2016 IL App (5th) 150017-U

NO. 5-15-0017

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 14-CF-1118
	)	
DARNELL FOREMAN,	)	Honorable
	)	Zina R. Cruse,
Defendant-Appellee.	)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's granting of the defendant's motion to suppress evidence and quash arrest is reversed where police officers had reasonable suspicion to investigate.

¶ 2 BACKGROUND

¶ 3 On July 31, 2014, the defendant was arrested in East St. Louis. On August 7, 2014, a felony information was filed charging the defendant with unlawful possession of a firearm by a felon. On October 15, 2014, the defendant filed a motion to suppress evidence and quash arrest. The defendant argued that there was no reasonable suspicion

or probable cause to stop or arrest the defendant and therefore the evidence seized was the result of an improper stop and arrest.

¶ 4 On November 10, 2014, the circuit court conducted a hearing on the defendant's motion to suppress evidence and quash arrest. Master Sergeant Joseph Beliveau of the Illinois State Police testified that he was the director of the Metropolitan Enforcement Group of Southwestern Illinois, a task force that was responsible for narcotics and investigative operations for the Illinois State Police in the Metro East area. In 2009, he had formed a detail known as Working Against Violent Elements due to the violence in the Metro East area. This detail targeted crime hot spots, or areas where several open-air drug sales and firearm violations had occurred. Many of these hot spots were gas stations and convenience stores.

¶ 5 On the night of the arrest, Beliveau was conducting similar work under a Project Safe Neighborhood grant. At approximately 9:15 p.m., he was traveling north on Illinois Route 111, approaching a Mobil station. He testified that he checked on gas stations to identify criminal activity and that this particular station was a hot spot for criminal activity. He testified that during such checks, he would look to identify a group of individuals and look for suspicious activity. If he did not see anything suspicious, he would not stop. On the night of the arrest, he saw two individuals standing by a car in the Mobil station that "caught [his] attention." As he drove past, "covert police cars" came up behind him. He observed one of the individuals look up, recognize these cars as police vehicles, and alert the other individual. The two then immediately turned away and walked towards the Mobil station. Beliveau testified that in his experience, if a

person flees into a store, it is an attempt to hide or conceal narcotics or a firearm, but if a person flees away from the store, they may have narcotics or a gun but likely also are wanted on a warrant. Based on this observation and his experience, Beliveau drove to the north side of the store, went to the window of the store, and attempted to identify where the individuals may have concealed contraband. Beliveau saw the defendant, who was one of the individuals, moving through the store. He saw the defendant move towards the restroom and look back to the front door, where agents with clothing identifying them as police were entering. However, Beliveau testified he could not see the agents enter, nor could he see if the defendant had a firearm.

¶ 6 Special Agent Kevin Crolly of the Illinois State Police also testified. Crolly worked with the Metropolitan Enforcement Group of Southwestern Illinois under Beliveau and had been with that unit for almost two years at the time of the hearing. Prior to his time with that unit, Crolly had been an intel analyst for the Illinois State Police for 6 years and had been an intelligence analyst for the Illinois Air National Guard for 18 years. As part of the Metropolitan Enforcement Group of Southwestern Illinois, Crolly had also worked with the Working Against Violent Elements and Project Safe Neighborhood details. On the night of the arrest, Crolly was riding with Beliveau in an unmarked 2014 black Ford Explorer. Crolly testified that he frequently patrolled the Mobil station because it was in a "very high-crime area" and because many of the investigations he has been a part of, including those involving gun crimes, occurred in that area. Crolly testified that he also saw the two individuals by the vehicle. Crolly observed the defendant motioning to the other individual when the unmarked police

vehicles pulled into the Mobil station. At that point, Crolly stated that the defendant and the other individual walked at "a quickened pace" towards the entrance of the Mobil station. When the defendant was about 30 yards away, Crolly made eye contact with the defendant. Crolly identified himself as a member of the Illinois State Police in "a regular tone of voice." Crolly had on a department-issued vest with "State Police" on the front and back, and his badge and duty belt were clearly visible. Crolly testified that he was attempting to make a consensual contact before the defendant entered the store. The defendant then looked away, and he and the other individual entered the store.

¶ 7 Crolly testified that he followed the defendant into the store. A Washington Park police officer entered before Crolly and made contact with the second individual. Crolly saw the defendant walking down the middle aisle of the Mobil station towards the bathrooms. Crolly testified that the defendant made direct eye contact with him once again and then entered the restroom. Crolly made his way to the area between the men's and women's restrooms. When he got there, he heard what he perceived to be a gun dropped or placed onto the floor in a hard manner. Crolly testified that it was a "unique sound," a "metallic clank" against a porcelain or tile floor. He testified that his experience in the military and law enforcement familiarized him with the sound. Upon hearing this sound, he identified himself as an Illinois State Police officer and instructed the defendant to exit the restroom. The defendant exited the restroom. Crolly again identified himself and then told the defendant he was being detained for the investigation. Crolly testified that the totality of the circumstances, which included the broken eye contact, the defendant's walking away, and hearing the clank, made him believe that the

defendant needed to be detained in order to investigate. Crolly waited for other officers to arrive and then transferred the defendant to them. Crolly then went into the restroom, where he observed a black handgun and magazine on the floor. On cross-examination, Crolly testified that he would have released the defendant had he not found the gun or other contraband after checking the restroom.

¶ 8 The defendant argued that his presence at the Mobil station and walking into the station did not constitute probable cause. Further, the defendant argued that Crolly could not have perceived the clank to be from a dropped gun. The defendant argued that the police thus could not "arrest" the defendant prior to searching the bathroom and finding the gun. The State argued that the circumstances amounted to a reasonable suspicion that the defendant was hiding a gun or other contraband and that, therefore, a brief detention was permissible.

¶ 9 On December 31, 2014, the circuit court entered an order granting the motion to suppress and quash arrest. The circuit court stated that, based on the testimony, "the defendant was 'taken into custody' prior to any investigatory encounter, which necessitated probable cause." Further, the court held that because the defendant "did not go into headlong flight" when walking to the Mobil station, the police officers did not have reasonable suspicion to detain him. The circuit court also stated that "the officer's testimony that he heard a 'metallic clank' and his conclusion that it was a handgun hitting the floor cannot be relied upon by this court as a reasonable suspicion nor probable cause." On January 7, 2015, the State filed notice of appeal.

¶ 10 ANALYSIS

¶ 11 In reviewing a circuit court's ruling on a motion to suppress, we apply a two-part standard of review: the circuit court's findings of historical facts must be given due weight and thus are reversed only if against the manifest weight of the evidence, whereas we are free to undertake our own assessment of the facts and review *de novo* the circuit court's ultimate legal ruling as to whether suppression is warranted. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). We recognize at the outset that the circuit court applied the wrong standard when it concluded that this brief detention of the defendant was an arrest requiring probable cause. Rather, it was a brief, investigatory stop requiring reasonable suspicion. The defendant does not contest that the circuit court used the wrong standard. The United States Supreme Court has "held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). "While 'reasonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop." *Id.* Thus, the officers were permitted to detain the defendant briefly so long as the officers were "able to articulate more than an 'inchoate and unparticularized suspicion or "hunch" ' of criminal activity." *Id.* at 123-24.

¶ 12 In improperly analyzing whether the police had probable cause, as opposed to reasonable suspicion, the circuit court seemingly evaluated each piece of evidence (whether it was a high-crime area, whether the defendant had fled, or whether Crolly had

heard a clank) separately. However, cases "have said repeatedly that [courts] must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). Further, in considering the totality of the circumstances, courts must "allow[ ] officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.' " *Arvizu*, 534 U.S. at 273 (quoting *Cortez*, 449 U.S. at 418). Thus, in determining whether the police had reasonable suspicion to detain the defendant, we will consider the totality of the circumstances and the experience and training of Beliveau and Crolly.

¶ 13 The circuit court appears to have accepted the contention that the Mobil station at which the defendant was arrested was in a high-crime area. However, the defendant argues that the State failed to provide sufficient evidence that the defendant was detained in a high-crime area because the State failed to show that the area had been a high-crime area recently and failed to show any nexus between the defendant's conduct and the type of crime occurring in the area. While "[a]n individual's presence in an area of expected criminal activity, standing alone, is not enough" for an officer to have reasonable suspicion about that individual, officers may consider "the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation." *Wardlow*, 528 U.S. at 124. Generally, "the trial court's factual findings, concerning whether this is or is not a high-crime area, are entitled to a great deal

of deference." *People v. Jackson*, 2012 IL App (1st) 103300, ¶ 34. However, the circuit court did not make findings of fact on this issue. Nevertheless, other courts have considered a number of factors in determining whether or not a location is a high-crime area, including (1) the nexus between the type of crime most prevalent or common in the area and the type of crime suspected in the instant case, (2) limited geographic boundaries of the "area" or "neighborhood" being evaluated, and (3) temporal proximity between evidence of heightened criminal activity and the date of the stop or search at issue. *People v. Harris*, 2011 IL App (1st) 103382, ¶ 14.

¶ 14 In considering these factors, the evidence supports finding the Mobil station to be in a high-crime area. Both Beliveau and Crolly spoke to the nexus between the crime prevalent at the station and the crime suspected in this case. Beliveau stated that the various tasks forces had been started due to violence in the Metro East area, and both he and Crolly stated hot spots like the Mobil station had many firearm violations. Further, Beliveau clearly explained that the high-crime area was well-defined. He explicitly stated that most of the hot spots, like the one in this case, were at gas stations. Crolly likewise singled out this Mobil station in particular as a "very high-crime area." Lastly, it appears the criminal activity had occurred at this area for quite some time. Beliveau stated that the initial task force to fight violence in the area began in 2009, and both Beliveau and Crolly were patrolling the night of the arrest as part of a grant from Project Safe Neighborhood to continue combating violent crime. Based on the record, we find that the Mobil station was in a high-crime area.

¶ 15 The State argues that the fact the defendant was in a high-crime area, coupled with his "evasive" behavior, is sufficient to support the officer's reasonable suspicion that the defendant was in possession of contraband. The Supreme Court of the United States has held that a defendant's presence in a high-crime area coupled with "unprovoked flight upon noticing the police" is sufficient to arouse a reasonable suspicion. *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). According to both officers, the defendant noticed the police, turned away, and walked to the Mobil station at "a quickened pace." While "headlong running" was held to support reasonable suspicion in *Wardlow*, "briskly walking" to an area "where the police had easy access to the [defendant]" has been held not to be evasive behavior in and of itself. See *In re Rafeal E.*, 2014 IL App (1st) 133027, ¶ 29.

¶ 16 However, the experience and training of the officers must also be given due weight. Beliveau explained that, based on his training and experience, a person who enters a building after noticing police officers often is seeking to hide or conceal contraband. Further, as noted above, both Beliveau and Crolly explained that the Mobil station was in a high-crime area. Thus, Beliveau and Crolly had found the defendant in a high-crime area, watched him notice the police, watched him walk to the Mobil station entrance at a quickened pace, and then watched him enter the Mobil station, which in their experience was an action often taken to conceal contraband. While we cannot say that these facts standing alone would rise to the level of reasonable suspicion, they certainly cannot be viewed in isolation.

¶ 17 Crolly followed the defendant into the Mobil station and saw him enter the restroom. At that time, Crolly heard a metallic clank, which he claimed he knew to be a gun dropped on the tile floor based on his years in the police and the military. At the hearing, the defendant cross-examined Crolly as to other sources that could have caused the clank. The defendant also argued that the clank could not be "probable cause" and that Crolly was unable to tell whether the clank was from a dropped gun or from some other source. The circuit court agreed, holding that "[Crolly's] testimony that he heard a 'metallic clank' and his conclusion that it was a handgun hitting the floor cannot be relied upon by this court as a reasonable suspicion nor probable cause."

¶ 18 The circuit court was within its discretion to determine that Crolly could not tell whether the clank was from a dropped gun or from another source. However, the circuit court again failed to look at the totality of the circumstances when determining the importance of the clank. The defendant has never argued that Crolly did not hear a clank but has merely argued that Crolly could not definitively say the clank had been caused by a dropped gun. On a motion to suppress evidence, the initial burden of producing evidence rests with the defendant. *People v. Price*, 2011 IL App (4th) 110272, ¶ 16. Because the defendant has produced no evidence arguing that there was no clank, it is undisputed that Crolly heard a clank.

¶ 19 Thus, the evidence before the circuit court was as follows: Beliveau and Crolly saw the defendant in a high-crime area talking with another individual. When the defendant recognized the police, he turned away and briskly walked into the Mobil station. Beliveau knew from experience that people who flee police by entering a

building often seek to conceal contraband, such as a gun. Crolly entered the Mobil station and saw the defendant enter the restroom. Crolly stood near the restroom and heard a metallic clank. Based on the totality of circumstances, Crolly could reasonably suspect that the defendant was trying to hide a gun even if he could not know with certainty that the clank was caused by a gun. Crolly therefore could conduct a brief, investigatory stop in order to determine if the defendant had hidden a gun. Only at this point did Crolly detain the defendant in order to briefly search the restroom for a gun. "Although these facts were not sufficient to justify an arrest, they were sufficient to justify the officer's stop of respondent ***." *In re F.R.*, 209 Ill. App. 3d 274, 280 (1991). Therefore, the circuit court improperly granted the defendant's motion to suppress evidence and quash arrest.

¶ 20 CONCLUSION

¶ 21 For the reasons stated, we reverse the decision of the circuit court of St. Clair County.

¶ 22 Reversed.