2019 IL App (4th) 160319-U

NO. 4-16-0319

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 1, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
ANTHONY D. HAGLAUER,	)	No. 15CF741
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith Jr.,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: Police officer lacked a reasonable suspicion required to justify a search pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), and the trial court erred in denying defendant's motion to suppress evidence on that basis.

¶ 2 After a bench trial, the trial court found defendant, Anthony Haglauer, guilty of being an armed habitual criminal (720 ILCS 5/24-1.7(a)(1) (West 2014)) and sentenced him to eight years' imprisonment.

¶ 3 Defendant appeals the denial of his motion to suppress evidence, arguing the officer who conducted the search lacked a reasonable suspicion defendant was armed and dangerous. We reverse.

¶ 4 I. BACKGROUND

¶ 5 On June 24, 2015, the State charged defendant with the offense of being an armed habitual criminal (count I) (720 ILCS 5/24-1.7(a)(1) (West 2014)) and unlawful possession of a

weapon by a felon (count II) (720 5/24-1.1(a) (West 2014)). Count I alleged that defendant, a person who had been convicted of burglary and aggravated robbery, knowingly possessed a firearm.

¶ 6 On August 20, 2015, defendant filed a motion to suppress evidence of the firearm, arguing, in part, that the officer who conducted the pat-down search and located the firearm "had no reasonable articulable suspicion for a [*Terry*] style search of defendant for weapons." On December 22, 2015, the trial court conducted a hearing on the motion. Defendant presented the testimony of Detective Paul Vinton, the officer who conducted the search.

¶ 7 Detective Vinton testified he was a detective with the Decatur Police Department. On June 10, 2015, at approximately 9 p.m., Vinton and another detective were traveling westbound near the 800 block of Johns Avenue in an unmarked squad car "actively looking for crimes in progress *** say, drugs, weapons." The detectives were patrolling in the area in part because of two different "shots fired" calls in the past several days, one of which was in the past 24 hours. Vinton testified that the area was a "high crime area."

¶ 8 While patrolling in the area, Vinton observed defendant on a bicycle on the sidewalk south of Johns Avenue. Detective Vinton testified he had no warrant to search or arrest defendant nor did he have any indication defendant was engaged in criminal activity. Vinton briefly continued westbound in his unmarked squad car and pulled the vehicle to the north curb around the 700 block of Johns Avenue, where he continued to observe defendant.

¶ 9 As Vinton pulled the vehicle to the curb, defendant continued westbound on the sidewalk, traveling in the direction of Vinton's parked vehicle. After a short period, defendant "moved into the roadway into the oncoming lane of traffic." As defendant approached Vinton's parked squad car, he "started to make a quick turn back eastbound." As defendant turned

eastward on his bicycle, Vinton exited the squad car and "heard [defendant] say basically, 'Oh, shit,' and [defendant] stopped his bicycle." Vinton testified that defendant "was kind of raised up and tensing, and I believed he was getting ready to flee on foot." Vinton ordered defendant to put his hands behind his neck and proceeded to conduct a pat-down search for weapons.

¶ 10 Detective Vinton further testified that he stopped defendant for a traffic violation and admitted that at the time of the stop and search he had no indication defendant was armed:

"Q. Okay. Now, why did you stop [defendant]?

A. Uh—because the traffic violation.

Q. What traffic violation?

A. Going westbound in the eastbound lane of traffic, sir.

Q. Are you talking about [defendant] on the bicycle?

A. Yes, sir.

Q. Uh—at that time, was it your intent to stop him?

A. Uh—yes, sir.

Q. Did you have any indication at that point in time that [defendant] had any type of weapon on him?

A. Not at that time, sir.

Q. All right. What did you do then?

A. I advised him to put his hands behind his neck for a pat-down for weapons, officer's safety.

* * *

Q. Now, at the point you started the pat-down, prior to that, did you have any indication that he had any type of weapon?

A. No, sir.

Q. You then subsequently recovered a handgun from his pocket of his—uh—sweat pants?

A. Yes, sir."

¶ 11 On cross-examination by the State, Detective Vinton elaborated on defendant's body posture and his reasoning for conducting the pat-down search:

"Q. Okay. And—uh—can you describe for the Court [defendant's]—uh—body posture as you were conducting the pat-down?

A. Yes, ma'am. As I exited the vehicle, he was standing straight up. He was kind of tensed. He began to lean a little bit to the left away from me, and then *** I advised him to put his hands behind his neck at which time I grasped his hands with my left hand and began a pat-down of his right side.

Q. And as you've testified before I think, the reason you conducted the pat-down was for officer safety purposes?

A. Yes, ma'am.

Q. And was that because of the recent shooting in the area primarily as well as the defendant's body posture?

A. Correct, ma'am."

¶ 12 After hearing the arguments of counsel, the trial court denied defendant's motion. The trial court found the stop was lawful based on Detective Vinton's testimony he observed defendant commit a traffic violation. The court also found the pat-down search was lawful, stating, "I think the law then gives [Detective Vinton] the right to pat [defendant] down to do sort of a cursory search just for his own protection which is what Detective Vinton did."

¶ 13 On March 2, 2016, the trial court conducted a bench trial. The State called as witnesses Detective Vinton and the detective patrolling with Vinton on the night defendant was arrested. The testimony of the two witnesses was substantially similar to the testimony given by Detective Vinton at the hearing on defendant's motion to suppress evidence. In addition, the State introduced into evidence the firearm recovered after the search of defendant, as well as photos of the firearm and defendant's bicycle, and certified copies of defendant's prior convictions for burglary and aggravated robbery.

¶ 14 After considering the evidence, the trial court found defendant guilty of both counts. The court merged count II into count I and sentenced defendant to eight years' imprisonment.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues the trial court erred in denying his motion to suppress evidence of the firearm. Specifically, defendant argues that the firearm was the fruit of an unlawful search in violation of his fourth amendment rights because the officer who conducted the search lacked a reasonable suspicion he was armed and dangerous. The State contends the search was lawful given the totality of the circumstances. We agree with defendant.

¶ 18 A. Standard of Review

¶ 19 We apply a two-part standard of review when considering a trial court's ruling on a motion to suppress evidence. *People v. Timmsen*, 2016 IL 118181, ¶ 11, 50 N.E.3d 1092. First, we will uphold the court's factual findings unless they are against the manifest weight of the evidence. *Id*. A finding of fact is against the manifest weight of the evidence where an opposite conclusion is clearly evident. *People v. Miles*, 343 Ill. App. 3d 1026, 1030, 798 N.E.2d 1279,

1283 (2003). Second, we review *de novo* the court's legal conclusion regarding whether suppression is warranted. *Timmsen*, 2016 IL 118181, ¶ 11.

¶ 20 Here, the trial court made no specific factual findings at the hearing on defendant's motion. The only facts presented at the hearing came from the uncontradicted and undisputed testimony of Detective Vinton, the officer who conducted the search. Thus, for purposes of this appeal, we will accept those facts as true.

¶ 21 In addition, the trial court made two legal determinations: (1) the traffic stop was lawful and (2) the pat-down search was lawful. Defendant does not challenge the validity of the traffic stop; he challenges only the lawfulness of the pat-down search. Accordingly, the sole question before this court is whether the trial court erred in concluding the pat-down search was lawful. As this is a legal question, our review is *de novo*. *Id.*

¶ 22 B. The *Terry* Exception to the Fourth Amendment Warrant Requirement

¶ 23 "Both the fourth amendment and the Illinois Constitution of 1970 guarantee the right of individuals to be free from unreasonable searches and seizures." *People v. Colyar*, 2013 IL 111835, ¶ 31, 996 N.E.2d 575 (citing U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6). "The search and seizure provisions of the Illinois Constitution are interpreted in limited lockstep with the fourth amendment to the United States Constitution." *People v. Walker*, 2013 IL App (4th) 120118, ¶ 32, 995 N.E.2d 351 (citing *People v. Fitzpatrick*, 2013 IL 113449, ¶ 15, 986 N.E.2d 1163). "Reasonableness under the fourth amendment generally requires a warrant supported by probable cause." *People v. Thomas*, 198 Ill. 2d 103, 108, 759 N.E.2d 899, 902 (2001). However, in *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court recognized a limited exception to the warrant requirement.

¶ 24 "Under the *Terry* exception, a police officer may briefly stop a person for temporary questioning if the officer reasonably believes that the person has committed, or is about to commit, a crime." *Thomas*, 198 Ill. 2d at 109. Additionally, under *Terry*, "if the officer reasonably believes that the person questioned may be armed and dangerous, the officer may conduct a limited pat-down search for weapons, commonly called a frisk." *People v. Love*, 199 Ill. 2d 269, 275, 769 N.E.2d 10, 15 (2002). In Illinois, the "*Terry* frisk" or "*Terry* search" has been codified under section 108-1.01 of the Code of Criminal Procedure of 1963. See 725 ILCS 5/108-1.01 (West 2014) ("When a peace officer has stopped a person for temporary questioning *** and reasonably suspects that he or another is in danger of attack, he may search the person for weapons.").

¶ 25 "The fact that an officer has reason to stop a person does not automatically justify the further intrusion of a search for weapons." *People v. Flowers*, 179 Ill. 2d 257, 263, 688 N.E.2d 626, 629 (1997). An officer conducting a lawful investigatory stop may only frisk the suspect for weapons if the officer has an objectively reasonable suspicion that the suspect is armed and dangerous. *Arizona v. Johnson*, 555 U.S. 323, 332 (2009); *Terry*, 392 U.S. at 27, 30-31. "This reasonable suspicion or belief is met if a reasonably prudent person, when faced with the circumstances the police officer confronted, would have believed his safety or the safety of others was in danger." *Walker*, 2013 IL App (4th) 120118, ¶ 34. Reasonableness in this context "is measured by an objective standard based upon the facts and circumstances known to the officer at the time of the intrusion." *Id*. "The officer conducting the frisk must be able to point to specific, articulable facts which, when taken together with natural inferences, reasonably warrant the intrusion." *Flowers*, 179 Ill. 2d at 264.

¶ 26 C. The Search of Defendant

¶ 27 The only issue before us is whether the pat-down search of defendant was lawful. To resolve this issue, we must determine whether the facts and circumstances known to Detective Vinton at the time he conducted the search were sufficient to create a reasonable suspicion defendant was armed and dangerous. See *Terry*, 392 U.S. at 27, 30-31; *Flowers*, 179 Ill. 2d at 264; *Walker*, 2013 IL App (4th) 120118, ¶ 34.

¶ 28 We first address Detective Vinton's admission that he had no indication defendant was armed and dangerous at the time he conducted the search. As previously noted, at the hearing on the motion to suppress, defense counsel engaged in the following exchange with Vinton:

> "Q. Did you have any indication [when you stopped defendant for the traffic violation] that he had any type of weapon on him?
>
> A. Not at that time, sir.
>
> Q. All right. What did you do then?
>
> A. I advised him to put his hands behind his neck for a pat-down for weapons, officer's safety.
>
> * * *
>
> Q. Now, at the point you started the pat-down, prior to that, did you have any indication that he had any type of weapon?
>
> A. No, sir."

¶ 29 Detective Vinton's candid admission that he had no indication defendant was armed and dangerous is certainly probative of the lawfulness of the pat-down search. See *Flowers*, 179 Ill. 2d at 264-65. However, while Vinton's testimony is probative of the validity of the search, it is not dispositive. See *Walker*, 2013 IL App (4th) 120118, ¶ 46 (citing *Flowers*, 179

Ill. 2d at 264-65). As noted above, "the appropriate test must be an objective one." *People v. Galvin*, 127 Ill. 2d 153, 167, 535 N.E.2d 837, 843 (1989) (citing *Terry*, 392 U.S. at 21). Thus, we must consider the entirety of Vinton's testimony at the hearing on the motion to suppress and determine whether the facts and circumstances known to him at the time he conducted the search would have led a reasonably prudent person to suspect defendant was armed and dangerous.

¶ 30 According to the evidence, the following facts and circumstances were known to Detective Vinton when he conducted the search: defendant had committed a minor traffic violation on his bicycle; when defendant approached Vinton's unmarked squad car, defendant "started to make a quick turn back [in the opposite direction]"; as Vinton exited his squad car, defendant said, "Oh, shit," and stopped his bicycle; and defendant "was kind of raised up and tensing, and [Vinton] believed he was getting ready to flee on foot." In addition, the encounter took place at approximately 9 p.m. in a "high crime area[,]" and Vinton was patrolling in the area partly due to two different "shots fired" calls in the past several days, one of which had occurred within the previous 24 hours. There was no indication defendant was connected to the "shots fired" calls. Nor was there any indication he was engaged in criminal activity when Vinton first observed him.

¶ 31 Defendant argues the above facts and circumstances would not lead someone to reasonably suspect he was armed and dangerous. The State disagrees and emphasizes the following facts and circumstances support its argument the pat-down search was lawful: (1) the traffic stop occurred in a "high crime area" where multiple recent shootings had been reported; (2) defendant initially tried to avoid the officers before being stopped; and (3) defendant's body posture after the stop signaled to Vinton that defendant might flee. For the reasons that follow,

we disagree with the State's suggestion that these factors, considered together, were sufficient to create a reasonable suspicion justifying the pat-down search.

¶ 32 First, a person's mere presence in a high-crime area is insufficient to create a reasonable belief that that person is armed and dangerous. In *People v. Surles*, 2011 IL App (1st) 100068, ¶ 37, 963 N.E.2d 957, the First District determined "that the basis for a pat-down search must be the danger that the specific defendant presents under the circumstances and not generalized concerns about the area where the defendant is engaged in a nonconsensual police encounter." Otherwise, "all citizens who reside in, or work, or travel through, visit, provide services for, or patronize businesses in a high-crime area for any number of lawful reasons would be subjected to such intrusions." *Id.* ¶ 38. The First District in *Surles* concluded that the State must be able to point to "some specific facts known to the police that tie defendant to the crime in the area." *Id.* ¶ 39.

¶ 33 In the present case, the record contains no facts known to Detective Vinton that connected defendant to any crime in the area, let alone the recent reports of "shots fired." Detective Vinton testified that when he first observed defendant, he had no warrant to search or arrest defendant nor did he have any indication defendant was engaged in criminal activity. Because there was no evidence defendant specifically presented a danger to the officers or was connected in some way to the recent "shots fired" reports, his mere presence in a high-crime area was insufficient to create a reasonable suspicion he was armed and dangerous. See *Ybarra v. Illinois*, 444 U.S. 85, 94 (1979) ("The 'narrow scope' of the *Terry* exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked ***.").

¶ 34 Next, neither the fact that defendant initially attempted to avoid an encounter with police nor that Vinton subjectively believed defendant would flee was sufficient to support a reasonable suspicion defendant was armed and presented a danger. We note that the State fails to cite to any authority in support of its argument that these two factors are probative of whether an individual might be armed and dangerous. Our review of the case law points to a different conclusion.

¶ 35 "[A] risk of flight does not support a search even though it might support a stop." *People v. Fox*, 2014 IL App (2d) 130320, ¶ 19, 11 N.E.3d 408; see also *People v. Linley*, 388 Ill. App. 3d 747, 753, 903 N.E.2d 791, 798 (2009) (despite the officer's belief that the defendant considered fleeing, the court concluded there were no particular facts to lead the officer to believe the defendant was armed and dangerous). "Viewed logically, the risk of a suspect's flight cannot factor into the inquiry of whether a search was appropriate, because flight would not suggest that the suspect is armed and dangerous." *Fox*, 2014 IL App (2d) 130320, ¶ 19.

¶ 36 Accordingly, we find Detective Vinton's subjective belief that defendant was contemplating fleeing was insufficient to create a reasonable suspicion defendant was armed and dangerous. Although it is arguable an individual's attempt to avoid a police encounter might lead an officer to reasonably believe the individual is engaged in criminal activity, thus supporting a *Terry* stop, we do not see, and the State does not explain, how this could lead to the reasonable belief that the person is armed and dangerous. See *Flowers*, 179 Ill. 2d at 263. ("The fact that an officer has reason to stop a person does not automatically justify the further intrusion of a search for weapons.").

¶ 37 Even when taken together, the factors identified by the State do not support a reasonable suspicion justifying the pat-down search of defendant.

¶ 38 In light of Detective Vinton's testimony that he had no indication defendant was armed and dangerous at the time he conducted the search and because the totality of the facts and circumstances known to him at the time of the search would not have reasonably supported such a belief, the pat-down search of defendant was unlawful and the trial court erred in denying defendant's motion to suppress evidence of the gun found on his person. Further, without the evidence of the gun and in view of the remaining evidence presented at trial, we find the State would have been unable to prove that defendant possessed a firearm, a necessary element of the offenses he was charged with committing. Accordingly, we reverse defendant's conviction without remand for a new trial. See *People v. Kipfer*, 356 Ill. App. 3d 132, 143, 824 N.E.2d 1246, 1255 (2005).

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we reverse the trial court's judgment.

¶ 41 Reversed.