2015 IL App (1st) 133298-U

FOURTH DIVISION
December 10, 2015

No. 1-13-3298

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. 11 CR 1754
	)	
JEREMIAH DIXON,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant forfeited for review his claim that the trial court erred in denying his motion to quash arrest and suppress evidence; trial counsel not ineffective for failing to preserve this claim; judgment affirmed.

¶ 2 Following a bench trial, defendant Jeremiah Dixon was convicted of armed robbery and sentenced to 23 years' imprisonment. On appeal, he contends that the trial court erred in denying his motion to quash arrest and suppress evidence because police violated his fourth amendment

rights (U.S. Const., amend. IV) when they stopped him two days after the armed robbery they were investigating and immediately patted him down without articulable facts that he was presently armed and dangerous.

¶ 3 Defendant and codefendant Perry Walker, who is not a party to this appeal, were charged with armed robbery, and aggravated unlawful restraint. Defendant was also charged with multiple counts of aggravated unlawful use of a weapon based on the robbery of the victim Anthony Demias on the morning of January 10, 2011, near 1951 West Birchwood Avenue in Chicago.

¶ 4 Defendant did not file a written motion to quash arrest and suppress evidence. However, at a status call on codefendant's motion to quash arrest and suppress evidence, defendant was allowed to join in that motion. At the hearing on the motion, defense counsel requested that the court suppress the gun found on defendant during the pat-down conducted two days after the alleged incident. She argued that defendant was simply walking down the street at 11:43 a.m. and was not doing anything that could even remotely be considered a crime or that he was about to commit a crime, and that police recovered a gun on him without any probable cause.

¶ 5 Chicago police officer Johnny Santiago testified that he was part of a robbery/burglary team, and on January 12, 2011, he received information that an armed robbery had taken place two days before in the area of 1951 West Birchwood Avenue at 10:30 a.m. He learned that a stainless steel handgun was used in the robbery, and that there were two offenders. One was described as a black male, 18 to 20 years of age, weighing 140 to 160 pounds, and wearing a black jacket, black pants and knit cap. The second offender was described as a black male, wearing a hooded sweatshirt with black jacket, which had the word "Chicago" written across the

back. The second individual was also described as 18 to 20 years of age, approximately 5'2" tall and weighing between 160 and 180 pounds.

¶ 6 Officer Santiago further testified that at 11:43 a.m. on January 12, 2011, he and his partner Officer Quadri were driving in a marked vehicle and canvassing the area where the robbery occurred for possible leads. While driving down the 1900 block of Birchwood Avenue, they noticed defendant and codefendant walking in the middle of the street looking into several cars. This raised Officer Santiago's suspicion because auto burglars look inside cars to see if there is anything inside worth breaking into the car for. The officers also noticed that codefendant was wearing a jacket with "Chicago" on the back of it, and defendant was wearing a knit cap, and that the two men matched the general descriptions of the offenders given by the victim of the armed robbery. The officers then pulled up next to defendant and codefendant, called them over to their vehicle, and exited.

¶ 7 Officer Santiago testified that he approached defendant, who was leaning against a car, so he could not tell if there was a bulge in his pants. Officer Santiago testified that because the case they were investigating was an armed robbery, and the men fit the description of the two offenders involved in that robbery, he conducted a protective pat-down of defendant for his safety and that of Officer Quadri. He recovered a handgun with a silver-finish from defendant's waistband, but found no contraband on codefendant. The officers then took the two men into custody and brought them to the police station.

¶ 8 Officer Quadri testified consistently to the events and encounter with defendant and codefendant provided by Officer Santiago. He also stated that he and Officer Santiago observed defendant and codefendant walking down the street, peering into cars, which raised their suspicion of possible criminal activity.

¶ 9 At the close of evidence and argument, the court denied defendant's motion to quash and suppress. In doing so, the court stated that the officers were in the area of the 1900 block of Birchwood Avenue conducting a follow-up investigation of an armed robbery that happened two days earlier. The court noted that the actions of defendant and codefendant looking into vehicles on the street was "suspicious activity," and thus concluded that the initial stop was proper pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). The court further noted that the officers knew that the men fit the general physical descriptions of the armed robbery offenders, that they were in the same area where the armed robbery took place, about the same time of day, and that a gun was used in the armed robbery. Based on the officers' knowledge that a gun was used in that armed robbery, they had reason to fear for their safety while in the presence of codefendant and defendant and were thus justified in conducting a pat-down.

¶ 10 At the severed, but simultaneous, bench trial that followed, the victim, Anthony Demias, testified that at 10:30 a.m. on January 10, 2011, he was in the area of 1951 West Birchwood Avenue when one tall man, defendant, and a shorter man, codefendant, approached him. Defendant placed a gun to his head, and ripped off the gold chain around his neck. Defendant was wearing either a blue or black jacket, and a hat. Codefendant was wearing a jacket with "Chicago" written on the back of it, and removed a wallet from Demias' pocket. Defendant then told the victim to leave, but the victim had not taken 10 steps when defendant returned, again pointed the gun at his head, asked for his phone, and found $300 in his pocket. Defendant and codefendant then fled. The victim immediately went to the police station to report the incident. Two days later, he was called to the station to view a lineup, but he was unable to identify anyone because he was really scared. While at the police station, he was also shown a gun which

he said looked like the one defendant had used, but he was not sure because the gun was pressed against his forehead during the robbery.

¶ 11 Officer Santiago testified consistently with his suppression hearing testimony. He further testified that he recovered a stainless steel handgun from defendant, which had one round in its chamber. He noted in his police report that codefendant was 5'4" tall and defendant was 5'9" tall.

¶ 12 Detective Alonso Jackson testified that on January 12, 2011, he interviewed defendant with Officer Quadri present. Defendant told them that on January 10, 2011, the victim came up to him asking to buy some marijuana, and pulled out $13. Defendant then pulled out his gun, and told the victim to give him his money and codefendant grabbed his chain and took his wallet from his pants pocket. Detective Jackson further testified that he conducted lineups with defendant and codefendant, but that the victim was unable to identify them.

¶ 13 Detective Jackson then called Assistant State's Attorney (ASA) Krystyn Dilillo, who conducted a further interview of defendant with Detective Jackson present. Defendant provided a written statement, which was consistent with his oral statement. The detective also testified that defendant admitted that after he robbed the victim, he fled to the nearby train station, but codefendant told him to go back for the victim's phone so he could not call police. Defendant went back, but could not find a phone on the victim, then ran back to the train station. They sold the gold chain at a jewelry store at 71st Street and Clyde Avenue for $40, and split the money. Defendant further stated that the gun he used during the robbery was the same gun that police found on him.

¶ 14 In announcing its determination that defendant was guilty of armed robbery, the court stated that it found the victim, the detective, and Officer Santiago credible. The court further noted that police found defendant and codefendant in the same vicinity at the same time of day

of the robbery, albeit two days later, and codefendant was wearing the same jacket the victim described one of the offenders wearing during the robbery, and was considerably shorter than defendant. In addition, defendant identified the victim in his statement, admitted that police recovered from him the same gun he used in the robbery, and corroborated pertinent parts of the victim's testimony.

¶ 15 On appeal, defendant contends that the court erred in denying his motion to quash arrest and suppress evidence, and that the gun and his statement must be suppressed as fruits of the illegal search. He maintains that police violated his fourth amendment rights (U.S. Const., amend. IV) when they stopped him two days after the robbery and immediately patted him down without any articulable facts that he was presently armed and dangerous.

¶ 16 As an initial matter, defendant acknowledges that he failed to preserve the issue for review because counsel did not raise it in his post-trial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). He contends, however, that the issue can be reviewed for plain error under both prongs of the test.

¶ 17 The plain error doctrine is a narrow and limited exception to the general waiver rule allowing a reviewing court to consider a forfeited error where the evidence was closely balanced or where the error was so egregious that defendant was deprived a substantial right and thus a fair trial. *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). The first step in plain error review is to determine whether any error occurred. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009).

¶ 18 The fourth amendment of the United States Constitution guarantees the right of the people against unreasonable searches and seizures. U.S. Const., amend. IV. Under a limited exception to the warrant requirement, a police officer may lawfully stop a person when he has reasonable, articulable suspicion that the person has committed, or is about to commit, a crime.

Terry v. Ohio, 392 U.S. 1, 21-22 (1968). The determination of reasonable suspicion must be based on commonsense judgment and inferences about human behavior, and requires taking the whole picture into account. *People v. Austin*, 365 Ill. App. 3d 496, 504-05 (2006). This includes the officer's experience and inferences the officer draws based on that experience. *People v. Holland*, 356 Ill. App. 3d 150, 155-56 (2005).

¶ 19 A police officer may also search for weapons during the stop if he reasonably believes that the person is armed and dangerous. *People v. Sorenson*, 196 Ill. 2d 425, 433 (2001). In order to conduct such a search, the officer need not be completely certain that the individual is armed; rather, he must simply have a reasonable fear for his safety or that of others. *People v. DeLuna*, 334 Ill. App. 3d 1, 10 (2002). This evaluation is based upon the totality of the circumstances, and therefore, includes, as one factor, evidence of the officer's subjective feelings regarding his safety. *Id.* In analyzing this issue, we may also consider the trial evidence. *Id.* 11.

¶ 20 In this case, Officer Santiago testified that on January 12, 2011, he received information of an armed robbery that took place two days before in the area of 1951 West Birchwood Avenue around 10:30 a.m., and involved a handgun. He knew there were two offenders, one shorter in height than the other who was wearing a jacket with "Chicago" written on the back of it. At 11:43 a.m. that day, he and Officer Quadri saw defendant and codefendant, who matched the descriptions given, in the vicinity of where the armed robbery had taken place. The two men were walking in the middle of the street peering into several parked vehicles, raising the officers' reasonable, articulable suspicion that they were about to commit another crime, *i.e.*, burglarize the cars, which warranted the stop. *In re S.V.*, 326 Ill. App. 3d 678, 687-88 (2001). In addition, the facts known to the officers about the armed robbery, provided Officer Santiago with a

reasonable belief that defendant was armed and dangerous, and that the safety of the officers was at risk, thereby allowing a protective pat-down for weapons. *DeLuna*, 334 Ill. App. 3d at 10.

¶ 21 Defendant disagrees, contending that the police did not have a specific articulable reason to believe that he was *presently* armed where the incident they were investigating occurred two days before, where only a "generic" description of the offenders was given, and he was not wearing the same color jacket as the offender described, nor did he have a bulge in his pants. Defendant posits that codefendant, who had the jacket with "Chicago" written on it, was likely walking with someone other than him "days after the offense."

¶ 22 Although the armed robbery occurred two days before the encounter at bar, and the officers only had a general description of the offenders, the evidence showed that defendant and codefendant matched the descriptions given and caught the attention of the officers. In addition, they observed activity on the street suggesting that they were about to perpetuate another crime in the same vicinity and the same time of day as the armed robbery, provided the officers with reasonable articulable suspicion to justify the investigative stop of defendant, and to conduct a protective pat-down of his person based on the facts known to them. *In re S.V.*, 326 Ill. App. 3d at 687-88. Accordingly, we find no error by the court in denying defendant's motion to quash arrest and suppress evidence. *Lewis*, 234 Ill. 2d at 43.

¶ 23 Defendant, however, cites *People v. Porter*, 2014 IL App (3d) 120338, ¶¶13, 16, and *People v. Wells*, 403 Ill. App. 3d 849, 857-60 (2010), in support of his contention that the protective pat-down was not justified under *Terry*. He contends that if the grounds for justifying the frisk in *Porter* and *Wells* "were weak, the grounds in the instant case are nonexistent."

¶ 24 In *Porter*, 2014 IL App (3d) 120338, ¶16, the victim of a home invasion reported that the suspect had a cell phone but did not report any weapon. The officers saw defendant making

furtive movements, but he did not make any moves to reach inside his pockets when the officer grabbed him. *Id.* Defendant attempted to flee after the officer grabbed him, but the officer restrained him and searched him. *Id.* The officer testified that he conducted the pat-down for safety reasons, but did not articulate any reasons that would lead a reasonably prudent person to believe his safety was in danger. *Id*. Here, by contrast, the police articulated that they knew that one of the offenders involved in the robbery was *armed with a handgun*, and given the totality of the circumstances before them, the officers had reasonable, articulable suspicion to temporarily stop and frisk defendant. *In re S.V.*, 326 Ill. App. 3d at 687-88.

¶ 25 In *Wells*, 403 Ill. App. 3d at 850, police were called twice regarding defendant's harassment of the victim. Defendant was cooperative with police in all encounters, the officers did not observe a bulge in his clothing, he was not observed in an area known for gun arrests and was not leaving a notorious location. *Id.* 860. Thus, there was no basis to suspect the presence of weapons or a risk of attack. *Id.* 861. Here, by contrast, as noted above, the facts known to the police officers provided legal justification for the safety frisk of defendant which revealed the handgun. *In re S.V.*, 326 Ill. App. 3d at 687-88. Accordingly, there was no error in denying the motion to quash arrest and suppress evidence, and thus no plain error to excuse defendant's forfeiture of this issue. *Lewis*, 234 Ill. 2d at 43.

¶ 26 Notwithstanding, defendant also contends that trial counsel was ineffective for failing to preserve this issue for review. However, because we find no error, counsel's failure to preserve the issue was not objectively unreasonable nor did it prejudice defendant. *People v. Conley*, 306 Ill. App. 3d 1, 9 (1999). Accordingly, his ineffective assistance of counsel claim fails.

¶ 27 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.