

No. 1-12-2561

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 16315
	)	
MONTEZ ANDERSON,	)	Honorable
	)	Neil J. Linehan,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HOWSE delivered the judgment of the court.  
Justices Fitzgerald Smith and Lavin concurred in the judgment.

**O R D E R**

- ¶ 1 *Held:* The trial court did not err in denying defendant's motion to quash arrest and suppress evidence where police officers had a reasonable and articulable suspicion of criminal activity sufficient to support a *Terry* detention and a subsequent show-up identification by the victim; convictions for attempted murder and armed robbery were affirmed.

¶ 2 Following a jury trial, defendant Montez Anderson was found guilty of attempted first degree murder and armed robbery in which a firearm was used. He was sentenced to consecutive prison terms of 26 and 23 years respectively. On appeal, defendant contends the trial court erred in denying his motion to quash arrest and suppress evidence because he was unlawfully arrested without probable cause, and the subsequent seizure of property from a search of his person and a show-up identification by the victim should have been suppressed as tainted fruit of the unlawful arrest. We affirm.

¶ 3 Defendant was charged by indictment with attempted first degree murder, aggravated battery, aggravated battery with a firearm, and armed robbery of Darrion Goss, and aggravated discharge of a firearm. Prior to trial, the defense filed a motion to quash arrest and suppress evidence. The motion alleged that defendant was arrested without probable cause, and that evidence of an identification show-up and physical evidence, which the State would seek to introduce at trial, was illegally obtained as a result of defendant's unlawful arrest.

¶ 4 At the hearing on defendant's motion, police radio messages, which were transmitted immediately after the robbery and shooting were reported, were played in court. The sole witness at the hearing was Chicago police officer Marco Proano. He testified that at about 5:10 p.m. on August 27, 2009, he and his partner, Officer Herrera, were on duty in a marked police vehicle and received a radio message "of a person shot, robbery that had just occurred, shots fired" near 82<sup>nd</sup> Street and South Eberhart, together with reference to two male black offenders and a description of one offender wearing a white tee shirt and blue jeans. Other messages described an offender having a bike and another offender with an orange hoodie. Proano and Herrera drove toward the location given in the message. Within two minutes of receiving the

message, Proano saw defendant jumping over a fence at about 8450 South Vernon. Proano observed that defendant, who was wearing a white tee shirt and dark jeans, fit the general description of one of the offenders and was running at a fast pace away from the scene of the reported crime just two or three blocks away. When Proano saw defendant crawling over a second fence, he activated the police car's emergency equipment and yelled at defendant repeatedly to stop, but defendant kept running. The officers followed defendant in their police vehicle but briefly lost sight of him for three or four seconds as he ran through a gangway toward King Drive. Defendant ran from the front to the back of a house at 8458 King Drive but was trapped in the enclosed back yard of the house. Defendant tried to climb the six-foot tall brick fence at the back of the yard facing the alley, but he dropped back down when he saw Proano exit the police vehicle on the other side of the fence. Defendant then tried to find another location to run to, but Officer Herrera drew his weapon on defendant. Proano entered the back yard, handcuffed defendant behind his back, did a protective "pat down" of defendant to make sure he had no weapon, and recovered a phone from defendant's left pocket. Proano testified that defendant was under arrest at that point "[p]ending an investigation of a person shot" and was not free to go until the investigation was completed.

¶ 5 Defendant was transported immediately to the scene of the shooting near 8300 South Rhodes "to get a positive identification" by the victim, who was being treated in an ambulance at that location. The officers transported defendant very quickly because Proano knew the victim had to be taken to a hospital. At the ambulance, the victim identified defendant as one of the men involved in the robbery and the shooting. Proano testified that after the identification, defendant was then arrested and placed back in the squad car.

¶ 6 Defense counsel argued in support of the motion to quash arrest that Proano's action was not a *Terry* stop but a "full blown arrest," and lacked probable cause because defendant did not exactly fit the meager description given over the police radio of the various offenders.

¶ 7 The trial court began its factual findings by noting from the police radio transmissions played in court that an armed robbery had taken place in which an individual had been shot. After hearing the radio message about the armed robbery and shooting and a description of one of the offenders dressed in white tee shirts and dark jeans, less than two minutes later Proano and his partner observed defendant, a male black wearing a white shirt and blue jeans. "[I]t's clear that the Defendant was fleeing from the scene of the crime, and that the crime in and of itself was a violent crime, where the offenders were obviously armed, and the police officers needed to react as swiftly as possible, which they did." When the officers asked defendant to stop, he did not do so until trapped in a back yard with no exit. Knowing the victim had been shot, the police conducted a protective pat-down search. The officers also knew the victim was in an ambulance and they took defendant to that location where the victim identified defendant. By totally ignoring the police commands to stop, defendant was obviously fleeing from the police. Once defendant was trapped in the back yard, "the police were at least under a minimum obligation to complete the investigation particularly when they had an opportunity of the victim still being there to say, no, that's not him, or it is him. At that point once [defendant] was identified he was placed under arrest and taken into custody." After making these factual findings, the trial court denied defendant's motion to quash arrest and suppress evidence.

¶ 8 Testimony adduced at defendant's jury trial included the following. At about 5 p.m. on August 27, 2009, 17-year-old Darrion Goss was riding his bike on 83<sup>rd</sup> Street when a group of

five persons called him over to the sidewalk. He did not recognize any of the five men. One of the five was defendant. Another one of the men asked Darrion if he wanted to buy some weed, but he declined. The man told Darrion to check it out and pointed to defendant, who was standing about one foot to Darrion's right. Darrion turned and looked at defendant. Then defendant pulled out a gun, a silver revolver. Defendant said, "You know what it is. Get off the bike." Darrion was led to the side of a house by defendant who wore a white shirt and another man who wore a black hoodie; the other three men stayed on the sidewalk, "watching out." One of the three men remaining on the sidewalk was tall with dark skin; he wore an orange and black "skinny hoodie." The second was short with dark skin and wore a red hoodie. The third wore a black shirt and was defendant's height. One of those three took Darrion's bike; someone else took his backpack.

¶ 9 Meanwhile, defendant and the man with the black hoodie went through Darrion's pockets. Defendant took Darrion's cell phone from his right pocket and the other man took cash from his left pocket. On cross-examination Darrion conceded that at an earlier court hearing he may have testified defendant took both his cell phone and money out of his right pocket. Defendant was still pointing the gun at Darrion's chest. Both men told Darrion to remove his earring. When the earring fell to the ground, the man with the black hoodie told defendant, "Shoot him, shoot him." Defendant told Darrion, "You got 20 seconds or I am going to pop you." Darrion pretended he was looking for the earring and pointed to the ground. When defendant bent down to pick it up, Darrion ran. The three men still on the sidewalk ran west on 83<sup>rd</sup> Street. Darrion heard a gunshot and he fell down in the middle of 83<sup>rd</sup> Street. He had been shot in the legs. He got back up, tried to run, fell down again, and began crawling. Defendant

approached him and shot him two or three more times, in his stomach and right arm. Then defendant and the man in the black hoodie ran southbound on Rhodes.

¶ 10 Officers Boone and Davis were in a marked squad car at about 5 p.m. when they monitored a call that shots were fired and a man was shot. They drove two blocks to 83<sup>rd</sup> and Rhodes where they saw a man lying on the stoop of a home at the corner; he identified himself as Darrion Goss and said he had been shot. Darrion was conscious and responsive, and he gave Boone information describing several individuals. That information was relayed over the police radio. Within a few minutes an ambulance arrived and paramedics began to assist Darrion, who remained conscious and alert.

¶ 11 Meanwhile, Officers Proano and Herrera also heard the police radio transmissions, including the description of a man wearing a white tee shirt and blue jeans, and observed defendant running at a fast pace and jumping fences. Proano's trial testimony about chasing and detaining defendant was substantially the same as his pretrial hearing testimony. He also testified at trial that when he conducted a protective pat-down of defendant, he recovered three cell phones from defendant's left pocket, some money (about \$169) and an iPod from his right pocket, and a wallet from his rear pants area. Proano directed other officers to follow defendant's route to search for a weapon, but they found none.

¶ 12 Proano transmitted a radio message that he and Herrera were holding a suspect in the robbery and shooting. Officer Boone, who was continuing to monitor the radio traffic, instructed Proano and Herrera to bring their suspect to the ambulance location to let the victim see whether he was one of the persons involved. They brought defendant to the ambulance for a show-up to make sure they had the right person in custody. The rear doors of the ambulance were opened

and Darrion identified the man's face and told the police that defendant was the man who shot him. Before the ambulance pulled away, Boone asked Darrion if he was sure defendant was the guy who shot him. He replied, "Yes."

¶ 13 The ambulance took Darrion to Christ Hospital where he underwent surgery and treatment for five gunshot wounds to his back, both legs, right arm, and stomach. He would remain in the hospital for three weeks.

¶ 14 After helping to secure the crime scene, Officers Boone and Davis went to Christ Hospital where Darrion was undergoing surgery. Davis spoke to Darrion's family members who gave Davis the number of Darrion's cell phone. Davis dialed that phone number.

¶ 15 Following defendant's arrest, at the police station Proano began inventorying the items taken from defendant as prisoner property. One of the items, a cell phone Proano had recovered from defendant's left pocket, began to ring. Proano answered the phone and recognized the voice of the person at the other end; it was Officer Davis.

¶ 16 The jury found defendant guilty of armed robbery and attempted first degree murder, both committed while armed with a firearm. The jury also found that, while committing those offenses, defendant did not personally discharge a firearm that caused great bodily harm. The court imposed a sentence of 26 years on the attempted murder count and 23 years on the armed robbery count, with each sentence including a 15-year enhancement for discharge of a firearm during commission of the crimes. The court found that defendant's conduct resulted in great bodily harm to the victim and also found that the sentences were required to be served consecutively to protect the public from further criminal conduct by defendant.

¶ 17 On appeal, defendant's sole contention is that the trial court erred in denying his motion to quash arrest and suppress evidence. Defendant asserts that the trial court erred in finding that he was not under arrest until after he was identified in a show-up, and that the actions of the police, in handcuffing him, searching him, and placing him in a police car, constituted an arrest without probable cause that required the suppression of the items taken from his person and the subsequent show-up identification. The State responds that defendant was lawfully detained pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). Alternatively, the State contends that, even if defendant was under arrest in the initial detention, the police had probable cause to arrest him.

¶ 18 In reviewing a trial court's ruling on a motion to suppress, we review the court's findings of fact for clear error, with due weight being given to any inferences drawn by the fact finder, and will reverse only when its findings are against the manifest weight of the evidence. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). However, our review of the trial court's ultimate legal ruling on the motion to suppress is *de novo*. *Id.*; *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). We nonetheless may affirm the trial court's ruling on a motion to suppress on any basis found in the record. *People v. Land*, 2011 IL App (1<sup>st</sup>) 101048, ¶ 134, citing *People v. Johnson*, 237 Ill. 2d 81, 89 (2010).

¶ 19 The fourth amendment to the United States Constitution guarantees the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; *Johnson*, 237 Ill. 2d at 89; *People v. Jones*, 215 Ill. 2d 261, 268 (2005). For fourth amendment purposes, a person is "seized" when, "by means of physical force or a show of authority, his freedom of movement is restrained." *United States v. Mendenhall*, 446 U.S. 544, 553 (1980). The courts have divided encounters between police and citizens into three tiers: (1) arrests, which must be supported by

probable cause; (2) brief investigative detentions, commonly referred to as "*Terry* stops," which must be supported by a police officer's reasonable, articulable suspicion of criminal activity; and (3) consensual encounters that involve no detention or coercion by the police and thus, do not implicate fourth amendment interests. *Luedemann*, 222 Ill. 2d at 544. Pursuant to *Terry*, a police officer may, under appropriate circumstances, briefly detain a person for investigative purposes if the officer has reasonable suspicion that the person has committed, or is about to commit, a crime. *People v. Daniel*, 2013 IL App (1<sup>st</sup>) 111876, ¶ 32. Reasonable suspicion is defined as "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion. \*\*\* And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief that the action taken was appropriate? [Citations.]" *Terry*, 392 U.S. at 21-22.

¶ 20 We conclude that defendant was lawfully detained for investigative purposes pursuant to *Terry*. Defendant was "seized" when Officer Proano detained him in the enclosed back yard. *Terry* and its progeny allowed for a brief stop, and therefore necessarily a brief seizure, for investigative purposes because Proano had reasonable, articulable suspicion that defendant had committed a crime. Proano had received a police radio message of a person shot, and a description of one offender wearing a white tee shirt and blue jeans. The nature of the offense indicated the offender could be armed and dangerous. Just two minutes later, Proano observed defendant, wearing a white tee shirt and dark jeans, leaping over fences and running at a fast pace in a direction away from the shooting incident which was just two or three blocks away. When Proano activated the emergency equipment of his marked police vehicle and ordered

defendant repeatedly to stop, defendant ignored the police and kept running. We find that under these circumstances, a competent police officer would be expected to act quickly and be justified in investigating the situation. See *People v. Austin*, 365 Ill. App. 3d 496, 505 (2006), citing *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000).

¶ 21 Proano testified at the pretrial hearing that defendant was detained "[p]ending an investigation of a person shot." Defendant was immediately transported, not to the police station, but to the shooting scene where Proano knew the shooting victim was in an ambulance, waiting to be transported to a hospital for treatment. "The purpose of a *Terry* stop is to allow a police officer to investigate the circumstances that provoke suspicion and either confirm or dispel his suspicions." *People v. Close*, 238 Ill. 2d 497, 512 (2010), quoting *People v. Ross*, 317 Ill. App. 3d 26, 31 (2000). Here, the circumstances were investigated swiftly. Defendant was quickly brought to the shooting scene for a show-up identification that would either allow him to go free or, as here, provide probable cause for his arrest.

¶ 22 Defendant asserts that his initial detention was not a *Terry* stop but an arrest because Proano described it as such. Proano testified that the initial detention "was a pending investigation" of a shooting and that "at that point we placed [defendant] into custody." Proano's partner, Officer Herrera, pointed his gun at defendant and Proano handcuffed him, and Proano testified that defendant was under arrest at that point. However, Proano also testified that after the victim identified defendant in a show-up at the ambulance, defendant was *then* arrested. We do not believe Proano's terminology controls the decision of whether defendant was briefly detained for investigative purposes pursuant to *Terry* or whether he was under arrest at the time of the initial detention. It was the responsibility of the trial court to make that determination.

¶ 23 Defendant also contends that the detention, even if it was initially a lawful *Terry* stop, was converted into a warrantless arrest when defendant was detained at gunpoint, handcuffed, and placed in a police vehicle. However, when a suspect is potentially armed and thus a threat to the officers, "the status or nature of an investigative stop is not affected by either the drawing of a gun by the police officer [citation], or by the use of handcuffs [citation] or by placing the person in a squad car [citation]." *Ross*, 317 Ill. App. 3d at 32. "The rationale for allowing such restraint during an investigatory stop recognizes the paradox that would occur if the police had the authority to detain a person pursuant to a stop yet were denied the use of force that might be necessary to effectuate the detention." *Id.* In the instant case, it was reasonable for Herrera to draw his gun because defendant, who could have been armed, had failed to comply with police orders to stop, and had kept running from where the shooting had occurred just a few blocks away. It was also reasonable for Proano to handcuff defendant, who had tried to scale the brick fence in the yard and, when prevented from doing so by Proano's presence on the other side, was seeking another way out of the yard when subdued by the officers. The testimony at the hearing indicated that almost immediately after defendant was handcuffed and patted down for weapons, he was transported to the ambulance at the shooting scene where Darrion was able to identify him. Thus, there was no extended detention that converted the *Terry* stop into an arrest. In denying defendant's motion to quash, the trial court correctly concluded the testimony demonstrated that the investigatory stop was properly based upon reasonable suspicion and that defendant was placed under arrest only after Darrion's positive identification, which provided probable cause to arrest.

¶ 24 Defendant also contends that various items of personal property taken from him when he was handcuffed and searched by Proano, together with the subsequent show-up identification of defendant by Darrion, should have been suppressed as the fruits of his unlawful arrest. As noted above, however, defendant was not then under arrest but was lawfully detained pursuant to a *Terry* stop. During a *Terry* stop, an officer may frisk a person for weapons where the officer "reasonably believes that he is dealing with an armed and dangerous individual." *People v. Linley*, 388 Ill. App. 3d 747, 749 (2009), citing *People v. Davis*, 352 Ill. App. 3d 576, 580 (2004); 725 ILCS 5/108-1.01 (West 2008). Here, Proano described his frisk of defendant as a protective pat-down. The frisk was permissible because Proano had reason to believe that defendant, who was suspected of participating in the shooting of another individual just a few minutes earlier and a few blocks away, was possibly armed. Consequently, Proano's recovery from defendant's pocket of Darrion's cell phone was authorized as part of the lawful pat-down frisk for weapons.

¶ 25 Even if Proano had impermissibly broadened the scope of the pat-down frisk, the cell phone would have been admissible at trial under the inevitable-discovery exception to the exclusionary rule, whereby evidence may be "admitted where the State can show that such evidence 'would inevitably have been discovered without reference to the police error or misconduct.'" *People v. Sutherland*, 223 Ill. 2d 187, 228 (2006), quoting *Nix v. Williams*, 467 U.S. 431, 448 (1984). Here, the suppression of the cell phone would not have been required because a subsequent "station house inventory of arrestees' possessions is a routine police administrative procedure" (*People v. Hoskins*, 101 Ill. 2d 209, 221 (1984), citing *Illinois v. Lafayette*), 462 U.S. 640, 648 (1983)), which inevitably would have led to the discovery of the

cell phone found on defendant's person during its inventory at the police station. Proano testified at trial that while he was processing the items from defendant's pockets for inventory as prisoner's property at the police station, one of the cell phones rang. Proano answered it and recognized Officer Davis's voice at the other end, confirming that it was Darrion's cell phone.

¶ 26 Because the length of defendant's detention and the scope of the investigation, including his transportation to the site of a show-up, were sufficiently limited, the show-up identification of defendant by Darrion was lawfully obtained and resulted in probable cause to arrest. *People v. Maxey*, 2011 IL App (1<sup>st</sup>) 100011, ¶¶ 59-68.

¶ 27 We conclude that the police initially had reasonable and articulable suspicion to make a valid investigatory *Terry* stop; the police did not exceed the bounds of the *Terry* stop when they detained defendant at gunpoint, handcuffed him, placed him in a police car, and immediately transported him to another location for a show-up identification; and defendant was not placed under arrest until after Darrion identified him in the show-up at the crime scene. Consequently, the trial court's denial of defendant's motion to quash arrest and suppress evidence was not error. Accordingly, we affirm the judgment of the trial court.

¶ 28 Affirmed.