2016 IL App (3d) 140121-U

Order filed February 5, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0121
v.	)	Circuit No. 11-CF-275
	)	
NAKIA D. JACKSON,	)	Honorable
	)	Stephen A. Kouri,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice O'Brien concurred.
Justice Holdridge dissented.

ORDER

¶ 1 *Held*: (1) State failed to establish the reliability of police informant; and (2) police officer's independent observations did not give rise to reasonable, articulable suspicion that defendant had committed a crime.

¶ 2 The judge found defendant, Nakia D. Jackson, guilty of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2010)) and sentenced him to a term of six years' imprisonment. On appeal, defendant argues that the trial court erred in denying his motion to suppress evidence. Specifically, defendant contends that the State

failed to establish the reliability of a police informant and, absent the information provided by the alleged informant, reasonable, articulable suspicion to stop his vehicle did not exist. We agree.

¶ 3 FACTS

¶ 4 Defendant was charged by indictment with unlawful possession of a controlled substance (720 ILCS 570/401(c) (West 2010)) and unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2010)). Defendant filed a motion to suppress all evidence, challenging the constitutionality of the stop that led to the discovery of suspected narcotics.

¶ 5 At the suppression hearing, Peoria police officer Brett Lawrence testified that on March 22, 2011, he was conducting surveillance on a house at 1820 West Bradley Avenue. Lawrence was at that address based upon information relayed to him by Sergeant Mushinsky. According to Lawrence, Mushinsky had developed information from one of his informants that a black male, going by the nickname of "Killa," was selling heroin from a house on Bradley Avenue at the corner of Bradley Avenue and Western Avenue. Mushinsky informed Lawrence that the house was on the corner closest to the McDonald's. From the given information, Lawrence concluded the only building to which the informant could be referring was at 1820 West Bradley Avenue. March 22 was Lawrence's first day conducting surveillance on that address; he was unsure whether any prior surveillance had taken place. Thus, Lawrence was not provided with any information concerning what cars might be present at that address.

¶ 6 Lawrence did not know who the confidential informant was that provided Mushinsky with the tip, and admitted the informant had not provided enough information to support a warrant. Lawrence testified that "[i]t was Sergeant Mushinsky's informant, and I'm pretty sure

that the individual was reliable to Sergeant Mushinsky." Lawrence elaborated that Mushinsky had a number of informants, and Lawrence did not know which one provided the information.

¶ 7 Lawrence explained that in his 11 years as a police officer, he had worked with confidential informants of his own. He confirmed that if the informant had been lying to Mushinsky, the informant would have been open to prosecution for obstruction of justice or providing false information.

¶ 8 Approximately one hour into his surveillance, Lawrence observed a black male and a black female exit 1820 West Bradley Avenue. Lawrence did not know who the individuals were, nor did he have any information about them. The two individuals got into a car and drove away. The male, later identified as defendant, sat in the passenger seat. Lawrence followed the vehicle and observed it pull into the parking lot of a shopping plaza. Defendant exited the car and approached a black minivan. Defendant opened the passenger-side door of the minivan and leaned inside. Lawrence was unable to see inside the minivan, and could not see who, if anyone, occupied it. He did not know whether a transaction occurred. Defendant then returned to his original vehicle and left the parking lot.

¶ 9 Lawrence asked another officer, Leach, to run the license plates on the black minivan. The minivan was registered to a Shirley Williams. Lawrence testified that he recognized the name, because 11 days prior he conducted a search warrant at Williams' residence pursuant to an ongoing investigation into the distribution of heroin by Williams and her boyfriend. Lawrence recalled that the search had uncovered evidence of heroin dealing, which ultimately led to Williams' indictment on federal drug charges.

¶ 10 Lawrence continued to follow defendant's vehicle, observing it pull over to the curb on Griswold Street. He then observed a white female approach the passenger side of the vehicle

and make what he described as an "exchange." Lawrence admitted that from his vantage point, three blocks away, he could not see what, if anything, the female had, nor could he see what, if anything, defendant had. Lawrence suspected that the encounter was an exchange because he saw the woman reach her hand inside the window. Lawrence described the interaction as very short, lasting approximately six or seven seconds.

¶ 11 Lawrence then ordered Leach to pull over defendant's vehicle. The stop occurred in an Aldi's parking lot. As Leach effectuated the stop, Lawrence observed defendant "moving around inside the vehicle." Approximately 30 to 45 seconds after the vehicle had stopped, Lawrence and Leach approached the passenger side of the vehicle. Defendant was removed from the vehicle, handcuffed, and searched. Lawrence testified that defendant was handcuffed for officer-safety purposes. He testified that the vehicle had been stopped solely for suspicion of drug activity—Lawrence did not witness any illegal activities, including traffic violations—and that it was common for people involved in such activity to be armed. Lawrence also had concerns that defendant might attempt to ingest any drugs he possessed before they could be discovered. As a result of the search, defendant was found in possession of suspected heroin.

¶ 12 The trial court took defendant's motion to suppress under advisement. In a written order dated three days after the hearing, the court denied the motion.

¶ 13 The matter proceeded to a stipulated bench trial. Pursuant to an agreement, the State dropped the simple possession count and agreed to a sentencing cap of six years' imprisonment. The trial court entered a conviction on the offense of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2010)) and subsequently sentenced defendant to a term of six years' imprisonment.

¶ 14 ANALYSIS

¶ 15 On appeal, defendant argues that the trial court's denial of his motion to suppress was erroneous. Specifically, defendant contends that the State failed to show that Mushinsky's informant was reliable or to otherwise corroborate the information provided by the informant. Defendant maintains that it was therefore unlawful for Lawrence to rely upon the informant's information as a basis for his reasonable suspicion. In turn, defendant argues that, absent the information provided by the informant, Lawrence did not have reasonable, articulable suspicion to perform a stop. We agree and reverse the trial court's denial of defendant's motion to suppress, vacate defendant's conviction, and remand for further proceedings.

¶ 16 "In reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review." *People v. Cummings*, 2014 IL 115769, ¶ 13. Findings of fact made by the trial court are reviewed for clear error, and only reversed if they are against the manifest weight of the evidence. *Id*. However, the ultimate decision of whether or not suppression is warranted is a question of law that is reviewed *de novo*. *People v. Harris*, 228 Ill. 2d 222, 230 (2008). A reviewing court remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006) (citing *People v. Pitman*, 211 Ill. 2d 502, 512 (2004)).

¶ 17 Both the federal and state constitutions protect citizens from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Searches and seizures executed without a warrant are generally considered *per se* unreasonable, subject to a number of exceptions. *Katz v. United States*, 389 U.S. 347, 357 (1967). For example, a police officer may make a warrantless arrest when he or she has probable cause to believe the arrestee is committing or has committed an offense. *People v. Montgomery*, 112 Ill. 2d 517, 525 (1986). A police officer may also conduct a brief investigatory stop, short of arrest, when he or she has a

reasonable, articulable suspicion that the arrestee is committing or has committed an offense. See *People v. Hackett*, 2012 IL 111781, ¶ 20; see also *Terry v. Ohio*, 392 U.S. 1 (1968).

¶ 18 Both at the suppression hearing and on appeal, the parties focused primarily on whether Lawrence had probable cause to stop defendant's vehicle. Because we find that Lawrence did not even have reasonable, articulable suspicion to stop the vehicle—a lesser quantum of proof pursuant to *Terry*, 392 U.S. 1—we need not decide whether the stop here rose past the level of a *Terry* stop such that probable cause would be required. See *Luedemann*, 222 Ill. 2d at 544.

¶ 19 I. Reliability of Informant

¶ 20 The reasonable suspicion necessary to justify a *Terry* stop " 'is dependent upon both the content of information possessed by police and its degree of reliability.' " *Navarette v. California*, 572 U.S. ___, ___, 134 S. Ct. 1683, 1687 (2014) (quoting *Alabama v. White*, 496 U.S. 325, 330 (1990)). "Informants' tips, like all other clues and evidence coming to a policeman on the scene may vary greatly in their value and reliability." *Adams v. Williams*, 407 U.S. 143, 147 (1972). In the benchmark case of *Illinois v. Gates*, 462 U.S. 213 (1983), the Supreme Court held that the value of an informant's tip is derived from a totality of the circumstances, including the veracity of the informant's information, the informant's basis of knowledge, and the informant's reliability. *Id*. at 230. Though *Gates* dealt with probable cause, the court subsequently held that the same factors are equally relevant to a determination of reasonable suspicion. *White*, 496 U.S. at 328-29.

¶ 21 A police officer making a warrantless arrest "may rely upon information received through an informant, rather than upon his direct observations, so long as the informant's statement is reasonably corroborated by other matters within the officer's knowledge." *Jones v. United States*, 362 U.S. 257, 269 (1960), *overruled on other grounds by United States v. Salvucci*, 448

U.S. 83 (1980). In *Gates*, for example, the Court found probable cause where a detailed letter from an anonymous informant correctly predicted details of the defendant's complicated travel itinerary. *Gates*, 462 U.S. at 243. Similarly, in *White*, an anonymous informant provided a detailed description of the defendant, her vehicle, and her planned route of travel from her home to a motel. *White*, 496 U.S. at 327. The *White* court reasoned that the tip alone lacked any indicia of reliability, but provided enough details which, when corroborated by police, gave rise to reasonable suspicion. *Id*. at 329.

¶ 22 When police receive information from known informants, rather than anonymous tipsters, that informant's reputation for reliability and credibility may also be assessed. *Florida v. J.L.*, 529 U.S. 266, 270 (2000). Indeed, the Court has held that a tip from an informant known to a police officer and with a history of providing information to the police is inherently more reliable than an anonymous tip. *Williams*, 407 U.S. at 146; see also *Gates*, 462 U.S. at 283-84 (contrasting known informants with anonymous informants: "By definition nothing is known about an anonymous informant's identity, honesty, or reliability."). The source's reputation and independent police corroboration of the source's information have thus become the touchstones for determining the value of the information from an informant. See *People v. Tisler*, 103 Ill. 2d 226, 237 (1984). "Where the facts a police officer relies upon for probable cause were provided by an informant, the informant's former reliability must be established or the information must be independently corroborated." *People v. Earley*, 212 Ill. App. 3d 457, 465 (1991).

¶ 23 In the case at hand, unlike in *Williams*, Lawrence—the sole witness at the suppression hearing—did not know the informant and could provide no indicia of the reliability of the informant or his information. While Mushinsky potentially knew of his informant's history of reliability and credibility, he was not called to testify to that information. Lawrence merely

assumed that Mushinsky believed his informant reliable; he had no personal knowledge of that fact. See Ill. R. Evid. 602 (eff. Jan. 1, 2011) ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.").

¶ 24 Moreover, the tip—as passed from the informant, to Mushinsky, to Lawrence—contained almost no details capable of corroboration. The mere fact that a house fitting the general geographic description provided by the informant did exist on West Bradley Avenue was all that Lawrence was able to corroborate. Indeed, the only other fact provided was the alias of "Killa," which Lawrence was unable to corroborate through surveillance. This stands in stark contrast to the detailed descriptions provided by anonymous informants and held to satisfy the varying quanta of suspicion in *Gates* and *White*.

¶ 25 Under the collective-knowledge doctrine, information known to all of the police officers acting in concert may be examined when determining whether the officer initiating the stop had reasonable suspicion to justify a *Terry* stop. *People v. Ewing*, 377 Ill. App. 3d 585, 595 (2007). However, where the arresting officer does not have personal knowledge of the facts supporting reasonable suspicion, it is "the State's burden to produce evidence at the suppression hearing from someone who possessed such knowledge." *People v. Hyland*, 2012 IL App (1st) 110966, ¶ 21.

¶ 26 In the present case, Lawrence's reasonable suspicion for stopping defendant, insofar as it relied upon the informant's tip, required that the informant's tip be reliable. See *Earley*, 212 Ill. App. 3d at 465. Because Lawrence had no personal knowledge of the reliability of the tip—either through corroboration of the facts or through knowledge of the informant—the State was required to produce evidence at the hearing from someone who did have such knowledge.

Hyland, 2012 IL App (1st) 110966, ¶ 21. Though Mushinsky may have been able to provide the requisite evidence, the State failed to call him as a witness. Accordingly, the State failed to demonstrate that the information relied on by Lawrence was reliable enough to form the basis of reasonable suspicion.

¶ 27 II. Independent Reasonable Suspicion

¶ 28 The finding that the informant's tip was not proven reliable does not conclude our analysis in this case. We must next determine whether, independent of the tip, Lawrence's observations of defendant provided a sufficient basis for reasonable suspicion. We find that it did not.

¶ 29 An investigatory stop pursuant to *Terry* must be justified at its inception. *People v. Close*, 238 Ill. 2d 497, 505 (2010). A "police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21. The officer's suspicion must amount to more than an inarticulate hunch. *Close*, 238 Ill. 2d at 505. The reasonableness of such a seizure "depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.' " *Pennsylvania v. Mimms*, 434 U.S. 106, 108 (1977) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)). In judging the police officer's conduct, a reviewing court applies an objective standard: would " 'the facts available to the officer at the moment of the seizure *** "warrant a man of reasonable caution in the belief" that the action taken was appropriate?' " *Id.* (quoting *Terry*, 392 U.S. at 21-22, quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)). "Although courts consider the training and experience of the officer as part of the totality of circumstances, they need not implicitly accept all of the officer's suspicions as reasonable." *People v. Leggions*, 382 Ill. App. 3d 1129, 1135 (2008).

¶ 30 In *Brown v. Texas*, 443 U.S. 47 (1979), police officers stopped the defendant after they observed him walking away from another man in an alley in an area known for drug crimes. The Supreme Court found that the officers' suspicion was not reasonable, noting that the record contained no evidence that it was unusual for people to be in the alley. *Id*. at 51-52. The Court pointed out that "the appellant's activity was no different from the activity of other pedestrians in that neighborhood." *Id.* at 52.

¶ 31 Relying on *Brown*, the Fourth District found that police officers did not have reasonable suspicion sufficient to justify a *Terry* stop where they observed two people exiting one vehicle and entering another in a high-crime area known for narcotics trafficking. *Leggions*, 382 Ill. App. 3d at 1134-38. The court observed that "[a] very large category of innocent travelers get out of their own cars and into other people's cars." *Id*. at 1137, citing *Riley v. State*, 892 A.2d 370 (Del. 2006); *Davis v. State*, 858 N.E.2d 168 (Ind. App. 2006). Where the facts used to justify a *Terry* stop could describe a large number of innocent people, the court reasoned, the Fourth Amendment balance " 'tilts in favor of freedom from police interference.' " *Id*. (quoting *Brown*, 443 U.S. at 52.)

¶ 32 In the present case, Lawrence observed defendant make two stops in his vehicle. At the first, defendant exited his vehicle and partially entered a minivan. The second was a more brief encounter with an individual on the street. At neither of these stops did Lawrence observe any sort of transaction, nor could he see what, if anything, was in the parties' hands. In short, Lawrence observed absolutely no illicit activity. While Lawrence's suspicion was clearly bolstered by the unsubstantiated information passed on to him by Mushinsky, we have already determined that that information, having not been shown reliable by the State, could not contribute to Lawrence's suspicion. Absent that information, Lawrence observed a man in a

vehicle make two stops. As in *Leggions*, Lawrence's observations could not rise to the level of reasonable suspicion sufficient to justify a *Terry* stop.

¶ 33 Moreover, simply because defendant encountered a minivan registered to a known narcotics dealer does not render Lawrence's eventual stop lawful. In *Sibron v. New York*, 392 U.S. 40, 62 (1968), the Supreme Court found it "clear" that seized evidence was inadmissible where the arresting officer had merely observed the defendant talking to a number of known narcotics addicts over a period of eight hours. The Court stated:

> "It must be emphasized that Patrolman Martin was completely ignorant regarding the content of these conversations, and that he saw nothing pass between Sibron and the addicts. So far as he knew, they might indeed 'have been talking about the World Series.' The inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the police upon an individual's personal security." *Id.*

Unlike *Sibron*, this case does not involve known narcotics addicts, only information concerning a car. Lawrence could not see who was inside the minivan, and he did not observe defendant conversing with anyone with involvement in narcotics. Whatever interaction defendant had with the person or persons in the minivan was quite brief compared to the conversations over eight hours in *Sibron*.

¶ 34 The State argues that the present case is distinguishable from *Leggions* because "[t]he fact that more than one encounter occurred made it unlikely that they were innocent exchanges[.]" The State's use of the word "exchange" in its argument is indicative of the flaw in its reasoning. Each of the cases that the State cites in support of this proposition deal with

exchanges: *People v. Rucker*, 346 Ill. App. 3d 873, 888-89 (2003) (police observed four exchanges of currency for unknown items); *People v. Harris*, 352 Ill. App. 3d 63, 65 (2004) (police observed three exchanges of currency for small objects approximately the size of a quarter); *People v. Taylor*, 165 Ill. App. 3d 64, 67 (1987) (police officer observed five different exchanges). In the case at hand, defendant made two stops, each dissimilar from the other. Lawrence was unable to see precisely what took place during either stop. While he initially described the second stop as an "exchange," Lawrence admitted that he could not see what, if anything, the parties had, or if any actual exchange was made. Lawrence's observations could not rise to the level of reasonable suspicion sufficient to justify a *Terry* stop.

¶ 35 Because the State failed to establish that the informant's tip passed from Mushinsky to Lawrence was reliable, it was unlawful for the arresting officers to rely on the tip as a basis for reasonable suspicion. Further, Lawrence's observations of defendant did not provide Lawrence with reasonable suspicion that defendant had committed or was committing a crime. Accordingly, the stop of defendant was unlawful, and we reverse the trial court's denial of defendant's motion to suppress.

¶ 36 Defendant urges that the proper remedy when a court of review reverses the denial of a suppression motion is outright reversal of the conviction. Defendant's argument, we presume, is that but for the suppressed fruits of the unlawful seizure, the State may not meet its burden of proving defendant guilty of the charged offenses beyond a reasonable doubt. See *People v. Sims*, 2014 IL App (1st) 121306, ¶ 19. However, we find the more prudent remedy to be *vacatur* of defendant's conviction and sentence, reversal of the trial court's ruling on the motion to suppress, and remand for further proceedings. This remedy allows the State itself to decide whether it can further pursue the charges absent the suppressed evidence.

¶ 37 CONCLUSION

¶ 38 The judgment of the circuit court of Peoria County is vacated in part, reversed in part, and remanded.

¶ 39 Vacated in part and reversed in part.

¶ 40 Cause remanded.

¶ 41 JUSTICE HOLDRIDGE, dissenting.

¶ 42 I dissent. I agree that, under the facts presented in this case, the informant's tip could not supply a reasonable suspicion sufficient to justify Lawrence's stop of the defendant's vehicle, and I join the majority's analysis of that issue. However, in my view, the totality of the circumstances provided a sufficient basis for reasonable suspicion even absent the informant's tip.

¶ 43 Prior to the stop, Lawrence saw the defendant exit his vehicle in a parking lot, open the passenger-side door of a nearby minivan, and lean inside the minivan. After another officer ran the minivan's license plates, Lawrence learned that the minivan was registered to a woman who was recently indicted on federal drug charges. (Only eleven days earlier, Lawrence himself had executed a search warrant on that woman's residence and found evidence of heroin dealing.) The defendant then returned to his vehicle and drove out of the parking lot, with Lawrence following him. Shortly thereafter, Lawrence observed the defendant pull over to a curb where a woman approached the car and reached her hand inside the passenger-side window for approximately six or seven seconds. Lawrence suspected that the encounter was some type of drug exchange because the woman had reached her hand inside the car window.

¶ 44 These facts, taken together, support a reasonable suspicion of criminal activity sufficient to justify a *Terry* stop of the defendant's vehicle. Unlike the defendant in *People v. Leggions*,

382 Ill. App. 3d 1129, 1134-38 (2008), the defendant did not merely exit his car and enter another car in a high crime area. Rather, he partially entered a vehicle that was registered to a woman *who the police confirmed had been charged with dealing heroin*. Lawrence himself had recently executed a search warrant that uncovered evidence supporting that charge. Moreover, the defendant did not merely get in a vehicle registered to a known drug dealer and drive away with others in that vehicle. Rather, he briefly leaned inside the vehicle, immediately returned to his own vehicle, and then proceeded to pull his car over to the side of a road where a woman reached her hand into the car window and left six or seven seconds later. In my view, this pattern of unusual conduct supported a reasonable inference that the defendant had just engaged in a drug transaction. In this case, the defendant did not merely converse or otherwise associate with known drug users (as did the defendant in *Sibron v. New York*, 392 U.S. 40, 62 (1968)). Rather, he performed a series of actions that, taken together, were highly suggestive of illegal drug activity.

¶ 45 Accordingly, I would affirm the trial court's denial of the defendant's motion to suppress evidence and uphold the defendant's conviction.