2015 IL App (1st) 132211-U

SECOND DIVISION
June 2, 2015

No. 1-13-2211

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. 12 CR 11032
	)	
NOEL DELEON,	)	Honorable
	)	William T. O'Brien,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

O R D E R

¶ 1 *Held*: Denial of defendant's motion to quash arrest and suppress evidence affirmed over his claim that police officers lacked a reasonable, articulable basis to support a *Terry* stop.

¶ 2 Following a bench trial, Noel DeLeon, the defendant, was found guilty of one count of burglary and one count of possession of burglary tools, and sentenced to 10 years' imprisonment. On appeal, defendant contends that the trial court erred in denying his motion to quash arrest and suppress evidence.

¶ 3 The record shows that defendant was charged with burglary and possession of burglary tools in connection with an incident that took place in the early morning hours of June 4, 2012, on the north side of Chicago. Prior to trial, defendant filed a motion to quash arrest and suppress evidence contending that the officers did not have a reasonable, articulable basis to stop him.

¶ 4 At the hearing on that motion, Chicago police officer Escalante testified that about 2:30 a.m. on June 4, 2012, he and his partner were on patrol when they received a radio call of criminal damage in progress in the area of Touhy and Hamilton. The officers proceeded to that location in their squad car where they met the individual who called police. The caller told them that there was a male breaking into cars in the parking lot behind the building and that the officers should drive around to the parking lot because the offender was still there.

¶ 5 The officers drove down an alley where they observed defendant exiting the parking lot on a bicycle. Officer Escalante testified that he did not see anyone else in the alley or the parking lot, and acknowledged that the only physical description they had of the person breaking into cars was that he was male.

¶ 6 Officer Escalante, who was driving, followed defendant in the car and shouted "hey" when he caught up to him. Defendant did not stop pedaling, however, and the officers continued to follow defendant until they caught up to him a second time. Officer Escalante pulled the car up parallel to defendant, and this time, defendant stopped and straddled his bicycle. When Officer Escalante asked him what he was doing, defendant responded "I'm caught up" and "You got me." Officer Escalante asked defendant what he did and he responded that he broke into a vehicle and took a GPS out of it. Officer Escalante then arrested defendant and found two GPS devices in his backpack, and screwdrivers and flashlights on his person.

¶ 7 The trial court denied defendant's motion to quash arrest and suppress evidence stating that the officers had a right to be in that location, they were investigating a crime, and they had "enough reasonable articulable suspicion" to stop defendant. The court thought that the stop did not take place until defendant actually stopped pedaling his bike, and stated that he had been caught. The court found that what the officers saw in the alley and the information they received from the caller provided a reasonable, articulable suspicion to at least stop defendant and conduct an investigation. Given these circumstances, the court concluded that defendant's statements were sufficient to give the officers probable cause to arrest and search him.

¶ 8 At the ensuing bench trial, the parties stipulated to the testimony given by Officer Escalante at the suppression hearing. Officer Escalante's partner, Officer Sergio Martinez, then testified to the same sequence of events leading to defendant's arrest. He further stated that after arresting defendant, they recovered two GPS devices, a flashlight, and a screwdriver from him. The officers then determined the location of the owner of the GPS devices and proceeded to 2170 West Touhy, where they went into the parking lot they had seen defendant exit. There, they observed a vehicle with a broken window, ran the license plates on it, and learned that it belonged to Amaan Zia, who lived in a nearby apartment. The officers visited Zia in his apartment and showed him the GPS devices they recovered from defendant. Zia identified the GPS devices as ones that had been inside his car, and accompanied the officers to the parking lot, where he identified his car as the one with the broken window.

¶ 9 Zia testified at trial that when he parked his car in the lot that evening, he had two GPS devices inside his car, and his window was not broken. He further stated the he did not give defendant permission to enter his car and take the devices.

¶ 10 Following closing arguments, the court found defendant guilty of burglary and possession of burglary tools and sentenced him to 10 years' imprisonment. On appeal, defendant contends that the trial court improperly denied his motion to quash arrest and suppress evidence because the officers improperly seized him when they did not have a reasonable articulable basis to believe he had committed an offense.

¶ 11 In reviewing a trial court's ruling on a motion to suppress evidence, this court reviews the court's findings of historical fact for clear error, giving due weight to any inferences drawn from those facts by the court. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). However, we review *de novo* the court's ultimate ruling as to whether suppression was warranted. *Luedemann*, 222 Ill. 2d at 542.

¶ 12 The fourth amendment to the United States Constitution guarantees the right of the people to be free from unreasonable searches and seizures. *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 13. Generally, a search is reasonable under the fourth amendment if a police officer obtains a warrant supported by probable cause. *Sanders*, 2013 IL App (1st) 102696, ¶ 13. However, in *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968), the Supreme Court recognized a limited exception to this requirement that permits a police officer, under appropriate circumstances, to conduct a brief, investigatory stop of a person if he can point to specific, articulable facts that reasonably warrant an intrusion. Under the *Terry* exception, an officer may briefly stop a person for temporary questioning if the officer reasonably believes that the person is committing, or has committed, a crime. *People v. Close*, 238 Ill. 2d 497, 505 (2010), (codified in 725 ILCS 5/107-14 (West 2014)).

¶ 13 To justify an investigatory stop, the police officer must be able to point to specific, articulable facts, which, taken with rational inferences therefrom, reasonably warrant the intrusion. *People v. Thomas*, 198 Ill. 2d 103, 109 (2001), citing *Terry*, 392 U.S. at 20-21. In determining whether a stop is reasonable, an objective standard is used in which the court considers the totality of the facts and circumstances from the perspective of a reasonable officer at the time of the stop. *Sanders*, 2013 IL App (1st) 102696, ¶ 14, and cases cited therein. Viewed as a whole, the circumstances must lead to the conclusion that the situation is so far removed from the ordinary, that any reasonable police officer would be expected to act, rather than observe the situation further. *People v. McGowan*, 69 Ill. 2d 73, 78 (1977).

¶ 14 The evidence in this case shows that Officer Escalante and his partner responded to a radio call reporting criminal damage in progress at 2:30 a.m. on the north side of Chicago. Upon arriving at the scene, they met the person who called police who told them that a male was breaking into cars in the parking lot behind the apartment building, and that he was still there. The officers immediately drove down the alley and saw defendant pedaling his bicycle out of the parking lot, and did not see anyone else in the area. Officer Escalante shouted "hey" to defendant, but defendant did not stop until Officer Escalante pulled the squad car up parallel to him. Officer Escalante then asked defendant what he was doing and defendant responded that he was "caught up," and confessed that he broke into a car and stole a GPS device. Further investigation confirmed his statement.

¶ 15 An investigatory stop may be based on information received from members of the public (*People v. Nitz*, 371 Ill. App. 3d 747, 751 (2007)), that reasonably suggests that a person was involved in criminal activity (*People v. Shafer*, 372 Ill. App. 3d 1044, 1049 (2007)), and here,

the officers acted on such a report. Given the early morning hour, the fact that defendant was leaving the area of the reported criminal activity, and that no one else was seen in the area, the officers had the minimum articulable suspicion necessary to warrant an inquiry. *People v. Rivera*, 272 Ill. App. 3d 502, 506 (1995). Thus, the court did not err when it denied defendant's motion to quash arrest and suppress evidence. *Sanders*, 2013 IL App (1st) 13402696, ¶¶ 31-32.

¶ 16 Defendant contends, however, that the officers did not have a reasonable, articulable suspicion sufficient to satisfy the *Terry* standard because the officers had no description of the offender, other than the fact that he was a male. In support of his contention, defendant cites *People v. Washington*, 269 Ill. App. 3d 862 (1995) for the proposition that officers must have more than a "vague and incomplete" description of the offender to meet the *Terry* standard. Defendant maintains that the description found insufficient in *Washington* was even more specific than the information the officers had here, which was merely that a male offender was breaking into cars in the parking lot behind the apartment building. In *Washington*, the court found that the description of a robber wearing a blue coat and a black hat and fleeing westbound into a park was not sufficient to support a stop of defendant, or provide reasonable, articulable suspicion to stop defendant. *Id*. at 866.

¶ 17 Although the officers did not have a particularized description of the offender in this case, they were apprised of his exact location from the caller who told the officers that he was still in the parking lot. Given the hour of the day (2:30 a.m.), the fact the officers saw defendant emerge from the parking lot identified by the caller, and the fact no one else was seen in or near the lot, it was reasonable for the officers to conclude the defendant was engaged in criminal activity and to inquire further into the situation. *Sanders*, 2013 IL App (1st) 102696, ¶ 31.

Reasonable suspicion can arise based on an individual's proximity to the scene of a recently reported crime (*People v. Hubbard*, 341 Ill. App. 3d 911, 918 (2005)), and here we find that the stop was reasonable given the information provided to the officers by the caller, defendant's proximity to the scene of the crime, and the circumstances that confronted the officers. *McGowan*, 69 Ill. 2d at 79.

¶ 18 Accordingly, we find that the court did not err when it denied defendant's motion to quash arrest and suppress evidence, and we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.