2020 IL App (1st) 181270-U

SIXTH DIVISION
September 25, 2020

No. 1-18-1270

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of Cook County.
	)	
v.	)	17 CR 1670
	)	
MARCUS WILLIAMS,	)	James M. Obbish,
	)	Judge Presiding.
Defendant-Appellant.	)	

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Mikva and Justice Griffin concurred in the judgment and opinion.

ORDER

¶ 1 *Held:* Police officers had probable cause to place defendant under arrest and search his car where defendant was heard yelling "on them hards" twice, which police officers knew to mean he was soliciting the sale of crack cocaine, and where police officers saw defendant toss a plastic bag onto the passenger-side floor of his vehicle as they approached; affirmed.

¶ 2 Following a bench trial, defendant Marcus Williams was convicted of possession of a controlled substance. Defendant filed a motion for a new trial, which was denied. He was sentenced to two years' probation and 30 hours of community service. On appeal, defendant contends that police officers arrested him and searched his car without probable cause, and

therefore his motion to quash arrest and suppress evidence of the cocaine recovered from his car should have been granted. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with one count of possession with intent to deliver one gram or more, but less than fifteen grams, of cocaine.

¶ 5 Prior to trial, defendant filed a motion to quash arrest and suppress evidence of the cocaine found in his car. At the hearing on the motion, Officer Salvador Enriquez testified that on December 23, 2016, he and his team conducted a surveillance operation near the Elinor hotel at 3230 North Cicero in Chicago. Prior to starting the operation, Officer Jason Bala met with a confidential informant who directed Bala to the area by the Elinor hotel. Officer Bala radioed to the other officers that he saw a person in a car shouting to people walking by, "on them hards." Officer Enriquez, who had been a Chicago Police officer for 17 years, testified that based on his professional experience, he knew "on them hards" to be a street term for selling crack cocaine.

¶ 6 Officer Enriquez testified that Officer Bala then informed him that defendant had engaged in two narcotics transactions, so Officer Enriquez went to the area of Belmont and Cicero and saw defendant sitting alone in a brown Chevrolet Impala. Officer Enriquez and other officers drove up to the Impala with their police lights activated. Officer Enriquez exited the vehicle and approached the passenger side of the Impala. Upon approaching, when he was less than one foot away, he observed defendant throw a clear plastic bag to the passenger side floor of the car. He then signaled to another officer, who approached the driver side of the Impala and ordered defendant to get out.

¶ 7 Officer Enriquez and Officer Novak placed defendant into custody. Officer Enriquez then recovered the plastic bag from the floor of defendant's car. The bag contained eight yellow-

tinted Ziploc baggies, each holding a chunky or rock-like substance suspected to be crack cocaine. Officer Enriquez could not see the contents of the bag prior to entering the car and recovering it.

¶ 8 Officer Bala testified that prior to 10 a.m. on December 23, 2016, he met with a confidential informant whom he had worked with in the past. The informant, a narcotics purchaser, informed Officer Bala that a person named "Big M" sold narcotics in the area of Belmont and Cicero. The informant described Big M as bald with a goatee and stated that he drove a brown Impala with Illinois license plates. Officer Bala testified the informant did not purchase narcotics from Big M on that day.

¶ 9 Approximately 30 minutes later, Officer Bala began conducting surveillance in the area of 3230 North Cicero Avenue in Chicago. He observed a brown Impala, driven by defendant, arrive in the area at 10:36 a.m., and park on the west side of Cicero facing southbound. Officer Bala was approximately 30 to 50 feet away from the Impala. The passenger side window of the Impala was down, and Officer Bala heard defendant say "on them hards" on at least two separate occasions while seated in the driver's seat of the Impala. There was a lot of foot traffic nearby. Officer Bala testified that after being a Chicago police officer for approximately 15 years and making over 1,000 arrests involving cocaine, he knew "on them hards" to be a street term meaning "to sell crack cocaine."

¶ 10 Officer Bala testified that at 10:38 a.m., a male approached the passenger side window of the Impala and had a brief conversation with defendant before tendering "an unknown amount of United States currency" to defendant. Defendant then "went into his waistband area, retrieved a clear bag. Within that clear bag he took out a smaller yellow bag and handed that item to the

unknown male." Officer Bala could not see what the smaller yellow item was, only that it was yellow.

¶ 11 Officer Bala then observed a female approach the passenger side window of the Impala and give money to defendant. Defendant again reached into his waistband area and retrieved an item from a plastic bag and handed it to the female. Officer Bala then radioed to enforcement officers who arrived on the scene. By the time the officers arrived, the female had left the vehicle and entered the hotel. Officer Bala then observed defendant reach into his waistband and make "a movement" as enforcement officers arrived. The officers ordered defendant out of the car and placed him into custody.

¶ 12 The trial court, after hearing this testimony from the two officers, stated in part:

> "So I think this is much more than just a sort of blind search of a vehicle after an arrest when one puts all the information that the police officers possessed; the confidential informant, the observable corroboration of what the confidential informant stated as to [the] vehicle and individual.
>
> And then, further, very important evidence which distinguishes this case from some other cases involving only an informant and only suspect transactions was the fact that the officers actually heard the defendant on two occasions make that statement. I believe it's on them hards, which is the street term for the sale of crack cocaine. I think that's what distinguishes the case.
>
> I found the officers credible, as I stated, knowledgeable with a good memory of the events. They were not impeached as to their actions that day. As such, the motion to suppress the evidence will be, respectfully, denied."

¶ 13 At the bench trial, Officer Bala's testimony was substantially similar to his testimony at the motion to quash arrest and suppress evidence. However, he testified that he could not make out the color of the item that defendant gave the unknown male and that the item defendant gave the unknown female was "reddish or pinkish" in color. While Officer Bala's incident report indicated that defendant had a conversation with the woman at his car window, it did not state that the woman gave defendant any money, or that defendant gave the woman an item.

¶ 14 The parties stipulated that Officer Enriquez would testify that he was working as an enforcement officer on December 23, 2016, at 3230 North Cicero in Chicago. He observed defendant in a brown Impala. He saw defendant toss a clear plastic bag to the passenger side floorboard of the car. After approaching the car, Officer Enriquez recovered a clear plastic bag containing eight individual yellow plastic baggies containing suspect crack cocaine.

¶ 15 The parties stipulated that Brittany Roran would testify that she was a forensic chemist employed by the Illinois State police and she received the bag recovered by Officer Enriquez in a heat-sealed condition from the Chicago Police Department. The eight items tested positive for cocaine and the weight of the items was 1.04 grams.

¶ 16 The State rested and defendant made a motion for a directed finding, which was denied.

¶ 17 Defendant then testified on his own behalf. He testified that on December 23, 2016, he was working as a livery cab driver. He stated that "livery" means "off the books." Defendant testified that on the day in question, he arrived at the Elinor hotel to pick up a client who had called him to ask for a ride. The rider's name was Chris, and he had picked her up five or six times in the past. He testified that the first time he gave Chris a ride was around November 1, when he picked her up at Jackson and Western and drove her to a laundromat at Pulaski and Ogden. The second time was about a week later, when he picked her up from the California Pink

Line station. He could not remember the third time he gave Chris a ride, but knew it was five to seven days after the second ride. Defendant further testified that he could not recall when he gave Chris the fourth or fifth rides, but that during one of those rides, he picked her up from her apartment and took her to a currency exchange and then back to her apartment.

¶ 18 Returning to the day of the incident, Chris came out of the hotel and got into defendant's car. Officers then pulled up to his car and exited their car with their weapons drawn. The officers told defendant that Chris was a prostitute and they were arresting him for prostitution. Defendant testified that they ordered defendant out of the car and searched him, then put him in the back of the police car. They took Chris to a different car. Defendant had approximately $250 on him from picking up other passengers that weekend. At the police station, defendant was told he was being charged with cocaine possession and soliciting a prostitute.

¶ 19 Defendant testified that he did not know Chris's last name and that he had tried to call her two phone numbers but had been unable to reach her since the day of his arrest. He testified that he did not engage in any narcotics transactions with an unknown male.

¶ 20 After hearing the evidence, the trial court found defendant guilty of possession of a controlled substance, which was a lesser included offense of intent to deliver a controlled substance. The court stated in part:

> "The State has charged here possession with intent to deliver. Some of the evidence or testimony that came from Officer Bala dealt with respect to, especially suspect delivers, was inconsistent with statements made in Officer Bala's police report. The testimony that he actually saw a small pink object handed to the female by the defendant is not reflected in the police report that he prepared at the time of the event. The report also doesn't say that he actually

observed the female hand United States currency to the defendant at the time. Those are some pretty serious points of impeachment there.

There is a stipulation though to the testimony of Officer Enriquez that he curbed the Impala and found the defendant toss a clear plastic bag to the passenger side of the vehicle. Ultimately, that he recovered, inventoried, and has 1.04 grams of cocaine in the bag.

The defendant's testimony creates quite a different scenario where he is nothing but a livery cab driver. He was responding to Chris, last name unknown, and had been giving her rides. Unfortunately, the longer [defendant] testified, the less credible his testimony became about the various rides that he provided to her, and it became clear to the court that his answers were being made up as he went along about all these other rides.

But what the State has proved is the lesser included offense of possession of a controlled substance, less than 15 grams. So there will be a finding on that."

¶ 21 Defendant moved for a new trial, arguing that the court erred in denying his motion to suppress evidence, and that the State did not prove him guilty beyond a reasonable doubt. The trial court denied defendant's motion for a new trial, and sentenced defendant to two years of probation and 30 hours of community service. Defendant now appeals.

¶ 22 ANALYSIS

¶ 23 On appeal, defendant contends that the police officers did not have probable cause to place him under arrest and search his car because the officers did not see what was exchanged during the transactions between the unknown male and unknown female on the day in question. Defendant further contends that Officer Bala was impeached on various points during the trial.

The State maintains that the police officers had probable cause to arrest defendant when defendant was heard solicitating the sale of crack cocaine and the search of defendant's car was a valid search incident to a lawful arrest. We agree with the State.

¶ 24 At issue is the correctness of the circuit court's order denying defendant's motion to suppress. In reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Brooks*, 2017 IL 121413, ¶ 21. Under this standard, a circuit court's factual findings are reversed only if they are against the manifest weight of the evidence, while the court's ultimate legal rulings as to whether suppression is warranted is reviewed *de novo*. *Id*.

¶ 25 When a defendant files a motion to suppress evidence, he bears the burden of proof at a hearing on that motion. *Id*. ¶ 22; *People v. Gipson*, 203 Ill. 2d 298, 306 (2003) ("The judge shall receive evidence on any issue of fact necessary to determine the motion and the burden of proving that the search and seizure were unlawful shall be on the defendant.") A defendant must make a *prima facie* case that the evidence was obtained by an illegal search and seizure. *Id*. A *prima facie* showing means that defendant has the primary responsibility for establishing the factual and legal bases for the motion to suppress. *Id*. If a defendant makes a *prima facie* case, the burden shifts to the State to present evidence to counter the defendant's *prima facie* case. *Id*.

¶ 26 "An arrest executed without a warrant is valid only if supported by probable cause." *People v. Montgomery*, 112 Ill. 2d 517, 525 (1986). "Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *People v. Love*, 199 Ill. 2d 269, 279 (2002). "In other words, the existence of probable cause depends upon the totality of the circumstances at the time of the arrest." *People v. Jackson*, 232 Ill. 2d 246, 274-75 (2009).

¶ 27 "[W]hether probable cause exists is governed by commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt." *People v. Hopkins*, 235 Ill. 2d 453, 477 (2009). "Indeed, probable cause does not even demand a showing that the belief that the suspect has committed a crime be more likely true than false." *People v. Jones*, 215 Ill. 2d 261, 277 (2005). In deciding whether probable cause exists, a law enforcement officer may rely on training and experience to draw inferences and make deductions that might well elude an untrained person. *Id.* at 274. A court must examine the events leading up to the search or seizure, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable law enforcement officer, amount to probable cause. *Id*.

¶ 28 Here, at the hearing on defendant's motion to quash arrest and suppress evidence, Officer Bala testified that on the morning in question he met with a confidential informant who told him that a person named "Big M" sold narcotics in the area of Belmont and Cicero. The informant described Big M as bald with a goatee and stated that he drove a brown Impala with Illinois license plates. Approximately 30 minutes later, Officer Bala began conducting surveillance in the area and observed a brown Impala, driven by defendant, parked on the street. The passenger side window of the Impala was down, and Officer Bala heard defendant say "on them hards" on at least two separate occasions while seated in the driver's seat. Officer Bala testified that after being a Chicago police officer for approximately 15 years and making over 1,000 arrests involving cocaine, he knew "on them hards" to be a street term meaning "to sell crack cocaine."

¶ 29 Officer Bala saw a man approach the passenger side window of the Impala and have a brief conversation with defendant before tendering money to him. Defendant then "went into his waistband area, retrieved a clear bag. Within that clear bag he took out a smaller yellow bag and

handed that item to the unknown male." Officer Bala also saw a woman approach the passenger side window of the Impala and give money to defendant. Defendant again retrieved an item from a plastic bag at his waist and handed it to the woman.

¶ 30 Officer Enriquez testified at the hearing that as he approached the passenger side of the Impala, when he was less than one foot away, he observed defendant throw a clear plastic bag to the passenger side floor of the car. The plastic bag recovered from the passenger side floor of defendant's car contained eight yellow-tinted Ziploc baggies, each holding a chunk or rock-like substance suspected to be crack cocaine.

¶ 31 We find that the evidence presented at the hearing on defendant's motion to quash arrest and suppress evidence established probable cause for the officers to arrest defendant for solicitation of unlawful business. Chicago Municipal Ordinance Section 10-8-515, entitled "Soliciting Unlawful Business" states in pertinent part:

> (a) No person may: (i) stand upon, use or occupy the public way to solicit any unlawful business; ***.
>
> (b) As used in this section, 'unlawful business' means any exchange of goods or services for money or anything of value, where the nature of the goods or services, or the exchange therefore, is unlawful. Unlawful business includes, but is not limited to, prostitution or the illegal sale of narcotics. For purposes of this section, 'soliciting' may be by words, gestures, symbols or any other means."

¶ 32 Officer Bala heard defendant yell "on them hards," at least twice, which both he and Officer Enriquez testified to mean defendant was selling crack cocaine. Looking at the totality of the circumstances at the time of the arrest (*Jackson*, 232 Ill. 2d at 274-75), and the facts known

to the officers, both of whom had extensive law enforcement training and experience (*Jones*, 215 Ill. 2d at 274), the testimony presented was sufficient to lead a reasonably cautious person to believe that defendant was soliciting unlawful business (*Love*, 199 Ill. 2d at 279).

¶ 33 We agree with the State that *People v. Grant*, 2013 IL 112734, is similar to this case and therefore instructive. In *Grant*, the defendant was arrested for soliciting unlawful business on a public way, a municipal offense. 2013 IL 112734, ¶ 3. After his arrest, the State charged the defendant with possession of cocaine with intent to deliver. *Id*. Prior to trial, the defendant moved to quash arrest and suppress evidence. *Id*. ¶ 4. At the hearing, one officer testified. He testified that he saw defendant in the entrance of a building yelling "dro, dro" to a passing vehicle. *Id*. According to the officer, who was familiar with terms used in the sale of narcotics, "dro, dro" was a term used for the sale of cannabis. *Id*. The officer testified that the defendant had nothing in his hands when he pulled up, he did not see the defendant drop anything, and he did not observe the defendant engage in any transactions. *Id*. ¶ 5. A custodial search of the defendant recovered four plastic bags containing a substance believed to be cannabis. *Id*. A search conducted at the police station recovered four small bags of cocaine. *Id*.

¶ 34 The defendant in *Grant* filed a motion to suppress evidence, which was denied. *Id*. ¶ 6. Following a bench trial, defendant was convicted of Class 4 possession of cocaine and sentenced to three years' imprisonment. *Id*. ¶ 7. On appeal, the court reversed the denial of defendant's motion to quash arrest and suppress evidence, concluding that the facts elicited from the testifying officer did not constitute probable cause that defendant violated the city ordinance. *Id*.

¶ 35 Our supreme court reversed, stating, "[the officer] observed defendant yelling 'dro, dro' to a passing vehicle, and thus witnessed him committing the offense of solicitation of unlawful business in violation of [the city ordinance]." *Id*. ¶ 15. The court found that the officer therefore

had probable cause to arrest the defendant, and that the circuit court had properly denied the defendant's motion to quash arrest and suppress evidence. *Id*.

¶ 36 Similarly here, Officer Bala had probable cause to arrest defendant for unlawful solicitation of business when he heard defendant yelling "on them hards" from his car to passing pedestrians. See *Jones*, 215 Ill. 2d at 273-74 ("Probable cause exists where the arresting officer has knowledge of facts and circumstances that are sufficient to justify a reasonable person to believe that the defendant has committed or is committing a crime.").

¶ 37 The fact that Officer Bala was impeached at trial on certain aspects of his testimony does not change our conclusion that there was probable cause to arrest defendant.[1] At trial, Officer Bala testified that the bag defendant gave to the second unknown individual was pink, whereas at the suppression hearing, he testified that the bag was yellow. The trial court stated:

> "Some of the evidence or testimony that came from Officer Bala dealt with respect to, especially suspect deliveries, was inconsistent with statements made in Officer Bala's police report. The testimony that he actually saw a small pink object handed to the female by the defendant is not reflected in the police report that he prepared at the time of the event. The report also doesn't say that he actually observed the female hand United States currency to the defendant at the time. Those are some serious points of impeachment there."

¶ 38 However, these points of impeachment were not related to Officer Bala's testimony at both the suppression hearing and at trial that he heard defendant yell "on them hards" to passersby. The trial court did not find that Officer Bala was not a credible witness or that his

[1] Because defendant renewed his objection of the trial court's denial of his motion to suppress in his motion for a new trial, we can consider trial testimony in deciding whether the trial court properly denied defendant's motion. See *People v. Gill*, 2018 IL App (2d) 150594, ¶ 76.

entire credibility was entirely destroyed based on those two impeachment points. Moreover, Officer Enriquez testified that Officer Bala told him on the day in question that he heard defendant yelling "on them hards," which he also knew to mean defendant was selling crack cocaine. When Office Enriquez approached defendant's vehicle, when he was only a foot away, he saw defendant toss a clear plastic bag to the passenger side floor of the car. The evidence presented was sufficient, points of impeachment aside, to establish probable cause to arrest defendant.

¶ 39 Finally, we note that the search of defendant's vehicle was a valid search incident to defendant's lawful arrest. A search conducted without prior approval of a judge or magistrate is *per se* unreasonable under the fourth amendment, subject only to a few specific and well-defined exceptions. *People v. Bridgewater*, 235 Ill. 2d 85, 93 (2009). One of the exceptions is a search incident to arrest. *Id.* A vehicle search incident to a recent occupant's arrest is authorized only when: (1) the arrestee is unsecured and within reaching distance of the vehicle's passenger compartment at the time of the search; or (2) officers reasonably believe evidence relevant to the crime of arrest may be found in the vehicle. *Id.* at 94-95.

¶ 40 Here, Officer Bala stated that he saw defendant reach into his waistband and "make a movement" when the arresting officers were approaching the vehicle. Additionally, Officer Enriquez testified that when he was within a foot of the vehicle, he saw defendant toss a plastic bag onto the passenger side floor of the vehicle. It was reasonable to believe that the plastic bag was relevant to the crime of unlawful solicitation, and therefore we find that the search of defendant's car was a valid search incident to a lawful arrest. Accordingly, the trial court properly denied defendant's motion to quash arrest and suppress evidence of the cocaine found in his car.

¶ 41 III. CONCLUSION

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

¶ 43 Affirmed.