

No. 1-13-4019

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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. 12 CR 21998
)	
PHILLIP BATIE,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction of aggravated unlawful use of a weapon affirmed over his contention that the trial court erred in denying his motion to quash arrest and suppress evidence.

¶ 2 Following a bench trial, defendant Phillip Batie was found guilty of aggravated unlawful use of a weapon, then sentenced to one year of probation. On appeal, defendant contends that the trial court erred in denying his motion to quash arrest and suppress evidence, and requests that his conviction be reversed.

¶ 3 The charges filed against defendant in this case arose from an incident that occurred on November 19, 2012, on the south side of Chicago, Illinois. Prior to trial, defendant filed a motion to quash his arrest and suppress evidence alleging that the gun discovered on his person was found as the result of an illegal search.

¶ 4 At the hearing on defendant's motion, defendant testified that he was 17 years of age at the time of his arrest, and lived at 6130 South Maplewood Avenue in Chicago. On November 19, 2012, he, two of his friends, and another person he did not know, were walking home from school when he saw an unmarked car approaching them. Defendant did not know it was a police car until the lights started flashing and someone yelled out "freeze," and told him to turn around with his hands in the air. Defendant immediately complied, and when the officers asked him where he was coming from and where he was going, defendant told them he was coming from school and going home. When the officers asked him if he liked to rob people, he did not respond.

¶ 5 Defendant and his friends were then ordered to place their hands on the car while the officers conducted a series of pat downs on each of them. On the third pat down, one of the officers went through defendant's pockets and took his phone and I.D. The officer returned his phone by placing it in his pocket and felt a gun in his waistband. Defendant was then taken into custody and transported to the police station.

¶ 6 On cross-examination, defendant stated that he did not have the gun at school that day, but picked it up afterward when a group of "boys" attempted to rob him. As he ran away from the group, one of them dropped the gun, which defendant retrieved, and placed in the waistband of his pants. Defendant also stated that before he was arrested, he was walking with his high

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school classmates, and that three of them were wearing dark clothing, but one of them was wearing a black and white sweatshirt that was mostly white. He finally stated that when he saw the police car coming toward them, he turned to start walking home, but he did not know it was a police car at that time and immediately stopped when the officer told him to freeze.

¶ 7 Chicago police officer Durkin testified that at 7 p.m. on November 19, 2012, he received a radio call to respond to 5655 South Christiana Avenue where he met with Robert Godinez.

Godinez told him that while he was driving he saw four black males walking around and yelling at cars. When Godinez exited his vehicle, one of the males approached him with his hand in his sleeve and asked for the time. The three other males surrounded Godinez and he fled into his house. Godinez related that the assailants fled eastbound and described them as four black males wearing dark clothes between the ages of 15 to 18 years.

¶ 8 Officer Durkin and his partner searched the area east of the original call in an unmarked police vehicle for 10 to 15 minutes before they observed a group of four black males matching Godinez's description. Officer Durkin activated the lights on their vehicle, stepped out, and said, "police, stop." Three of the individuals complied. Defendant, however, looked back at the officers, then turned, started walking away from them, and put his hands into the front pocket of his outer garment. Officer Durkin walked toward defendant, grabbed him, and immediately felt around his waistband where he discovered a hard object in the shape of a gun. Officer Durkin testified that, based on his experience on the street, most individuals keep weapons in their waistband or in their pockets. He further testified that before the officers saw defendant and the other three individuals, they did not see any other group of black males in the area during their search.

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¶ 9 In issuing its ruling, the court stated that it was not going to consider defendant's "somewhat convoluted explanation" of how he obtained the gun, and recounted the evidence as related by Officer Durkin. The court noted that the officers received a description of four individuals and observed a group which seemingly matched that description in the area. The court observed that three of the individuals stopped when asked to do so, but one of them, defendant, started to walk away, which aroused the suspicions of Officer Durkin. Officer Durkin then stopped defendant and searched precisely where he believed most individuals carried weapons. The court acknowledged that the group did not turn out to be the same group that accosted Godinez, but noted there was no way for the officers to know that. The court found Officer Durkin credible and compelling, and denied defendant's motion to quash arrest and suppress evidence, then subsequently denied his motion to reconsider.

¶ 10 The case proceeded to a bench trial and the parties stipulated to the testimony presented at the hearing on the motion to quash and suppress. The parties further stipulated that if Officer Durkin were recalled, he would identify defendant in court as the person from whom he recovered the handgun. The parties also stipulated that defendant did not have an Illinois Firearms Owner Identification Card, and that he was under the age of 21 at the time of the offense. The trial court found defendant guilty of aggravated unlawful use of a weapon, then sentenced him to one year of probation.

¶ 11 In this appeal from that judgment, defendant solely contends that the trial court erred in denying his motion to quash arrest and suppress evidence recovered in the search of his person. He maintains that the officers had no reasonable justification to stop him and his friends who

were merely walking home and had not done anything to make the officers think they were armed and dangerous.

¶ 12 In reviewing a ruling on a motion to quash arrest and suppress evidence, this court applies a two-part standard of review. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009). The trial court's factual findings are accorded great deference, and this court will reverse those findings only if they are against the manifest weight of the evidence; however, the court's ultimate ruling on a motion to suppress involving probable cause is reviewed *de novo*. *Id.* A reviewing court may affirm a ruling on a motion to suppress on any basis supported by the record, and is free to consider trial testimony as well as the evidence presented at the hearing on the motion to suppress. *Id.* at 458, 473.

¶ 13 We initially observe that defendant does not challenge the trial court's factual findings, but contends that the officers had no reasonable justification to stop him. Although defendant makes several references to his version of the events in support of the arguments in his brief, the trial court found Officer Durkin to be credible and compelling and relied on his version of the events in denying defendant's motion. Defendant does not contend that the trial court's factual findings were against the manifest weight of the evidence, and we have no basis for so finding where the trial court's factual determinations were supported by the record. *People v. Sorenson*, 196 Ill. 2d 425, 434 (2001). Therefore, we solely address defendant's contentions regarding the court's ultimate ruling on the motion.

¶ 14 The fourth amendment to the United States Constitution guarantees the right of the people to be free from unreasonable searches and seizures. U.S. CONST. amend. IV.

Reasonableness under that amendment generally requires a warrant supported by probable cause

(*Sorenson*, 196 Ill. 2d at 432); 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 when the officer reasonably believes that the person had committed or was about to commit a crime. *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 13.

¶ 15 To justify an investigatory stop, the 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.

¶ 16 Defendant contends that the officers had no reasonable justification to stop him because he was merely walking home. In so contending, defendant relies on *Brown v. Texas*, 443 U.S. 47 (1979) for the proposition that officers do not have reasonable justification to stop a person where the person's activity was no different from the activities of other pedestrians in the neighborhood.

¶ 17 In this case, the officers were responding to a call from Godinez that four black males between the ages of 15 and 18, dressed in dark clothing were yelling at cars and had accosted him near his home. He also reported that they headed eastbound after he fled into his home. Defendant admitted that he, and the group he was walking with, matched the complainant's description of the assailants, and Officer Durkin testified that during their 10-to-15-minute search of the area, they did not observe any other group of people matching Godinez's

description. Given the proximity of the group to the area of the initial investigation (*People v. Hubbard*, 341 Ill. App. 3d 911, 918 (2003)) within a short time of its occurrence, and the fact that the group fit the general description provided, the officers had the minimum articulable suspicion necessary to warrant an inquiry (*People v. Rivera*, 272 Ill. App. 3d 502, 506 (1995)). We thus find that the stop was reasonable based on the information provided to the officers by Godinez, and the circumstances that confronted them. *People v. McGowan*, 69 Ill. 2d 73, 79 (1977).

¶ 18 Defendant contends, nonetheless, that even if the officers had reasonable suspicion for the initial stop, they did not have a reasonable justification for the search since they had no reason to believe that he was armed and dangerous. Whether an investigatory stop is valid is a separate question from whether a search for weapons is valid. *People v. Thomas*, 198 Ill. 2d 103, 109 (2001). The fact that an officer has reason to stop a person does not automatically justify a search for weapons. *People v. Flowers*, 179 Ill. 2d 257, 263. Rather, the officer must have reason to believe that the individual is armed and presently dangerous to the officer or to others. *Id.* Although the standard for the officer's belief is an objective one, the officer's subjective belief regarding the safety of the situation is one of the factors that a court may consider in determining whether a weapons search was valid under *Terry*. *Id.* at 264. The scope of the search must be confined to "an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." *Sorenson*, 196 Ill. 2d at 440, quoting *Terry*, 392 U.S. at 29.

¶ 19 Here, Officer Durkin's unchallenged testimony shows that defendant ignored the officers' initial request to stop, and immediately placed his hands in his front pocket, near his waistband,

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which Officer Durkin knew, from his experience as a police officer, is where most people keep a weapon. Although Godinez did not indicate that any of the assailants had a weapon, he did state that when they approached him, one of them had his hand in his sleeve. Given defendant's initial response to the officers' call to stop by walking away and putting his hands into his waistband, an area where Officer Durkin knew many people kept weapons, coupled with the information he had from the original call, we find that it was reasonable for Officer Durkin to believe that his safety was in danger, and that the frisk was necessary. *Sorenson*, 196 Ill. 2d at 439.

¶ 20 For the reasons stated, we conclude that the trial court did not err in denying defendant's motion to quash arrest and suppress evidence (*Sanders*, 2013 IL App (1st) 13402696 ¶¶ 31-32), and affirm its judgment.

¶ 21 Affirmed.