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2015 IL App (3d) 140323-U

Order filed December 16, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0323
)	Circuit No. 12-CF-1068
ALFONZO D. HILL,)	Honorable
Defendant-Appellant.)	Kevin Lyons, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err when it denied defendant's motion to suppress evidence.

¶ 2 After a stipulated bench trial, defendant, Alfonzo D. Hill, was found guilty of unlawful possession of a controlled substance and sentenced to two years' imprisonment. On appeal, defendant challenges the trial court's denial of his motion to suppress evidence. We affirm.

FACTS

¶ 3

¶ 4 On October 3, 2012, Peoria Police Officer Todd Leach signed a complaint for a search warrant. The complaint requested a warrant to search the premises located at 1312 N.E. Monroe Street, Peoria and the person of defendant. The complaint sought to seize cocaine and any other items constituting evidence of possession or control of cocaine. In the complaint, Leach averred that he believed the items to be seized were located on defendant's person and/or at the listed address based on information provided to Leach by a confidential informant (CI). The CI participated in two controlled buys, one of which occurred 72 hours before the complaint was filed, where the CI purchased a quantity of suspected cocaine from defendant in Peoria.

¶ 5 After reviewing the complaint, a judge issued a search warrant commanding officers to search defendant's person and the premises at 1312 N.E. Monroe Street. The warrant also commanded the police to seize, among other things, cocaine and other items that evidenced possession of cocaine if discovered during the course of the search.

¶ 6 On October 3, 2012, officers transported defendant to the police station, where a strip search revealed defendant was carrying contraband between his buttocks. Defendant was subsequently charged by indictment with unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(c)(2) (West 2012)) and unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2012)). Defendant filed a motion to suppress evidence, and the matter proceeded to a hearing.

¶ 7 At the hearing, defendant testified that, on October 3, 2012, he and his friend, Randy, were traveling together in a vehicle on Hamilton Street. Two officers approached defendant's car with their weapons drawn and told both men to exit the vehicle. When defendant complied, an officer placed defendant in handcuffs, bent defendant over the hood of the car, and conducted a

pat down search. During the pat down, the officer swiped his hand between defendant's buttocks but did not detect any illegal items in that location. Defendant was then placed in a patrol car.

¶ 8 According to defendant, Officer Cary Hightower transported defendant to the police station. Along the way, Hightower told defendant not to "be digging around in your ass and put anything in the seats because when we get out of the car, we are going to search the seats." At the police station, Hightower searched defendant and the seats. Hightower did not find any illegal items. Hightower escorted defendant to a holding cell where he removed defendant's handcuffs and ordered defendant to remove his clothes. Defendant told Hightower the search was illegal, but he complied with Hightower's order. Hightower searched defendant's clothes and told defendant to "[t]urn around, bend over, and cough." Defendant complied. When Hightower placed his hand between defendant's buttocks, the officer discovered a bag containing an illegal substance. On cross-examination, defendant acknowledged that the police had found controlled substances between his buttocks during a prior search.

¶ 9 Hightower testified that on October 3, 2012, he and his partner were dispatched to the scene of the traffic stop of the vehicle defendant was riding in. Hightower had received verbal authorization from his commanding officer to conduct a strip search of defendant's person, and Hightower transported defendant to the Peoria police department. Along the way, Hightower told defendant to stop moving around.

¶ 10 At the police station, Hightower searched the backseat of the patrol car and did not find any contraband. Hightower escorted defendant into a holding cell and patted defendant down. During the pat down, Hightower felt defendant "clinch up," which was a sign that defendant might be trying to conceal something in the area of his buttocks. Hightower noted it was common for individuals who possessed narcotics to hide the drugs between their buttocks.

Hightower had discovered drugs concealed between a suspect's buttocks during more than 100 prior searches. Hightower told defendant that he was going to conduct a strip search. Hightower helped remove defendant's clothing, and he told defendant to bend at the waist and spread his buttocks. Hightower caught a plastic bag as it fell from the area of defendant's buttocks. Defendant said the bag was not his. Hightower prepared a written report after the search, but he did not give the report to defendant.

¶ 11 Lieutenant Loren Marion testified that a strip search was commonly done in connection with the search of a person pursuant to a search warrant. Marion explained the subject of the warrant is first taken into custody, and then transported to the Peoria police department for a more thorough search of their person. Marion further explained if a person was named in a search warrant, Marion did not get written permission from a commanding officer because the command was issued by a judge. In the absence of a search warrant, Marion had to have authorization from a commanding officer to conduct a strip search.

¶ 12 In a written order, the trial court denied defendant's motion to suppress the search. The case proceeded to a stipulated bench trial where the court found defendant guilty of unlawful possession of a controlled substance and not guilty of unlawful possession of a controlled substance with intent to deliver. The court sentenced defendant to two years' imprisonment. Defendant appeals.

¶ 13 ANALYSIS

¶ 14 Defendant argues that the search of his person at the scene fulfilled the command of the search warrant to search his person. Consequently, defendant challenges the lawfulness of the subsequent strip search at the police station as exceeding the court's authorization to search his person. Alternatively, defendant argues that the strip search at the police station was

unnecessary to carry out the mandates of the search warrant, and consequently, violated his fourth amendment right to be free of unreasonable searches and seizures. Lastly, defendant argues that the absence of written departmental authorization for a strip search rendered his search unreasonable as it did not comply with section 103-1 of the Code of Criminal Procedure of 1963 (Code). 725 ILCS 5/103-1 (West 2012). Upon review, we reject each of defendant's arguments.

¶ 15 When reviewing a trial court's ruling on a motion to suppress evidence, we defer to the trial court's credibility and factual determinations, and we will reverse those findings only if they are against the manifest weight of the evidence. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). We review *de novo* the trial court's legal ruling denying defendant's motion. *Id.*

¶ 16 A quick pat down does not fulfill the command of the search warrant to search defendant's person for evidence of contraband that is easily concealed in areas undetectable by a pat down of a person's outer garments. See *id.* at 433 (noting a pat down is used as a "limited search for weapons"); see also *People v. Seymour*, 84 Ill. 2d 24, 40 (1981) (noting that a reasonable strip search is designed to detect hidden evidence, drugs, or objects which might be used to inflict harm). In this case, an officer first patted defendant down during the traffic stop before Hightower transported him to the police station for a more complete search of his person. From the time of the traffic stop until the contraband was seized from defendant's person at the police station, defendant was held in police custody. Much like searching a physical location, officers may first employ the least intrusive method when searching a person—albeit this is not a constitutional requirement (*Illinois v. Lafayette*, 462 U.S. 640, 647 (1983) (fourth amendment does not require officers to pursue the least intrusive alternative in a search and seizure)). After an initial less intrusive search, officers may conduct subsequent and more intensive searches of a

specific location until the command of the search warrant is satisfied. Consequently, we hold the officers were not required to restrict their attempt to discover contraband to a singular external examination of defendant's clothing at the scene of the traffic stop when the police have taken the additional precaution of obtaining a search warrant to search an individual before transporting the person to a more suitable location for a complete search of his person pursuant to the search warrant.

¶ 17 A strip search is a severe intrusion into one's privacy interest; however, such searches are not *per se* illegal or unconstitutional. *Seymour*, 84 Ill. 2d at 39. To determine the reasonableness of the search, the fourth amendment requires that we consider: "(1) the scope of the particular intrusion; (2) the manner in which it was conducted; (3) the justification for initiating it; and (4) the place in which it was conducted." *People v. Mitchell*, 353 Ill. App. 3d 838, 843-44 (2004).

¶ 18 Here, defendant was taken into custody pursuant to a search warrant that commanded officers to search defendant's person for evidence of cocaine. This particular defendant testified that officers had previously discovered contraband hidden between his buttocks. Hightower testified that, from his experience, individuals suspected of possessing narcotics commonly concealed the drugs between their buttocks.

¶ 19 When defendant was initially seized, he was on a roadway on a late evening in the fall. Under the circumstances present in the case at bar, it would have been unreasonable for officers to ask defendant to remove all clothing covering areas where drugs could be concealed on his person. See *People v. Carter*, 2011 IL App (3d) 090238, ¶ 16 (strip search conducted on public street violated Illinois strip search statute). In this case, defendant previously concealed cocaine in an unusual and private location on his person which created circumstances that made it reasonable for the officers to conduct a strip search here. See *Seymour*, 84 Ill. 2d at 40 (quoting

United States v. Klein, 522 F. 2d 296, 300-01 (1st Cir. 1975) for the proposition that a brief strip search, conducted without abuse and in a professional manner, is not unconstitutional as it is used to detect hidden evidence, drugs, or objects which might be used to inflict harm).

¶ 20 In addition, the strip search itself was conducted in a reasonable manner that complied with the Peoria police department policies requiring the transportation of the subject of the search warrant to the Peoria police department before conducting a strip search with or without a prior warrant. The Peoria police department also provided a safe location to execute the search of defendant's person pursuant to the search warrant and afforded defendant a modicum of privacy. Considering these factors, we conclude that defendant's strip search was reasonably conducted and fulfilled the command of the warrant. See *Mitchell*, 353 Ill. App. 3d at 843-44.

¶ 21 Lastly, defendant argues that his strip search did not comply with section 103-1 of the Code because Hightower did not have written authorization to conduct the search. 725 ILCS 5/103-1 (West 2012). We disagree because the written authorization to search defendant's person for contraband was provided by the search warrant issued after a neutral judicial officer made a finding of probable cause. Finally, a violation of section 103-1 does not support granting a motion to suppress evidence. See *Carter*, 2011 IL App (3d) 090238, ¶ 17. Having determined that the strip search was reasonably conducted and did not infringe on defendant's constitutional rights, we conclude the trial court did not err when it denied defendant's motion to suppress.

¶ 22 CONCLUSION

¶ 23 The judgment of the circuit court of Peoria County is affirmed.

¶ 24 Affirmed.