2017 IL App (1st) 150027-U

FIRST DIVISION
April 17, 2017

No. 1-15-0027

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 C6 60454
	)	
NATHANIEL FAULKNER,	)	Honorable
	)	Anna Helen Demacopoulos,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for burglary as the trial court did not err in denying his motion to quash his arrest and suppress evidence where, under the totality of the circumstances, the police officer had reasonable suspicion to stop defendant and investigate whether he had been involved in criminal activity and had probable cause to arrest at the time defendant was arrested.

¶ 2 Following a bench trial, defendant Nathaniel Faulkner was convicted of burglary (720 ILCS 5/19-1(a) (West 2012)) and sentenced to 10 years' imprisonment. On appeal, Mr. Faulkner

contends that the trial court erred in denying his motion to quash his arrest and suppress the inculpatory statement he made while in custody. We affirm.

¶ 3 BACKGROUND

¶ 4 Prior to trial, Mr. Faulkner's counsel filed a motion to quash his arrest and suppress the inculpatory statement he made after being advised of his *Miranda* rights. Counsel argued that, when the police officer stopped Mr. Faulkner, the officer lacked both reasonable suspicion and probable cause for the seizure and that, because Mr. Faulkner was unreasonably seized, his subsequent arrest should be quashed and his inculpatory statement should be suppressed.

¶ 5 At the hearing on the motion to suppress, Dolton police officer Carr testified that, at around 1 p.m. on April 2, 2013, he was on routine patrol when he received a dispatch of a call of "burglary in progress," involving "[t]wo subjects breaking into a garage" at 15504 Drexel Avenue in Dolton, Illinois. The dispatch did not contain any further information. Officer Carr, who was working alone, immediately drove to that address and arrived "at the most" a minute later. At the address, he observed a single-family home with a driveway, a garage at the end of the driveway, and a vehicle slowly backing out of the driveway. Officer Carr activated his emergency lights, pulled directly up to the vehicle, and stopped it "halfway in the driveway and halfway [in the] street." Officer Carr ordered the only occupant, subsequently identified as Mr. Faulkner, out of the vehicle.

¶ 6 Officer Carr detained Mr. Faulkner using handcuffs and placed him inside his police vehicle, which "took a little while." Officer Carr acknowledged that he did not have an arrest warrant for Mr. Faulkner and, up until this point, he had not seen Mr. Faulkner violate any laws. Officer Carr testified that Mr. Faulkner was not free to leave. After securing Mr. Faulkner,

Officer Carr walked toward the garage and observed Dennis Burton, Mr. Faulkner's codefendant who is not a party to this appeal, "exiting the garage." Officer Carr went to the service door of the garage and observed that it "had been forced open," as the door had been "broken away" from its frame.

¶ 7 Inside the garage, Officer Carr noticed that there was a vehicle "jacked up on one side" with several tools near that side of the vehicle. Officer Carr estimated that, from the time he put Mr. Faulkner in the back of his vehicle until he observed the damage to the garage, "less than three minutes" had elapsed. Officer Carr also stated that "a minute or two" after he arrived, other officers arrived. Mr. Faulkner was later transported to the police station where he was read his *Miranda* rights and gave a statement to Dolton police officer Harris.

¶ 8 The trial court denied Mr. Faulkner's motion to suppress that statement. It found that, given Officer Carr's immediate response to the "911 dispatch of a burglary in progress," it was "reasonable" for Officer Carr to detain Mr. Faulkner in handcuffs in his police vehicle. The court stated that it would have been "unreasonable" for the officer to have just let Mr. Faulkner "go about [his] business" under the circumstances. The court also found that "within three minutes" of him being detailed, there was probable cause for Officer Carr to arrest Mr. Faulkner, which led to him being taken to the police station and giving a statement. Mr. Faulkner's case proceeded to a bench trial.

¶ 9 At trial, the parties stipulated that Officer Carr's testimony from the hearing on the motion to quash Mr. Faulkner's arrest would be considered at his trial. Officer Harris testified that, at around 1 p.m. on April 2, 2013, he arrived at the residence located at 15504 Drexel Avenue. He went to the garage and observed damage to its service door. Officer Harris looked

inside the garage and saw that a vehicle had been "jacked up" on one side. Around that side of the vehicle, Officer Harris found "[t]ools," including a construction lamp, a rotary saw, electrical cords, a flashlight, a skullcap, and two blades. Officer Harris testified that, nearly an hour later, he read Mr. Faulkner his *Miranda* rights and Mr. Faulkner acknowledged understanding his rights. Mr. Faulkner informed Officer Harris that he wanted to speak about the events in question and signed a *Miranda* waiver form. Mr. Faulkner told Officer Harris that he had been informed by Mr. Burton that "they [could] go get some parts off a vehicle" at the residence and "sell [them] for money." Officer Harris acknowledged that forensic testing was not performed on the evidence in the garage.

¶ 10 The parties also stipulated that Jerome Brusaw would testify that, on April 2, 2013, he owned the property located at 15504 Drexel Avenue and he had not given Mr. Faulkner or Mr. Burton permission to enter or take his property.

¶ 11 The trial court found Mr. Faulkner guilty of burglary and possession of burglary tools. The court subsequently merged Mr. Faulkner's two convictions into one conviction for burglary. After Mr. Faulkner unsuccessfully moved for a new trial, the court sentenced him, as a Class X offender based on his criminal background, to 10 years' imprisonment. This appeal followed.

¶ 12 JURISDICTION

¶ 13 Mr. Faulkner was sentenced on December 4, 2014, and timely filed his notice of appeal on that same day. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 14 ANALYSIS

¶ 15 Mr. Faulkner contends that the trial court erred in denying his motion to quash his arrest and suppress the evidence. Specifically, he argues that he was handcuffed and placed in the back of a police vehicle by Officer Carr based only on the officer's observation of him backing out of the driveway at a residence where a burglary in progress was reportedly occurring in its garage. Mr. Faulkner asserts that, based on this evidence, Officer Carr had neither reasonable suspicion to detain him nor probable cause to arrest him, and he was therefore unlawfully seized. Based on this allegedly unlawful seizure, Mr. Faulkner contends that the inculpatory statement he made after being read his *Miranda* rights should have been suppressed and excluded from the evidence at trial. The State responds that Officer Carr's initial detention of Mr. Faulkner was properly based on his reasonable suspicion that Mr. Faulkner had committed a crime. Immediately after that initial detention, Officer Carr observed additional evidence that gave him probable cause to arrest Mr. Faulkner. After that legal arrest, Mr. Faulkner gave the inculpatory statement. The State argues that the trial court therefore correctly denied Mr. Faulkner's motion to quash his arrest and suppress the evidence.

¶ 16 The trial court's ruling on a motion to quash Mr. Faulkner's arrest and suppress evidence presents a mixed question of law and fact. *People v. Lee*, 214 Ill. 2d 476, 483 (2005). The court's findings of fact, including reasonable inferences from the evidence, are given deference, and we will not disturb the findings of fact unless they are against the manifest weight of the evidence. *Id.*; *People v. Green*, 2014 IL App (3d) 120522, ¶ 48. The ultimate issue, however, of whether the law was applied correctly to the established facts is reviewed *de novo*. *Lee*, 214 Ill. 2d at 484; *People v. Fox*, 2014 IL App (2d) 130320, ¶ 11.

¶ 17 Both the United States and Illinois constitutions protect an individual's right to be free from unreasonable searches and seizures. U.S. Const., amends. IV, XIV; Ill. Const. 1970, art. I, § 6; *People v. Timmsen*, 2016 IL 118181, ¶ 9. "The touchstone of the fourth amendment is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.' " *Timmsen*, 2016 IL 118181, ¶ 9 (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)). There are three types of police-citizen encounters that do not constitute an unreasonable seizure of an individual: (1) consensual encounters, which involve no coercion or detention; (2) *Terry* stops, which are brief investigatory detentions that must be supported by a reasonable, articulable suspicion of criminal activity; and (3) arrests, which must be supported by probable cause. *People v. Gherna*, 203 Ill. 2d 165, 176-77 (2003). *Terry* stops, as the name implies, evolved from the United States Supreme Court's decision in *Terry v. Ohio*, 392 U.S. 1 (1968). See *Timmsen*, 2016 IL 118181, ¶ 9.

¶ 18 Mr. Faulkner argues that, at the time Officer Carr stopped him, the information that the officer had was insufficient evidence to support either probable cause to justify an arrest or reasonable suspicion to justify a *Terry* stop. Because reasonable suspicion requires a lower quantum of evidence than probable cause does (see *People v. Colyar*, 2013 IL 111835, ¶ 33), we will first examine whether Officer Carr had reasonable suspicion to justify a *Terry* stop of Mr. Faulkner.

¶ 19 In a *Terry* stop, a police officer may "conduct a brief, investigatory stop of a citizen when the officer has a reasonable, articulable suspicion of criminal activity." *Gherna*, 203 Ill. 2d at 177. The purpose of this investigatory detention is so an officer, who reasonably suspects an individual "to be recently or currently engaged in criminal activity," can "verify or dispel those

suspicions." *People v. Brown*, 2013 IL App (1st) 083158, ¶ 22. Although handcuffing a suspect is generally more synonymous with an arrest, it is permissible during a *Terry* stop "only when it is a necessary restraint to effectuate the stop and foster the safety of the officers." *People v. Johnson*, 408 Ill. App. 3d 107, 113 (2010).

¶ 20 To justify a *Terry* stop, the officer "must be able to point to specific and articulable facts which, considered with the rational inferences from those facts, make the intrusion reasonable." *In re Elijah W.*, 2017 IL App (1st) 162648, ¶ 36. An officer's detention under *Terry* must be based on more than a "hunch or unparticularized suspicion." *Id.* An officer may initiate a *Terry* stop based on an anonymous tip from a member of the public, but to rely on such information, the tip must bear "some indicia of reliability." *People v. Henderson*, 2013 IL 114040, ¶ 26. The decision to perform a *Terry* stop is a practical one based on the totality of the circumstances at the moment the stop is initiated. *In re Elijah W.*, 2017 IL App (1st) 162648, ¶ 36. The reasonableness of the detention is judged according to an objective standard (*id.*) and must be determined on a case-by-case basis as reasonableness under *Terry* is a fact-intensive inquiry. *People v. Hubbard*, 341 Ill. App. 3d 911, 917 (2003).

¶ 21 In the present case, we find that Officer Carr's detention of Mr. Faulkner was proper under *Terry*. The evidence established that Officer Carr received a dispatch of a call of a burglary in progress of a garage at 15504 Drexel Avenue, involving two subjects, with no further description. Officer Carr arrived at the residence within a minute and immediately observed Mr. Faulkner, alone in a vehicle, backing out of the residence's driveway. That driveway led to the garage. Officer Carr ordered Mr. Faulkner out of the vehicle, detained him using handcuffs, and placed him in the back of the police vehicle. It is undisputed that, at the point Officer Carr

initiated his detention of Mr. Faulkner, he had not noticed any damage to the garage, had not looked inside the garage, had not seen anyone at the scene besides Mr. Faulkner, and had not observed Mr. Faulkner violate any laws.

¶ 22 However, given that Officer Carr immediately responded to the residence of an alleged burglary in progress and observed Mr. Faulkner in a vehicle backing out of that very residence's driveway, which led to the garage, under the totality of the circumstances, Officer Carr had a reasonable and articulable suspicion that Mr. Faulkner was involved in criminal activity. See *People v. Dyer*, 141 Ill. App. 3d 326, 331 (1986) (finding "particularly the extreme spatial and temporal proximity to the crime" established reasonable suspicion for a police officer to conduct a *Terry* stop of a vehicle he observed two miles away from a recently reported armed robbery); *People v. Waln*, 120 Ill. App. 3d 73, 76-77 (1983) (finding that, after a police officer received a radio call of a burglary in progress in a subdivision, the officer was justified in performing a *Terry* stop of two vehicles leaving the subdivision's sole exit, which was approximately one-quarter to one-half of a mile away from the location of the burglary, "especially given the extremely close spatial and temporal proximity to the report of the burglary in progress" even though the radio call did not include a description of any suspects or vehicles to be stopped).

¶ 23 Officer Carr's suspicion of Mr. Faulkner's involvement in criminal activity was based on more than a mere hunch, as the call that led to the dispatch was corroborated, and thus bore some indicia of reliability, by the fact that Officer Carr observed a vehicle backing out of the driveway of the very residence that was the subject of the tip almost immediately after the tip was received. The fact that the dispatch did not mention a vehicle being involved does not change the analysis, as Officer Carr could rationally infer from the facts that the burglary suspects would

attempt to escape from the scene of the crime in a vehicle. See *Dyer*, 141 Ill. App. 3d at 331-32 (finding a police officer could rationally infer based on the facts he knew that a vehicle had been used by suspects in a recently reported armed robbery despite no actual evidence of a vehicle being involved). Because an officer's reasonableness must be judged, in part, "on the basis of [his] responsibility to prevent crime and to catch criminals" (*People v. Stout*, 106 Ill. 2d 77, 86-87 (1985)), it was reasonable for Officer Carr to detain Mr. Faulkner in order to verify or dispel his suspicion that Mr. Faulkner was involved in the reported burglary in progress in the residence's garage.

¶ 24 We are not persuaded by Mr. Faulkner's reliance on *People v. Rhinehart*, 2011 IL App (1st) 100683, or *People v. Pantoja*, 184 Ill. App. 3d 671 (1989). In *Rhinehart*, an unidentified female flagged down a police officer on the street, informed him that "a black male wearing a white shirt and yellow pants had a gun," and directed the officer to the man's location. *Rhinehart*, 2011 IL App (1st) 100683, ¶ 3. On appeal, this court held that the officer's detention and search of the defendant was not proper under *Terry*. *Id.* ¶ 18. We found that the tip given to the officer by the woman was not sufficiently reliable because she did not explain how she knew the defendant had a gun and the officer did not know the woman's identity. *Id.* ¶¶ 14-16.

¶ 25 In *Pantoja*, a police officer received a radio dispatch based on a complaint from an anonymous citizen that the defendant had been seen with a handgun and was inside a specifically described vehicle. *Pantoja*, 184 Ill. App. 3d at 672. On appeal, this court held that the officer's detention of the defendant was not proper under *Terry*. *Id.* at 675. We found that the anonymous complainant's tip was not sufficiently corroborated by any evidence, noting that "[t]here was no testimony that [the officer] viewed any suspicious conduct which might corroborate the

anonymous tip" and there were "no other facts argued which might buttress the reasonableness of the belief that an immediate stop was necessary." *Id.*

¶ 26 The reasonableness of a *Terry* stop depends entirely on the totality of the circumstances and is very fact-specific. *Coylar*, 2013 IL 111835, ¶ 32; *In re Elijah W.*, 2017 IL App (1st) 162648, ¶ 36. In this case, unlike in either *Rhinehart* or *Pantoja*, there was strong temporal and geographic proximity between the tip Officer Carr received and the behavior Officer Carr observed. The officer saw Mr. Faulkner in a vehicle backing out of the driveway of the very residence of an alleged burglary in progress no more than a minute after he received the dispatch based on a call reporting the crime being committed. This corroborative fact rendered the call leading to the dispatch sufficiently reliable for Officer Carr to properly detain Mr. Faulkner under *Terry* while he investigated the matter further.

¶ 27 Mr. Faulkner also argues that Officer Carr's initial detention of him cannot be justified as a *Terry* stop because Officer Carr never asked him any questions, but rather immediately handcuffed him and placed him in the police vehicle. This argument rests on a basic misapprehension of the permissible nature of a *Terry* stop. Quoting *Bailey v. United States*, ____ U.S. ____, ____, 133 S. Ct. 1031, 1042 (2013), Mr. Faulkner argues that a *Terry* stop "is 'a brief stop for questioning based on reasonable suspicion.' " He relies in part on the language of section 107-14 of the Criminal Code of Procedure of 1963 (Code) (725 ILCS 5/107-14 (West 2012)), codifying the principles of *Terry* (see *Timmsen*, 2016 IL 118181, ¶ 9 n.7), for this same proposition. However, as the United States Supreme Court and our supreme court have repeatedly made clear, the purpose of a *Terry* stop is to conduct a brief investigation. See, *e.g.*, *Navarette v. California*, ___ U.S. ___, ___, 134 S. Ct. 1683, 1687 (2014); *Illinois v. Wardlow*,

528 U.S. 119, 123 (2000); *Coylar*, 2013 IL 111835, ¶ 32; *People v. Close*, 238 Ill. 2d 497, 505 (2010); *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006); *Gherna*, 203 Ill. 2d at 177.

¶ 28 There is simply no requirement that the officer who detains a suspect pursuant to *Terry* must question the individual detained in order for the stop to be lawful. This was an investigative stop and Officer Carr used it to investigate. Sometimes that investigation requires making additional observations rather than asking questions, as it did here. See 4 Wayne R. LaFave, Search and Seizure § 9.2(f), at 424, 432-33 (5th ed. 2012) (stating that, while "[t]he most common" investigative technique under a *Terry* stop "is interrogation," the police may also detain a suspect "while it is determined if in fact an offense has occurred in the area, a process which might involve checking certain premises"). Officer Carr detained Mr. Faulkner, who he suspected of committing a burglary, placed Mr. Faulkner in his vehicle and subsequently began to check the premises to see if, in fact, a burglary had been committed. That check of the premises provided additional evidence of Mr. Faulkner's involvement in a crime.

¶ 29 In addition, because Officer Carr was the first officer to the scene and was working alone, it was reasonable to handcuff and place Mr. Faulkner in his vehicle as a part of that stop, especially considering the dispatch described the burglary in progress as involving two individuals. See *Colyar*, 2013 IL 111835, ¶¶ 46-47 (the mere fact that an officer handcuffs an individual during a *Terry* stop does not transform an otherwise lawful stop into an unlawful arrest and whether the handcuffing was reasonable depends on the totality of the circumstances facing the officer at the time). Officer Carr's handcuffing and placement of Mr. Faulkner in his police vehicle was reasonable in order to safely investigate wheth er or not Mr. Faulkner had committed a crime.

¶ 30 Neither *Bailey* nor section 107-14 of the Code stand for the proposition that a *Terry* stop must be accompanied by questioning of the individual detained. *Bailey* includes a discussion of the permissible detention of occupants of a house being searched pursuant to a search warrant and says nothing about the scope of a *Terry* stop, except to say that it is a different creature and generally involves "questioning" a suspect. See *Bailey*, 133 S. Ct. at 1039. Section 107-14 of the Code states that a police officer:

> "may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense ***, and *may* demand the name and address of the person and an explanation of his actions. Such detention *and* temporary questioning will be conducted in the vicinity of where the person was stopped." (Emphasis added.) 725 ILCS 5/107-14 (West 2012).

By section 107-14's plain language, when a police officer has reasonable suspicion that an individual has committed, or is about to commit, a crime, the officer may temporarily detain that individual and also "may" ask questions of him. *Id.* "Legislative use of the word 'may' is generally regarded as indicating a permissive or directory reading." *People v. Reed*, 177 Ill. 2d 389, 393 (1997). Additionally, section 107-14 separates the "detention" by an officer and the "temporary questioning" by the officer, further demonstrating that the detention and permissible questioning of a suspect are both allowed under the statute.

¶ 31 Mr. Faulkner does not contest that, if his initial detention was lawful, Officer Carr's subsequent discovery of the garage's damaged service door, the "jacked up" vehicle, and the tools gave Officer Carr probable cause to arrest him. After this lawful arrest, Mr. Faulkner was

read his *Miranda* rights, signed a *Miranda* waiver form and subsequently made an inculpatory statement about his presence at the residence. As both Mr. Faulkner's initial detention and his subsequent arrest were constitutional, exclusion of his inculpatory statement is not necessary. See *People v. Winsett*, 153 Ill. 2d 335, 351 (1992). Consequently, the trial court correctly denied Mr. Faulkner's motion to quash his arrest and suppress evidence, and we accordingly must affirm Mr. Faulkner's conviction for burglary.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 34 Affirmed.