

SECOND DIVISION
August 18, 2015

No. 1-13-3662

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 13 CR 648
)	
BRYAN SULLIVAN,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Liu concurred in the judgment.

O R D E R

¶ 1 **Held:** An unidentified individual's tip was sufficiently reliable to support a police officer's investigative stop and protective search, under *Terry v. Ohio*, 392 U.S. 1 (1968), where the individual flagged down the officer, indicated he had seen defendant with a gun, and was located less than a block from the location of the eventual stop.

¶ 2 Defendant Bryan Sullivan was charged by information with armed habitual criminal, aggravated unlawful use of a weapon, and unlawful use or possession of a weapon by a felon.

After a bench trial, defendant was found guilty of all charges and sentenced to seven years in

prison for the armed habitual criminal offense. On appeal, defendant contends that the trial court erred in denying his motion to quash arrest and suppress evidence because there were no specific and articulable facts to justify his stop and subsequent search pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). We affirm.

¶ 3 At the hearing on defendant's motion, Chicago police officer Hector Villanueva testified that he was driving in his marked police vehicle with his partner on December 17, 2012. A member of the public flagged the officers down and told them that he had observed a man drop a gun, pick it up, and return it to his pocket. He pointed to defendant walking a half-block away and described his clothing and jacket. After the brief discussion with the unnamed citizen, the officers drove up behind defendant who had both hands in his pockets. Both officers exited their vehicle and ordered him to stop. Villanueva told defendant that someone had indicated he had a weapon. Villanueva frisked defendant and found a .22 caliber revolver in his pocket. The officers arrested him.

¶ 4 The trial court denied defendant's motion.

¶ 5 At trial, Villanueva testified consistently with his earlier testimony. Chicago police officer Adam Bednarczyk testified that he drove defendant from the scene of the arrest to a police station. At the scene, defendant indicated that he had recently purchased the weapon from individuals known as "Chako" and "Light Bulb." In a later interview, defendant added that he had purchased the gun from the two men for protection. Following Bednarczyk's testimony, the State entered a certificate of defendant's prior felony convictions into evidence.

¶ 6 Defendant testified that he was walking home from a liquor store on December 17, 2012. As he walked, officers approached and stopped him. The officer frisked him, but found no weapon. They arrested him, but did not tell him it was due to a firearm until subsequent interviews.

¶ 7 The trial court found defendant guilty of all charges, and merged the various counts into the armed habitual criminal count. Defendant appeals.

¶ 8 Defendant does not challenge the sufficiency of the evidence presented at trial. He solely contends that the trial court erred in denying his motion to quash arrest and suppress the resulting evidence. He argues that the citizen's statements to officers and the fact that he had his hands in his pockets did not create a reasonable suspicion to justify the officers stop or frisk, particularly where the officers obtained no information regarding the citizen's identity. He also argues that the citizen's statement that defendant had dropped a gun, picked it up, and kept walking is too incredible to be believed. The State responds that the citizen's statements were sufficiently reliable to support a reasonable suspicion that defendant may be committing a crime.

¶ 9 We review the denial of a motion to quash arrest and suppress evidence *de novo*. *People v. Close*, 238 Ill. 2d 497, 504 (2010).

¶ 10 The fourth amendment to the United States Constitution and the Illinois Constitution of 1970 protects individuals from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. The essential purpose of these protections is to "impose a standard of reasonableness upon the exercise of discretion by law enforcement officers to safeguard the

privacy and security of individuals against arbitrary invasions.” *People v. McDonough*, 239 Ill. 2d 260, 266 (2010).

¶ 11 There are three distinct levels of police-individual encounters: full arrests, investigative stops, and consensual interactions without detention or coercion. *People v. Brown*, 2013 IL App (1st) 083158, ¶ 21. Neither party contests that the encounter at issue was an investigative stop. Investigative stops are governed by the rule set forth in *Terry v. Ohio*, 392 U.S. 1 (1968). See also *People v. Gherna*, 203 Ill. 2d 165, 177 (2003). A *Terry* stop is reasonable if an officer develops a reasonable suspicion, supported by "specific and articulable facts which, taken together with rational inferences from those facts" reasonably suggest that criminal activity has occurred or is about to occur. See *Terry*, 392 U.S. at 21; *Gherna*, 203 Ill. 2d at 177. The reasonableness of a stop is determined from the objective perspective of a reasonable officer in the given circumstances. *People v. Thomas*, 198 Ill. 2d 103, 109-10 (2001). The reviewing court must consider the totality of the circumstances in making its determination. *People v. Harris*, 2011 IL App (1st) 103382, ¶ 11. If "a reasonably prudent person in the circumstances would be warranted in the belief that his safety or that of others was in danger," an officer's decision to frisk a stopped individual does not violate constitutional rights. *People v. Flowers*, 179 Ill. 2d 257, 264 (1997), citing *Terry*, 392 U.S. at 27.

¶ 12 An officer's reasonable suspicion may be founded on the statements of a member of the public, if that "concerned citizen" is sufficiently reliable. *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 15. On appeal, a reviewing court must consider an individual's "veracity, reliability, and basis of knowledge" when examining a tip given to police. *People v. Sparks*, 315 Ill. App. 3d

786, 792 (2000). All tips require some verification or corroboration supporting the information received. *People v. Linley*, 388 Ill. App. 3d 747, 751 (2009). A tip's reliability is sufficiently supported when accompanied by "predictive information and readily observable details" subsequently confirmed by police." *Sanders*, 2013 IL App (1st) 102696, ¶ 15.

¶ 13 Defendant analogizes his case to *Florida v. J.L.*, 529 U.S. 266 (2000). In *J.L.* police officers received an anonymous call indicating that "a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." *Id.* at 268. Officers arrived at the bus stop and saw three black males, including the defendant who was wearing a plaid shirt. *Id.* One of the officers, based solely upon the anonymous tip, searched the defendant, and recovered a gun. *Id.* The Supreme Court determined that the anonymous tip did not contain the required indicia of reliability, and thus the *Terry* stop and frisk was unjustified. *Id.* at 272-74. The Court noted that "[a]ll the police had to go on *** was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information." *Id.* at 271. The Court differentiated an anonymous tip and one from an informant whose reputation is ascertainable and who can be held accountable for a fabricated tip. *Id.* at 270.

¶ 14 This court applied the Supreme Court's ruling in *J.L.* in *Sanders*, 2013 IL App (1st) 102696. In *Sanders*, a police officer was flagged down by a woman he did not know. *Id.*, ¶ 2. The woman informed him that she had seen a man driving with a machine gun in the back of his car. *Id.* She described the man, his car, and his direction of travel. *Id.* Two minutes later, the police officer stopped a man matching the description a mile away and found the weapon. *Id.*, ¶

3. This court distinguished *J.L.*, noting that the woman had "placed her anonymity at risk" by speaking with the police officer. *Id.*, ¶ 26. She had also explained the basis of her knowledge and accurately predicted the man's behavior by describing his direction of travel. *Id.* The court also reasoned that the woman's status as a "disinterested citizen informant suggested trustworthiness and undercut any negative implications regarding her reliability created by her unidentified status." *Id.*, ¶ 31. Viewing the totality of the circumstances, this court held that the woman's tip sufficiently supported the subsequent *Terry* stop. *Id.*

¶ 15 *People v. Miller*, 355 Ill. App. 3d 898 (2005), is also instructive. In *Miller*, two police officers were stopped by an unidentified man. *Id.* at 899. The man told the officers that he had seen an individual display a handgun at a street corner an eighth of a mile away, and gave a vague description of the individual. *Id.* at 899, 905. The officers drove to the named corner and found the defendant, who matched the given description. *Id.* at 899. They frisked him and recovered a gun. *Id.* This court found the tip to be reliable, because the tipster had stated the basis of his knowledge. *Id.* at 902. It also found the man to be readily distinguishable from the anonymous caller found in *J.L.* *Id.* While he was unidentified, the man was "identifiable," as the short distance between the tip and stop allowed officers to seek the tipster out if required. *Id.* at 903-04. Thus, this court concluded that the tip "included the requisite indicia of reliability." *Id.* at 904.

¶ 16 The facts of the present case are substantially similar to both *Sanders* and *Miller*, and dissimilar to *J.L.* Villaneuva testified that he spoke face to face with the unidentified individual. The man gave a basis for his knowledge; he saw defendant drop a gun and retrieve it. He gave

the officers a description of defendant. As in *Sanders*, the man was able to indicate defendant's direction of travel. As in *Miller*, he was just a short distance away from the subsequent *Terry* stop, allowing officers to seek him out if the tip turned out to be fabrication. Moreover, unlike the concerned citizens in *Sanders* and *Miller*, the man was able to specifically and instantly point defendant out to the police officers. The fact that defendant was in eyesight not only drastically decreased the chances that the officers would be mistaken as to the person indicated by the tipster, it also increased the ability of the officers to seek the tipster out if his information was false. The necessarily short time between the conversation with the individual and the subsequent stop of defendant made the informant's whereabouts much more traceable. See *In re A.V.*, 336 Ill. App. 3d 140, 144 (2002) (finding informants to be easily traceable where *Terry* stop occurred one minute after a tip). Therefore, like in *Sanders* and *Miller*, we find the unidentified citizen's tip in the present case bore sufficient indicia of reliability to support the *Terry* stop and resulting frisk of defendant.

¶ 17 Defendant also analogizes his case to *People v. Rhinehart*, 2011 IL App (1st) 100683, arguing that the unidentified man was akin to an anonymous informant. In *Rhinehart*, a woman flagged down a police officer and stated that a man on a certain block had a gun. *Id.*, ¶ 3. She gave a description of the man's outfit and the officer went to the address. *Id.* He observed the defendant, who matched the description of the individual with a gun. *Id.* The officer searched defendant and recovered a handgun. *Id.* The appellate court held that the tip was unreliable and could not support the ensuing frisk because the court could not determine, based on the record, whether the officer believed the informant. *Id.*, ¶ 15. The court further noted that the informant

did not indicate how she knew of the criminal activity or predict the defendant's future actions. *Id.* In reaching its determination that the tip was not sufficiently reliable as to justify a *Terry* stop, the court distinguished the decision in *Miller. Id.*, ¶19. It explained that the unidentified informant in *Miller* explained the basis of his knowledge and could have been found because he was only a short distance from the stop, while in *Rhinehart*, the record did not contain evidence indicating that the informant had seen the gun or establishing the distance between the tip and the *Terry* stop. *Id.* Because the present informant gave a basis for his knowledge and was located only a block from the *Terry* stop, we find *Rhinehart* is readily distinguishable.

¶ 18 Finally, defendant also argues that the individual's tip was incredible, asserting that it is reminiscent of a "dropsy" case. A so called dropsy case has been described as one where "a police officer, to avoid the exclusion of evidence on fourth-amendment grounds, falsely testifies that the defendant dropped the narcotics in plain view (as opposed to the officer's discovering the narcotics in an illegal search)." *People v. Ash*, 346 Ill. App. 3d 809, 816 (2004). Defendant cites numerous law review articles for the proposition that such cases are commonplace in Cook County. However, the present facts do not implicate a "dropsy" case. It was not a police officer, but an unnamed citizen who observed defendant drop a weapon. Furthermore, there is no indication that the unnamed individual's statement was untrustworthy or inherently unreliable. He told Villanueva that he observed defendant drop a gun and "put it back in his right pocket." Despite defendant's assertion that "it seems wholly unlikely" that a person would drop a gun in view of another person, there is nothing unbelievable about an object dropping out of one's pocket. Similarly, defendant's failure to flee after dropping the weapon is not unbelievable where

there is no indication in the record that he knew anyone saw him. We therefore find defendant's argument unpersuasive.

¶ 19 For the foregoing reasons we hold that the unidentified individual's tip bore sufficient indicia of reliability to justify Officer Villanueva's *Terry* stop and frisk of defendant.

Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 20 Affirmed.