 IL 111835, ¶ 31. Reasonableness under the fourth amendment generally requires a warrant supported by probable cause. *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001). The Code of Criminal Procedure of 1963 also allows a warrantless arrest when a peace officer "has reasonable grounds to believe that the person is committing or has committed an offense." 725 ILCS 5/107-2(c) (West 2008). "As used in the statute, 'reasonable grounds' is considered to have the same substantive meaning as 'probable cause.'" *People v. Tisler*, 103 Ill. 2d 226, 236-37 (1984). To determine whether probable cause for arrest exists, the trial court must decide whether a reasonable and prudent person, having the knowledge possessed by the officer at the time of the arrest, would believe the defendant committed the offense. See *id.* at 237.

¶ 27 The circuit court, however, initially determined that the police had engaged in a valid investigative stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). "Under *Terry*, a police officer may briefly stop a person for temporary questioning if the officer has knowledge of sufficient articulable facts at the time of the encounter to create a reasonable suspicion that the person in question has committed or is about to commit a crime." *People v. Lee*, 214 Ill. 2d 476, 487

(2005). "Whether an investigatory stop is reasonable is determined by an objective standard [citation], and the facts are viewed from the perspective of a reasonable officer at the time of the stop [citation]." *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 14.

¶ 28 "Reasonable suspicion is a less exacting standard than probable cause." *People v. Ward*, 371 Ill. App. 3d 382, 412 (2007). "The facts supporting the officer's suspicions need not meet probable cause requirements, but they must justify more than a mere hunch." *People v. Thomas*, 198 Ill. 2d 103, 110 (2001). The decision to make an investigatory stop is based on the totality of the circumstances. *Sanders*, 2013 IL App (1st) 102696, ¶ 14. For example, "[a] *Terry* stop may be initiated based upon information received from a member of the public." *Id.* ¶ 15 (citing *People v. Nitz*, 371 Ill. App. 3d 747, 751 (2007)). "Ordinarily information from a 'concerned citizen' is considered more credible than information from a paid informant or a person who provided the information for personal gain." *Sanders*, 2013 IL App (1st) 102696, ¶ 15. In addition, "[u]nder the 'collective- or imputed-knowledge' doctrine, information known to all of the police officers acting in concert can be examined when determining whether the officer initiating the stop had reasonable suspicion to justify a *Terry* stop." *People v. Ewing*, 377 Ill. App. 3d 585, 593 (2007) (citing *People v. Fenner*, 191 Ill. App. 3d 801, 806 (1989)). Nervous, evasive behavior, bizarre conduct, and flight by individuals in the face of a potential encounter with police are also pertinent factors in determining reasonable suspicion. See *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000); *Thomas*, 198 Ill. 2d at 113; *People v. Jackson*, 2012 IL App (1st) 103300, ¶ 42. "We apply a *de novo* standard of review to determine the existence of a 'reasonable suspicion' supporting a *Terry* stop." *People v. Magallanes*, 409 Ill. App. 3d 720, 725 (2011).

¶ 29 In this case, the circuit court concluded that the credible evidence established that a *Terry*

stop occurred. The transcript of proceedings indicates the circuit court relied upon the police officers' version of the events leading to defendant's arrest. Officer Dailing was informed by Lester and Wagner that Lester was robbed and beaten by an African-American male, approximately six feet tall and weighing approximately 200 pounds, wearing a three-quarter length black leather jacket and a dark knit cap over his short black hair. Officer Kotlarz was informed by Ortiz, a concerned citizen known to her, that at approximately the same time as the incident, he had observed a person of similar appearance and wardrobe in front of a health club near the incident. Ortiz observed this individual jump out of and run from a small, silver sport utility vehicle with a Florida license plate including the partial number "H58." The vehicle also had a red and black bumper sticker with an anti-violence message on the body of the vehicle to the left of the license plate.

¶ 30 The following day, at approximately 9:20 a.m., Ortiz informed the police that the same sport utility vehicle was again cruising near the health club. At approximately 10:45 a.m., Officer Dailing observed the sport utility vehicle at a McDonald's restaurant located at 23 North Western Avenue. At the moment Officer Dailing appeared on the scene, the vehicle exited the drive-thru lane of the restaurant before receiving any food. The vehicle crossed the street to a gas station, whereupon both occupants exited the vehicle. The passenger fled immediately. The driver, who matched the description of the offender provided to Officer Dailing and was wearing a three-quarter length black leather jacket, behaved in a nervous and erratic manner, refusing to comply with Officer Dailing's requests. Given the totality of the information provided to the police from a concerned citizen, as well as the apparently nervous and evasive behavior displayed by defendant and his passenger, we conclude Officer Dailing could reasonably believe defendant was the person who robbed Lester, justifying an investigative stop pursuant to *Terry*.

See *Wardlow*, 528 U.S. at 124; *Thomas*, 198 Ill. 2d at 113; *Sanders*, 2013 IL App (1st) 102696, ¶ 15; *Ewing*, 377 Ill. App. 3d at 593.

¶ 31 Defendant relies upon cases that are distinguishable from this appeal. *In re Woods*, 20 Ill. App. 3d 641, 646-47 (1974), involved a respondent arrested because he was in the vicinity of the offense (which was also the vicinity of his home), based on a general clothing description. Similarly, in *People v. Washington*, 269 Ill. App. 3d 862, 867 (1995), no evidence of the offender's appearance had been introduced. In this case, both defendant and the sport utility vehicle were described with more detail, and there was the immediate evidence of defendant's erratic behavior.

¶ 32 Defendant further contends, however, that he was arrested without a warrant when Officer Dailing pointed her weapon at him, radioed for backup, handcuffed him and placed him in the rear of her police vehicle. "Although no one factor is dispositive in making the determination of whether an arrest occurred, the court can consider factors including: (1) the time, place, length, mood, and mode of the encounter between the defendant and the police; (2) the number of police officers present; (3) any indicia of formal arrest or restraint, such as the use of handcuffs or drawing of guns; (4) the intention of the officers; (5) the subjective belief or understanding of the defendant; (6) whether the defendant was told he could refuse to accompany the police; (7) whether the defendant was transported in a police car; (8) whether the defendant was told he was free to leave; (9) whether the defendant was told he was under arrest; and (10) the language used by officers." *People v. Gomez*, 2011 IL App (1st) 092185, ¶ 59. "[T]here is no bright-line test for distinguishing between a lawful *Terry* stop and an illegal arrest." *People v. Daniel*, 2013 IL App (1st) 111876, ¶ 38 (quoting *People v. Arnold*, 394 Ill. App. 3d 63, 70 (2009)). "[A] restriction of movement that is brief may amount to an arrest

rather than a *Terry* stop if it is accompanied by use of force usually associated with an arrest, unless such use of force was reasonable in light of the circumstances surrounding the stop.' "

Daniel, 2013 IL App (1st) 111876, ¶ 38 (quoting *People v. Johnson*, 408 Ill. App. 3d 107, 113 (2010)).

¶ 33 Defendant correctly notes that " '[a]n arrest occurs when the circumstances are such that a reasonable person, innocent of any crime, would conclude that he was not free to leave.' "

People v. Lopez, 229 Ill. 2d 322, 346 (2008) (quoting *In re D.G.*, 144 Ill. 2d 404, 409 (1991)).

On the other hand, "the law provides that, during the course of a legitimate investigative stop, a person 'is no more free to leave than if he were placed under a full arrest.'" *People v. Ross*, 317 Ill. App. 3d 26, 32 (2000) (quoting *People v. Paskins*, 154 Ill. App. 3d 417, 422 (1987)). "The rationale for allowing such restraint during an investigatory stop recognizes the paradox that would occur if the police had the authority to detain a person pursuant to a stop yet were denied the use of force that might be necessary to effectuate the detention." *Ross*, 317 Ill. App. 3d at 32 (citing *People v. Walters*, 256 Ill. App. 3d 231, 237 (1994)). Accordingly, the status or nature of an investigatory stop is not necessarily affected by the drawing of a weapon by the police officer, the use of handcuffs, or the placement of a person in a police vehicle. See *Ross*, 317 Ill. App. 3d at 32 (and cases cited therein); see also *People v. Colyar*, 2013 IL 111835, ¶ 46 (handcuffing does not automatically transform a *Terry* stop into an illegal arrest). Indeed, there are situations in which concerns for the safety of the police officer or the public justify handcuffing the detainee for the brief duration of an investigatory stop. *Daniel*, 2013 IL App (1st) 111876, ¶ 39; *Arnold*, 394 Ill. App. 3d at 71. In short, "when arrest-like measures *** are employed, they must be 'reasonable in light of the circumstances that prompted the stop or that developed during its course.'" *Nitz*, 371 Ill. App. 3d at 754 (quoting 4 W. LaFave, *Search & Seizure* § 9.2(d), at 304

(4th ed. 2004)). Moreover, "[r]egardless of the initial restraint of the person's movement, whether a stop becomes an arrest is determined by the length of time the person is detained and the scope of the investigation that follows the initial stop." *Ross*, 317 Ill. App. 3d at 32 (2000).

¶ 34 For example, in *Ross*, the police officer was alone when he stopped the defendant. *Id.* Although the police officer was not sure whether the defendant was armed, he was aware that the intruder he was seeking had committed a home invasion, violently choking and robbing the victim. *Id.* The intruder was described as 6 feet 2 inches tall and weighing 220 pounds. *Id.* The *Ross* court determined a reasonably prudent officer in those circumstances would be warranted in the belief that his safety or that of others was in danger. *Id.* Accordingly, the *Ross* court concluded that handcuffing the defendant at gunpoint, placing him in a police vehicle, and briefly transporting the defendant for a "showup" identification did not convert the *Terry* stop in that case into an illegal arrest. See *id.* at 30, 32.

¶ 35 In this case, Officer Dailing was initially alone when she stopped a vehicle containing defendant and a passenger. The passenger immediately fled, posing a possible risk to Officer Dailing or the public. The potential danger to the officer and the public may justify more arrest-like measures during an investigative stop. See *Daniel*, 2013 IL App (1st) 111876, ¶ 39; *Arnold*, 394 Ill. App. 3d at 71. Officer Dailing did not know whether defendant might be armed, but she knew the offender had been involved in a violent robbery. Defendant matched the description of the offender, who was described as six feet tall and weighing approximately 200 pounds. During the course of the *Terry* stop, defendant behaved erratically, refusing to stand still or keep his hands on the vehicle, which were additional factors suggesting Officer Dailing had a reasonable concern for her safety. See *Daniel*, 2013 IL App (1st) 111876, ¶ 45 (defendant's furtive movements and refusal to comply with police directions in a dangerous area warranted use of

handcuffs in a *Terry* stop); *Jackson*, 2012 IL App (1st) 103300, ¶¶ 49-51 (defendant "making all kinds of movements" and refusing to keep his hands on the vehicle in a high-crime area gave rise to reasonable safety concern). Accordingly, given the totality of the circumstances, it was reasonable for Officer Dailing to briefly detain defendant at gunpoint until other officers arrived on the scene.

¶ 36 Once the police backup arrived, the number of officers outnumbered defendant, but the passenger remained at large. Therefore, it was also reasonable for the police to handcuff defendant and place him in the rear of a police vehicle for the brief period of time during which Officer Dailing walked over to the sport utility vehicle, where she observed pipes between the driver and passenger seat, providing probable cause to arrest defendant. See *Ross*, 317 Ill. App. 3d at 32. The time and scope of the investigation were not significantly greater than the initial detention. Thus, the circuit court did not err in denying defendant's motion to quash his arrest and suppress evidence.

¶ 37

CONCLUSION

¶ 38 For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 39 Affirmed.