SECOND DIVISION
March 22, 2016

No. 1-13-3306

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 9873
	)	
TERRANCE WALKER,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Hyman concurred in the judgment.

O R D E R

¶ 1 *Held*: Where the trial court erred in denying defendant's motion to quash arrest and suppress evidence, his conviction of possession of a controlled substance with intent to deliver is reversed.

¶ 2 Following a joint bench trial, defendant Terrance Walker and codefendant Courtney Woods, who is not a party to this appeal, were found guilty of possession of a controlled substance with intent to deliver. Defendant was sentenced to five years in prison. On appeal, defendant contends that the trial court erred in denying his motion to quash arrest and suppress evidence where the police (1) lacked probable cause or reasonable suspicion to order him out of

a parked car and (2) lacked a reasonable basis to believe he was armed and dangerous so as to justify a patdown and subsequent search. In the alternative, defendant contends that his trial counsel was ineffective for failing to move to re-open the hearing on the pretrial motion after hearing favorable testimony at trial.

¶ 3 For the reasons that follow, we find that the police were not justified in ordering defendant out of the car at issue or in frisking him and seizing the drugs found in his waistband. Accordingly, we reverse.

¶ 4 The charges filed against defendant arose from his arrest on April 19, 2013. Prior to trial, defendant filed a motion to quash arrest and suppress evidence, alleging that the police lacked probable cause to arrest him and that the evidence obtained as a result of the arrest should be suppressed.

¶ 5 At the hearing on defendant's motion, Chicago police officer Kevin Deeren testified that about 10:30 a.m. on the day in question, he was working with Officers Mandile and Cox. They received a tip that a beige four-door Buick contained a large amount of "L," street terminology for "leaf" or phencyclidine-saturated substance, also known as PCP, and set up a surveillance to corroborate the information. Officers Deeren and Mandile acted as enforcement officers, while Officer Cox conducted surveillance and maintained radio communication with them.

¶ 6 Officer Cox informed Officer Deeren that he observed a beige-colored four-door Buick, with the driver, identified as codefendant, not wearing a seatbelt, and provided him with information regarding the location of the vehicle. Officers Deeren and Mandile pursued codefendant in their unmarked police car, but before they could curb the vehicle, codefendant parked at 3435 West Douglas Avenue. Codefendant exited the driver's seat and started walking

towards Officer Deeren's vehicle, which was parked facing codefendant's Buick. Officer Deeren did not activate the emergency lights or siren on his vehicle to initiate a stop.

¶ 7 As codefendant approached, Officer Deeren got out of his vehicle and asked codefendant for his name and driver's license. Codefendant provided his name, but was unable to produce a license, and Officer Deeren placed him under arrest. At that time, defendant and another passenger were seated in codefendant's vehicle. Once codefendant had been arrested, Officer Deeren and Officer Mandible asked defendant and the other passenger to step out of the car. Officer Deeren did not see defendant make any "furtive movement" prior to ordering him out of the vehicle. As defendant exited from the rear passenger seat, Officer Deeren observed him place his left hand toward his waist and stuff something inside the front of his waistband. Officer Mandile recovered the item, which was determined to be a plastic bag containing 47 smaller zip lock bags of suspect crack cocaine. Defendant was placed under arrest.

¶ 8 Officer Deeren testified that as he drove codefendant's vehicle to the police station to impound it, he noticed a distinct odor of PCP, which resembles the smell of formaldehyde, coming from the vehicle. Based on his observations while driving, Officer Deeren searched the car at the station and recovered a clear plastic bag, containing three smaller knotted plastic bags, which held a total of 38 tinfoil packets of a substance the parties stipulated was PCP.

¶ 9 The trial court found Officer Deeren's testimony credible, denied defendant's motion to quash arrest and suppress evidence, and then subsequently denied his motion to reconsider. The case proceeded as a bench trial and the parties agreed to incorporate by reference the testimony presented at the hearing on the motion to quash and suppress.

¶ 10 At trial, the State called as a witness Chicago police officer Angelo Mandile, who corroborated Officer Deeren's version of events. Officer Mandile added that after codefendant was detained, he ordered defendant and the other passenger out of codefendant's Buick. At this time, Office Mandile was "aware that there had been information given with respect to a similarly-described car and the movement of drugs." As defendant got out of the rear passenger seat, Officer Mandile saw him "trying to stuff a golf ball-sized item with his left hand into his front waistband." Officer Mandile testified that he believed defendant "was trying to maybe conceal a weapon or something like that," so he detained defendant and performed a protective pat-down. During the pat-down, he felt a hard, golf ball-sized item in defendant's waistband. Officer Mandile recovered the item, which he described as a bag containing 47 zip lock bags containing suspect crack cocaine. He testified that in his experience, this packaging was consistent with the way narcotics are packaged for sale. At the police station, $466 was recovered from defendant during a custodial search.

¶ 11 Officer Cox also testified at trial, and his testimony regarding the events leading to defendant's arrest corroborated that presented by Officers Deeren and Mandile. The parties also stipulated that the 47 items recovered from defendant tested positive for cocaine in the amount of 5.1 grams.

¶ 12 The trial court found defendant guilty of possession of a controlled substance with intent to deliver. At sentencing, defense counsel moved for a new trial, asking the trial court to reconsider based on a lack of probable cause to remove defendant from a non-moving vehicle. The trial court denied the motion and subsequently sentenced defendant to five years in prison.

¶ 13 On appeal, defendant first contends that the trial court erred in denying his motion to quash arrest and suppress evidence where the police lacked probable cause or reasonable suspicion to order him out of a parked car. Defendant argues that no justification existed for the officers' order, as it was not made until after the Buick was stopped and codefendant had been arrested on the sidewalk, and no officer testified that defendant made any furtive movements or engaged in nervous or evasive behavior prior to the order. He asserts that because the cocaine recovered as a result of this illegal seizure was the only evidence of his possession of a controlled substance with intent to deliver, his conviction should be reversed.

¶ 14 When 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 will be reversed only if they are against the manifest weight of the evidence. *Id*. In contrast, the trial court's ultimate ruling on a motion to suppress involving probable cause or reasonable suspicion is reviewed *de novo*. *Id*.; *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). A reviewing court may consider both the trial testimony and the testimony presented at the suppression hearing when reviewing the denial of a motion to suppress. *Hopkins*, 235 Ill. 2d at 473 (citing *People v. Stewart*, 104 Ill. 2d 463, 480 (1984)).

¶ 15 With regard to ordering passengers out of a car, the parties agree that police officers making a traffic stop may, as a matter of course, order passengers out of a vehicle pending completion of the stop without violating the protections of the fourth amendment. *Maryland v. Wilson*, 519 U.S. 408, 415 (1997); *Sorenson*, 196 Ill. 2d at 433. The parties disagree, however, as to how this principle applies to the instant case. The State asserts that defendant was ordered out of the vehicle "in the course of" a traffic stop. Defendant, in contrast, maintains that the traffic

stop at issue terminated when codefendant was arrested, and that therefore, the police did not order the passengers out of the car pending completion of the stop, but rather, *after* the traffic stop had ended. Neither party has cited authority addressing the issue of when a traffic stop involving an arrest is completed, and our research has not revealed any cases directly on point.

¶16 We agree with defendant's position. In our view, Officer Mandile's action in ordering defendant and the other passenger out of codefendant's car was not part of the traffic stop, but rather, was a new and distinct police-citizen encounter that occurred after the traffic stop terminated with codefendant's arrest. As such, we must determine whether the new police-citizen encounter violated the fourth amendment.

¶ 17 Police-citizen encounters are divided into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or *Terry* stops, which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) consensual encounters, which involve no coercion or detention and thus do not implicate fourth amendment interests. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006). The encounter between defendant and the police was a *Terry* stop.

¶ 18 In *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968), the Supreme Court held that police officers may stop a person briefly for temporary questioning where the officer reasonably believes that the person has committed or is about to commit a crime. *Sorenson*, 196 Ill. 2d at 432; *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 13. To justify making a *Terry* stop, a police officer must be able to point to specific and articulable facts which, combined with the rational inferences from those facts, reasonably warrant the intrusion. *People v. Thomas*, 198 Ill. 2d 103, 109 (2001). While the facts need not rise to the level of probable cause, a mere hunch is insufficient.

Thomas, 198 Ill. 2d at 110. Whether a *Terry* stop is reasonable is determined by an objective standard, and the facts are viewed from the perspective of a reasonable officer at the time of the stop. *Sanders*, 2013 IL App (1st) 102696, ¶ 14. On appeal, a reviewing court must be mindful that the decision to make a *Terry* stop is a practical one based on the totality of the circumstances. *Id*.

¶ 19 A police officer may initiate a *Terry* stop based upon information received from a member of the public. *Sanders*, 2013 IL App (1st) 102696, ¶ 15. In general, information provided by a "concerned citizen" is considered more credible than information from a paid informant or a person who provided the information for personal gain. *Id*. However, even when a police officer receives information from an identified informant, some corroboration or other verification of the reliability of the information is required. *Id*. A tip that includes predictive information and readily observable details will be deemed more reliable if the details are confirmed or corroborated by the police. *Id*.

¶ 20 Here, the officers had received a tip that a beige four-door Buick contained a large amount of PCP. However, the record does not indicate whether the source of the tip was a concerned citizen or a paid informant, and lacks any information about the veracity, reliability, or basis of knowledge of the person who gave the police the tip. In addition, the tip did not include a license plate number or any information about any of the people allegedly involved in moving the PCP. The tip received by the police, with nothing more, was not sufficiently reliable to allow an officer to reasonably infer that defendant was involved in criminal activity and to justify a *Terry* stop. See *People v. Jackson*, 348 Ill. App. 3d 719, 732-33 (2004). Moreover, the officers did not report observing defendant making any furtive or evasive movement while he

was inside the car. Thus, no independent observations justified ordering defendant to exit the vehicle. See *id.*

¶ 21 We find that the police were not justified in ordering defendant to exit the parked car in which he was a passenger. Therefore, defendant's motion to quash arrest and suppress evidence should have been granted, and we reverse the trial court's decision denying the motion. Because the State cannot prevail without the suppressed evidence, we reverse his conviction and need not remand for further proceedings. See *People v. Staple*, 345 Ill. App. 3d 814, 821 (2004).

¶ 22 Although we have disposed of defendant's appeal, we nevertheless address his second contention, which is that the trial court erred in denying his motion to quash and suppress where the police lacked probable cause or a reasonable suspicion to believe he was armed and dangerous so as to justify a patdown and subsequent search. Defendant asserts that the act of "putting an unknown object into his pants" is insufficient to justify a *Terry* frisk for weapons. He further argues that Officer Mandile's subjective belief that this act indicated defendant was trying to conceal a weapon has no evidentiary basis in the record, as he was cooperating with the officers' instructions to exit the Buick, he did not attempt to resist or struggle in any way, there was no evidence that anyone in the car had been involved in any shootings, and the tip received by the police made no mention that the car contained weapons. Finally, defendant argues that any actual subjective belief on Officer Mandile's part that a golf ball-sized item could constitute a weapon is objectively unreasonable. Defendant concludes that the *Terry* frisk was a pretext to search him for possible contraband and to gain access to the Buick, which the police suspected contained PCP.

¶ 23 During a *Terry* frisk, a police officer may conduct a limited search for weapons once he reasonably concludes that the person whom he legitimately stopped poses a threat to his safety or the safety of others. *Terry*, 392 U.S. at 21-22; *People v. Gonzalez*, 184 Ill. 2d 402, 421 (1998). The officer's conduct must be supported by specific, articulable facts that, when taken together with natural inferences, reasonably warrant a belief that the officer's safety, or that of others, is in danger. *Gonzalez*, 184 Ill. 2d at 422. The sole justification of a *Terry* search is to protect the police officer and others nearby, not to gather evidence. *Sorenson*, 196 Ill. 2d at 432. Accordingly, the search must be limited in scope and designed to discover guns, knives, clubs, or other hidden instruments that could be used to assault the officer or others. *Gonzalez*, 184 Ill. 2d at 421-22. If a search goes beyond what is necessary to determine if a suspect is armed, it is no longer valid under *Terry*, and its fruits will be suppressed. *Sorenson*, 196 Ill. 2d at 432.

¶ 24 There is no requirement that an officer be certain that the individual is armed; rather, the issue is whether a reasonably prudent person in the officer's circumstances would be warranted in the belief that his safety or that of others was in danger. *Sorenson*, 196 Ill. 2d at 433. When assessing whether an officer acted reasonably, due weight must be given to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience. *Id*.

¶ 25 We find that, based upon the facts available to Officer Mandile at the time, it was unreasonable for him to frisk defendant for weapons and remove the item he felt in defendant's waistband. Officer Mandile's articulated basis for frisking defendant was that he saw defendant making a furtive movement. Specifically, Officer Mandile testified that he witnessed defendant "trying to stuff a golf ball-sized item with his left hand into his front waistband," that he believed defendant "was trying to maybe conceal a weapon or something like that," that he performed a

protective pat-down, that he felt a hard, golf ball-sized item in defendant's waistband, and that when he recovered the item, it turned out to be a bag containing 47 zip lock bags containing suspect crack cocaine.

¶ 26 Although furtive movements may justify performing a warrantless search when they are coupled with other circumstances that tend to show probable cause, looks, gestures, and movements taken alone are insufficient to constitute probable cause to search since they may be innocent. *People v. Smith*, 2015 IL App (1st) 131307, ¶ 29. Here, while defendant's action of putting something in his waistband may be characterized as furtive, there was no evidence of other circumstances tending to show probable cause. Officer Mandile's testimony established that the item he saw defendant place in his waistband was the size of a golf ball. Thus, the item did not resemble a gun, knife, club, or other weapon. Also, Officer Mandile stated that he believed defendant was trying to "maybe" conceal a weapon, but significantly, he did not testify that he feared for his safely or the safety of others and offered no specific or articulable facts that would support such a belief. Accordingly, defendant's actions can be viewed as innocent, and Officer Mandile's frisk of defendant cannot be justified . See *People v. Creagh*, 214 Ill. App. 3d 744, 747-48 (1991) (defendant's act of putting something in his pants pocket did not justify pat-down search). Moreover, even if we were to find that a protective frisk was proper, its scope would have been limited to a search for weapons which would place the life of the officer or others in danger. *Id*. at 748. Officer Mandile confirmed during the frisk that the item defendant put in his waistband was golf ball-sized and, therefore, that defendant was not carrying a weapon, his seizure of the item was beyond the limited scope of the search and was an unlawful intrusion. *Id*. (citing *Terry*, 392 U.S. at 29).

¶ 27 We find, once the police stop a car because the driver is not wearing a seatbelt, the police arrest the driver because he does not have a driver's license, the police order the passengers out of the car, the police are now involved in a new citizen encounter they do not have a reasonable belief the passenger has engaged or is about to engage in criminal activity because the passenger, who makes no furtive movement and does not attempt to flee, placed an unknown "golf ball-sized" item in the waistband of his pants.

¶ 28 Therefore, we hold that the police officer's pat down search of the passenger was unjustified because the facts articulated by the officer – passenger placed an unknown item in the waistband of his pants – did not warrant a search because the passenger was not observed committing a crime.

¶ 29 Reversed.