

No. 1-12-2627

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 11 CR 4376
)	
TEVALLIS TERRY,)	
)	Honorable
Defendant-Appellant.)	Michael J. Howlett, Jr.,
)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justice McBride and Justice Gordon concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court's denial of motion to suppress evidence affirmed where informant's tip was sufficiently reliable to establish reasonable suspicion of criminal conduct; fines and fees order corrected.
- ¶ 2 Following a bench trial, defendant Tevallis Terry was found guilty of possession of a controlled substance pursuant to section 402 of the Illinois Controlled Substances Act (720 ILCS 570/402(c) (West 2010)). The trial court sentenced defendant to one year in prison and imposed

\$1,279 in fines and fees against defendant including a \$200 DNA analysis fee pursuant to section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2010)) and a \$5 electronic citation fee pursuant to section 27.3e of the Clerks of Courts Act (705 ILCS 105/27.3e (West 2010)). On appeal, defendant contends: (1) the trial court erred in denying his motion to quash arrest and suppress evidence because the police lacked reasonable suspicion to conduct a *Terry* stop; (2) the \$200 DNA analysis fee should be vacated due to defendant's DNA already being registered in the database; and (3) the \$5 electronic citation fee should be vacated because defendant was not convicted in a "traffic, misdemeanor, municipal ordinance, or conservation case." For the following reasons, we vacate the DNA analysis fee and electronic citation fee, and otherwise affirm the judgment of the trial court.

¶ 3

BACKGROUND

¶ 4 On February 23, 2011, defendant was charged with unlawful possession of a controlled substance and unlawful possession of cannabis.

¶ 5 Prior to trial, defendant filed a motion to quash his arrest and suppress evidence of his possession of cannabis and cocaine. Defendant asserted the *Terry* stop was improper because no reasonable person could have inferred that he was in violation of any law.

¶ 6 At the suppression hearing, Latasha Hampton (Hampton), a friend of defendant, testified that at about 11 p.m. on February 22, 2011, she called defendant and asked him to pick her and her cousin up at Pulaski Road and Thomas Street in Chicago. Defendant arrived about 10 to 15 minutes later, driving his "grayish-black" Buick Regal. Hampton occupied the front passenger seat, her cousin occupied the backseat, and defendant began taking them to their home at 1116 North Central by driving "straight up Pulaski." As defendant turned left onto Potomac Avenue, four police vehicles surrounded defendant's automobile. The officers instructed defendant to exit

the vehicle. The police officers then searched defendant, Hampton, her cousin, and the automobile. Hampton further testified that after defendant picked her up, defendant did not stop the vehicle during the trip until he was stopped by police.

¶ 7 The defense then called Chicago police officer Joseph Lipa (Officer Lipa) who testified that around 11:15 p.m. on February 22, 2011, he was near Pulaski Road and Potomac Avenue in an unmarked police vehicle with three other officers. Officer Lipa testified the officers were in that area because they had recently received information "concerning a black older Buick with temporary plates with a black male driver that was delivering narcotics to the area" of Pulaski Road and Division Street. Upon receiving the information, Officer Lipa instructed the two other units on his team to "roam" the "four-block radius area" in search of the vehicle.

¶ 8 Officer Lipa further testified that around 11:15 p.m., he was informed over the police radio by officers DeMarco and Varchetto¹ that they observed a black Buick with temporary plates driving north on Pulaski Road. Officer Lipa was further informed by the officers that the Buick was stopped and double parked in the middle of the street, while the driver of the vehicle had a brief conversation through the passenger side window with a woman. Officer Lipa then observed the headlights of the Buick as it was stopped in the middle of the street, then witnessed the driver proceed westbound. Officer Lipa activated the lights on his police vehicle and proceeded east, and stopped the vehicle at 4020 West Potomac Avenue. Shortly thereafter, Officers DeMarco and Varchetto pulled their vehicle in behind the Buick. Officer Lipa, during his testimony, made an in-court identification of defendant as the driver of the vehicle.

¶ 9 Officer Lipa further testified that Officers Eric Seng (Officer Seng) and Jeffrey Salvetti (Officer Salvetti) approached the driver side of the Buick while Officer Lipa approached the

¹ The first names of Officers DeMarco and Varchetto were not included in the record.

passenger side. Utilizing his flashlight, Officer Lipa observed a plastic bag of suspect cannabis in the driver's side door handle. Officer Lipa then said "1811," which is a police term for cannabis, and the officers instructed defendant to exit the vehicle. Defendant complied and did not make any furtive movements. Officer Lipa recovered the suspect cannabis and defendant was taken into custody for possession of cannabis. Officers Seng and Salvetti then performed a custodial search of defendant, whereby Officer Seng recovered a clear plastic bag containing 46 smaller bags of suspect cocaine concealed underneath his clothing but hanging from the tube of a colostomy bag behind defendant's knee. Officer Lipa acknowledged those items were discovered by touch, and not by sight, that defendant had not performed any actions that led Officer Lipa to believe that defendant was armed with a weapon, and that the officers did not have any warrants to arrest or search him.

¶ 10 On cross-examination by the State, Officer Lipa testified that defendant was arrested in a "high narcotics" area where he had effectuated narcotics arrests in the past. Officer Lipa also testified defendant's vehicle had a temporary license plate tag. He further testified that defendant matched the description of the individual that the officers had received earlier that evening.

¶ 11 On re-direct, Officer Lipa stated he knew the name of the individual who supplied the information that led to defendant's arrest and that the individual had not supplied information in the past. Officer Lipa further stated that the informant told him that "[t]his car has been known to drop off narcotics on several occasions in these areas, and these certain people used this gentleman for delivery service."

¶ 12 The defense then called Officer DeMarco who testified that at approximately 11:15 p.m. on February 22, 2011, he was on patrol with Officer Varchetto near the intersection of Pulaski

Road and Division Street. While on patrol, he "received information from Officer Salvetti that an older model dark-colored Buick with a temp tag being driven by a male black was supposed to be dropping off narcotics in the area of Division and Pulaski." Officer DeMarco then observed defendant driving a black Buick with temporary tags northbound on Pulaski Road from Division Street. Officer DeMarco presently relayed this information to the other members of his team. Soon thereafter, Officer DeMarco observed the driver of the Buick double park on Potomac Avenue and briefly converse with a white female who is a known prostitute. Officer DeMarco, however, did not observe any exchange of money between defendant and the woman. Defendant then proceeded westbound on Potomac Avenue, at which point officers Lipa, Salvetti, Jannotta and Seng stopped the vehicle, and officers DeMarco and Varchetto pulled up behind the automobile. Officer DeMarco testified he did not give defendant a ticket for double parking, but is not sure whether any officer gave defendant a ticket for double parking.

¶ 13 On cross-examination, Officer DeMarco made an in-court identification of defendant as the driver of the Buick. Officer DeMarco further stated that the area where defendant stopped to speak with the female is a high narcotics area.

¶ 14 The trial court denied defendant's motion to quash arrest and suppress evidence. In doing so, the court stated the issue was the reasonableness and legality of the officers' conduct. The court noted the officers' receipt of information about a black male driving a black Buick with temporary tags who was expected to engage in some kind of drug activity near Division and Pulaski. The court was not persuaded that the defendant's double parking in the street was sufficient to provide an appropriate predicate for the officers to conduct a *Terry* stop. The court found, however, the information provided to the officers proved to be accurate in so far as they observed this black Buick with temporary tags being driven by a "male black" in the area

predicted. Thus, after having legally stopped the vehicle, the officers legitimately looked into the vehicle, and reasonably believed that the substance observed in the handle of the vehicle door closest to the driver was cannabis.

¶ 15 The parties stipulated to the testimony provided at the hearing on the motion to suppress and the matter subsequently proceeded to a bench trial.

¶ 16 The State then called Officer Eric Seng who testified and made an in-court identification of defendant as the driver of the Buick. He also corroborated Officer Lipa and DeMarco's description of events. He further added that when he performed the custodial search of defendant, he felt a hard knotted ball behind defendant's left kneecap, and could feel smaller objects were inside of it. Believing those objects to be narcotics, he pulled defendant's pants leg up and recovered a knotted plastic baggie that contained 46 individual ziplock baggies containing what appeared to be crack cocaine. He then took the suspected narcotics to the police station to be inventoried and sent for analysis.

¶ 17 On cross-examination, Officer Seng acknowledged he did not witness defendant's involvement in any narcotic transactions.

¶ 18 The parties then stipulated that if called, Moses Boyd, a forensic scientist with the Illinois State Police crime lab, would testify he tested 16 of the 46 baggies recovered from defendant, the contents of which weighed 1.1 grams, and tested positive for cocaine. The remaining 30 bags weighed approximately 2.1 grams. He also tested plant material recovered in this case, which weighed .9 grams and tested positive for cannabis. The State then rested and defendant elected not to testify in his defense.

¶ 19 The trial court found defendant guilty of the lesser-included offense of possession of a controlled substance, and, after hearing evidence in aggravation and mitigation, sentenced him to

one year in prison. The trial court imposed fees totaling \$1,279, including a \$200 DNA analysis fee, and a \$5 electronic citation fee. Defendant timely filed the notice of appeal.

¶ 20

ANALYSIS

¶ 21 On appeal, defendant contends: (1) the trial court erred in denying his motion to quash arrest and suppress evidence because the police lacked reasonable suspicion to conduct a *Terry* stop; (2) the \$200 DNA analysis fee should be vacated due to defendant's DNA already being registered in the database; and (3) the \$5 electronic citation fee should be vacated because defendant was not convicted in a "traffic, misdemeanor, municipal ordinance, or conservation case."

¶ 22

Motion to Quash Arrest

¶ 23 Defendant first contends the trial court erred in denying his motion to quash arrest and suppress evidence because the officers lacked reasonable suspicion to conduct a *Terry* stop. In reviewing a trial court's ruling on a motion to quash arrest and suppress evidence, we apply the two-part standard of review adopted by the Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Luedemann*, 222 Ill. 2d 530, 542-43 (2006). Under this standard, we give deference to the factual findings of the trial court, and we will reject those findings only if they are against the manifest weight of the evidence. *People v. Johnson*, 237 Ill. 2d 81, 88 (2010). "A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence." *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995). A reviewing court, however, "remains free to undertake its own assessment of the facts in relation to the issues," and "we review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted." *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). "[I]n reviewing the trial court's ruling on a motion to

suppress, we may consider the entire record, including trial testimony." *People v. Robinson*, 391 Ill. App. 3d 822, 830 (2009).

¶ 24 Both the United States and Illinois Constitutions protect individuals from an unreasonable search. U.S. Const., amend. IV; Ill. Const. 1970, art. 1, § 6. Although the reasonableness standard under the Fourth Amendment generally requires a warrant supported by probable cause, the *Terry* exception to that requirement allows a police officer to briefly stop a person for questioning if the officer reasonably believes the person has committed or is about to commit a crime. *People v. Flowers*, 179 Ill. 2d 257, 262 (1997) (citing *Terry v. Ohio*, 392 U.S. 1, 22 (1968)). To justify a temporary detention, the officers must point to specific, articulable facts which, when considered with natural inferences, make the intrusion reasonable. *People v. Ledesma*, 206 Ill. 2d 571, 583 (2003), *overruled on other grounds by Pitman*, 211 Ill. 2d at 513. In determining the reasonableness of a *Terry* stop, we look to the totality of the circumstances. *People v. Baskins-Spears*, 337 Ill. App. 3d 490, 499 (2003). “[T]he determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior.” *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000).

¶ 25 A *Terry* stop need not be based on the officer's personal observation, but may instead be based on information from members of the public. *People v. Nitz*, 371 Ill. App. 3d 747, 751 (2007). An informant's tip may be the basis of a lawful *Terry* stop, but “the information must bear some indicia of reliability, and the information upon which the police act must establish the requisite quantum of suspicion.” *People v. Lee*, 214 Ill. 2d 476, 487 (2005). Pertinent factors include the detail of the tip, whether the tip established the informant's basis of knowledge, whether the informant indicated that he or she witnessed any criminal activity, and whether the tip accurately predicts future activities of the suspect. *People v. Salinas*, 383 Ill. App. 3d 481,

492 (2008). A tip from an anonymous informant may supply the necessary level of reliability to conduct a *Terry* stop. *Alabama v. White*, 496 U.S. 325, 332 (1990). An ability to predict a suspect's future behavior is a particularly important factor of assessing an informant's reliability, as it demonstrates inside information and familiarity with the suspect's affairs. *Id.*; *People v. Spiegel*, 233 Ill. App. 3d 490, 492-493 (1992). The central issue is whether the totality of the information, interpreted by factual and practical considerations, rather than technical legal rules, would lead a reasonable and prudent person to believe that the stopped individual had committed an offense. *Ledesma*, 206 Ill. 2d at 583.

¶ 26 In this case, defendant contends that the police officers lacked reasonable suspicion to stop him because the officers relied on a legally insufficient tip. The State disagrees, asserting that the weight of the evidence created a reasonable, articulable suspicion that defendant was engaged in criminal activity.

¶ 27 The record in the present case demonstrates the informant who provided the tip at issue did so in a face-to-face encounter with Officer Lipa. Although Officer Lipa had not received information from this person in the past, he testified that he knew the informant's name. The substance of the tip was that an African-American male would be driving a black older model Buick with temporary plates in the area of Pulaski and Division for the purpose of delivering narcotics. The informant also notified police that this vehicle had been known to drop off narcotics on several previous occasions in these areas and "these certain people used this gentleman for delivery service."

¶ 28 Here, the informant provided an accurate description of the vehicle, noting the make, age, and color of the vehicle, as well as the fact that the vehicle had temporary plates. In addition, the informant provided the gender and race of the driver of the vehicle. The informant also

identified the specific area where defendant would be on a particular night in the described vehicle. These corroborating details were similar to those in *Ledesma* where the court held that information provided to police regarding the description of a vehicle and location of the automobile was sufficient to justify stopping defendant. *Ledesma*, 206 Ill. 3d at 591-92; see also *Lee*, 214 Ill. 2d at 487-88.

¶ 29 As to the informant's basis of knowledge, we observe that both defendant and the State infer that, from the informant's statements to police, he or she had participated in criminal activity with the driver of the Buick in the past. As such, the informant's knowledge of the criminal activity at issue would be first-hand knowledge. Although defendant argues that the tip in this case is less reliable due to the informant's previous participation in criminal activity, an informant's prior participation in criminal activity with a suspect has been found to lend credibility to a tip (*People v. Sparks*, 315 Ill. App. 3d 786, 794 (2000) ("The informant did not indicate that he had witnessed any criminal activity by defendants or that he had participated in previous criminal activity with them, which would have lent some credibility to his story."))

¶ 30 In addition, the informant was also able to predict defendant's future behavior, in that he correctly predicted the particular area in which defendant would be driving a specific vehicle on a particular night. The officers then corroborated these facts at the time of the stop. Because the officers had independently corroborated significant aspects of the informant's predictions, some degree of reliability was provided to the informant's other allegation relating to the delivery of narcotics, and the officers therefore had reason to believe the informant was reliable enough to justify the *Terry* stop. See *White*, 496 U.S. at 331-32. Although, defendant's brief stop in the street was, on its own, an insufficient predicate for a *Terry* stop, the fact defendant double-parked his vehicle in a high narcotics area to speak with a known prostitute and drug user was an

additional circumstance that established sufficient articulable suspicion to warrant the stop. See *Ledesma*, 206 Ill. 2d at 592. Because the initial stop of defendant was proper, the plain view discovery of the cannabis, and custodial search revealing the cocaine were also proper.

Therefore, when viewing the totality of the circumstances, we find the trial court did not err in denying defendant's motion to quash arrest and suppress evidence. See *Wardlow*, 528 U.S. at 125.

¶ 31 In reaching this conclusion, we have considered *Florida v. J.L.*, 529 U.S. 266 (2000), and *Sparks*, upon which defendant relies, and find them distinguishable. In *J.L.*, the supreme court held that an anonymous tip received by police via telephone that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun, had insufficient indicia of reliability to justify a *Terry* stop. *J.L.*, 529 U.S. at 268, 271, 274. In doing so, the court reasoned that an informant's tip must be reliable in its assertion of illegality and noted that the informant in the case before it gave no basis for his knowledge about the gun and the tip provided no predictive information, thereby leaving police with no means to test the informant's knowledge or credibility. *J.L.* 529 U.S. at 271-72. Here, unlike *J.L.*, the in-person informant provided specific predictive information of future behavior that gave police a basis on which to corroborate the information, which was not present in *J.L.* *Ledesma*, 206 Ill. 2d at 591, accord *Rollins*, 382 Ill. App. 3d at 839-40.

¶ 32 In *Sparks*, police stopped the two defendants as they drove on a highway, based on a tip from a confidential informant who was facing unrelated charges and agreed to give information in exchange for help in his own case, and who did not provide a basis of knowledge for his tip that the defendants were carrying contraband. *Sparks*, 315 Ill. App. 3d at 788-89, 794. The trial court granted defendants' motion to suppress evidence, and, on appeal, the reviewing court

affirmed. *Sparks*, 315 Ill. App. 3d at 790, 794-95. In doing so, the court found *J.L.* to be controlling, and reasoned that police lacked reasonable suspicion to support the *Terry* stop because they had only corroborated innocent details prior to effectuating it. *Sparks*, 315 Ill. App. 3d at 794-95. Here, unlike *Sparks*, there is no indication in the record that the informant had a personal interest in providing the information. In addition, the tip provided the officers with a reasonable basis for suspecting that defendant was involved in criminal activity, and the information was sufficiently corroborated to allow for that reasonable inference. *Rollins*, 383 Ill. App. 3d at 838-40. For these reasons, we find that neither *J.L.* or *Sparks* are controlling in this case.

¶ 33 The Fees Assessed by the Trial Court

¶ 34 Defendant finally challenges the imposition of certain fines and fees, which we review *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007). Defendant first contends that the DNA analysis fee should be vacated because his DNA is already registered in the database. Among the \$1,279 in fees and costs assessed by the trial court, was a \$200 DNA analysis fee. The trial court imposed the fee pursuant to section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2010)), which provides that any person required “to submit specimens of blood, saliva, or tissue to the Illinois Department of State Police for analysis and categorization into genetic marker grouping *** shall pay an analysis fee of \$250.” Defendant and the State are in agreement that the charge should be vacated because defendant’s DNA profile was already registered in the database. See *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). This DNA fee can only be imposed where the defendant is not already registered in the database. Because defendant was previously registered in the database, we vacate the \$200 DNA analysis fee.

¶ 35 Defendant next contends, and the State concedes, that defendant was improperly assessed

the \$5 electronic citation fee because he was not convicted of any traffic, misdemeanor, municipal ordinance, or conservation case pursuant to section 27.3e of the Clerks of Courts Act (705 ILCS 105/27.3e (West 2010)). We agree and vacate the \$5 electronic citation fee.

¶ 36 Pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), and our authority to correct a mittimus without remand (*People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008)), we order the fines and fees order to be corrected to reflect the vacation of the \$200 DNA analysis fee and the \$5 Electronic Citation Fee, resulting in a corrected assessment amount of \$1,074, before application of applicable custody credit.

¶ 37 **CONCLUSION**

¶ 38 For the reasons stated above, the judgment is affirmed in part and vacated in part.

¶ 39 Affirmed in part; vacated in part.