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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-CF-2140
)	
GEORGE LAMONT PITTMAN,)	Honorable
)	Robert G. Kleeman,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Burke and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant's motion to suppress, as the totality of the circumstances, including the smell of cannabis, gave the police reasonable suspicion to conduct an investigative stop, which did not become an unlawful arrest when he was placed in a squad car.

¶ 2 Defendant, George Lamont Pittman, appeals the denial of his motion to suppress evidence seized as a result of the search of a vehicle in which he was a passenger and to suppress statements that he made following his arrest. He contends that he was unlawfully detained and that the unlawful detention tainted the search, the driver's consent to search, and his postarrest statements. Because defendant's detention was justified, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was indicted in the circuit court of Du Page County on one count of residential burglary (720 ILCS 5/19-3 (West 2012)). Defendant filed a motion to suppress, and the trial court, after an evidentiary hearing, denied it. Following a stipulated bench trial, defendant was found guilty and sentenced to four years' imprisonment.

¶ 5 The following evidence was adduced at the evidentiary hearing. According to defendant, on October 29, 2012, at about 10:30 a.m., he was a front-seat passenger in a vehicle driven by Christian Johnson. Donald Flowers was a passenger in the rear seat. Johnson had parked the car in the driveway of the residence at 974 Wilma Lane in Elk Grove Village so that he could look for directions to Lombard.

¶ 6 As the trio sat in the car, a police officer approached and asked Johnson for his driver's license and proof of insurance, both of which Johnson provided. The officer then asked Johnson to step out of the vehicle. According to defendant, the officer did not ask if they had been smoking cannabis. Defendant testified that they had not been smoking cannabis.

¶ 7 According to defendant, he did not see any "no trespassing" signs at the residence. He denied that any of the three had spoken to anybody at the residence.

¶ 8 A second police officer asked defendant and Flowers to exit the vehicle. That officer frisked defendant and found only some cash. Johnson and Flowers were also frisked, but no weapons or drugs were found.

¶ 9 After being frisked, defendant and his companions were each placed in separate squad cars. Defendant was not handcuffed when placed in the squad car. Nonetheless, he did not feel free to leave.

¶ 10 The police then searched Johnson's car, which produced evidence from a burglary in Addison. After being arrested and transported to the Addison police station, defendant gave a statement regarding the Addison burglary.

¶ 11 Officer Rosko of the Elk Grove Village police department testified that at around 10:28 a.m. on October 29, 2012, he was on uniformed duty in a marked squad car. He received a dispatch instructing him to go to 974 Wilma Lane. The dispatch advised that a female occupant at that address had called 911 and reported that someone she did not recognize was knocking on the door. The complainant had been sleeping and was not expecting any visitors. She also reported that a white Hyundai station wagon was parked in front of the house.

¶ 12 When Officer Rosko arrived, he saw a white Hyundai station wagon backed into the driveway with three black males inside: one in the driver's seat, one in the front passenger's seat, and one in the rear seat. Officer Rosko exited the squad car and walked up to the vehicle. As he did, he observed that "everyone in the vehicle was fidgety, moving their hands and it appear[ed] to [him] that they were attempting to hide something or grab something." They were "leaning forward and their arms were out of [his] line of vision." As Officer Rosko approached the driver's side, the driver rolled down the window. Officer Rosko "immediately detected the odor of burnt cannabis coming from inside of the vehicle." He had been involved in hundreds of calls and arrests in which people possessed or were smoking cannabis, and he was familiar with the smell of burnt cannabis. According to him, he asked the trio if they had been smoking cannabis and they denied having done so.

¶ 13 Officer Rosko told Johnson that he was there because someone had complained about somebody knocking on the door of the residence, and he asked Johnson if he had done so.

Johnson denied having knocked on the door, and he said that he was checking his GPS because he was lost. Defendant and Flowers also denied knocking on the door.

¶ 14 Shortly thereafter, Officers Sacomano and Gigante arrived. Based on the movements of the occupants and the smell of burnt cannabis, Officer Rosko asked Johnson to exit the vehicle and patted him down. Johnson was placed, unhandcuffed, in a squad car. Officer Rosko asked him if there was anything in the vehicle that should not be there and if he could search it. Johnson told him to go ahead.

¶ 15 Officer Rosko opened the driver's-side door and searched the center console. He found several watches and a class ring with the inscription "Mucciati." He also discovered small amounts of raw and burnt cannabis on the front and rear seats of the vehicle. He found an I-Pad under the driver's seat. Based on the items found in the car, and information that he had received regarding a burglary in Addison, he arrested defendant, Johnson, and Flowers for burglary.

¶ 16 Officer Rosko admitted that he did not include in his written report having asked the three if they had been smoking cannabis. He acknowledged that he did not take as evidence any of the cannabis found in the car, but he explained that he did not intend to charge them based on the cannabis. He admitted that he did not know the name of the complainant when he received the dispatch and did not know whether she was reliable. He also conceded that defendant was not free to leave when he conducted the search.

¶ 17 Officer Joe Sacomano testified that he had been an Elk Grove Village officer for 31 years. He was in uniform and driving a marked squad car on the day of the incident. He heard a dispatch about someone "banging on the front door of a residence" at 974 Wilma Lane and that there were "several subjects out in [a] car in front of the house."

¶ 18 Upon arriving at the residence, he observed a small white station wagon backed into the driveway. Officer Rosko was standing next to the driver's-side window.

¶ 19 Officer Sacomano approached the front passenger door. He saw three occupants in the vehicle, two in front and one in back. As he approached, he saw defendant "holding his hand down behind his back" and "kind of leaning forward and he was quite obviously jamming something next to him." Officer Sacomano was "alarmed" because he thought that defendant might be shoving a weapon behind his back. He ordered defendant to put his hands on the dashboard. Instead of doing so, defendant "kept putting something behind his back and then he eventually did put his hands on the dash board."

¶ 20 Officer Sacomano asked defendant to exit the vehicle and asked him what he was doing there. Defendant answered that they had parked to charge a cell phone. Officer Sacomano then frisked defendant but found no weapons. He placed defendant, who was not handcuffed, in a squad car. His concern that defendant might have a weapon "on him" was alleviated after the frisk.

¶ 21 The trial court denied the motion to suppress and the motion to reconsider. After defendant was found guilty and sentenced, he filed this timely appeal.

¶ 22 II. ANALYSIS

¶ 23 On appeal, defendant contends that there was no reasonable suspicion to stop him. He alternatively argues that, once he was placed in the squad car, he was under arrest without probable cause. Therefore, he asserts, the search of the car, Johnson's consent, and his postarrest statements were tainted by his illegal detention.

¶ 24 On appeal from an order denying a motion to suppress, we use a two-part standard of review. *People v. Miller*, 2014 IL App (2d) 120873, ¶ 25. The trial court's findings of fact are

upheld unless they are against the manifest weight of the evidence. *Miller*, 2014 IL App (2d) 120873, ¶ 25. Findings are against the manifest weight of the evidence if they are unreasonable, arbitrary, or not based on the evidence, or when the opposite conclusion is clearly evident. *Miller*, 2014 IL App (2d) 120873, ¶ 25. That said, the ultimate issue of whether to suppress is a legal one and subject to *de novo* review. *Miller*, 2014 IL App (2d) 120873, ¶ 25.

¶ 25 The State initially argues that defendant does not have standing to contest the search of the vehicle or Johnson's consent. Defendant responds that he has standing in regard to the search of the vehicle because that search was tainted by his unlawful detention. He concedes that he does not have standing to directly challenge the legality of Johnson's consent, but he asserts that he can do so indirectly because Johnson's consent was the product of the illegal detention of defendant and his companions. Because we hold that defendant's detention was not unlawful, we need not resolve the issues of defendant's standing to contest the legality of the search of the vehicle or Johnson's consent.

¶ 26 Generally, the police may seize a person only if they have first obtained a warrant supported by probable cause. *Miller*, 2014 IL App (2d) 120873, ¶ 21. However, warrantless seizures are proper in some circumstances, one being a stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). *Miller*, 2014 IL App (2d) 120873, ¶ 21. Under the *Terry* doctrine, an officer may make an investigative stop if the officer reasonably believes that the person seized has committed, is committing, or is about to commit a crime. *Miller*, 2014 IL App (2d) 120873, ¶ 21. Similarly, an officer may stop the occupant of a vehicle if he has reasonable suspicion that the person is violating the law. *Miller*, 2014 IL App (2d) 120873, ¶ 22.

¶ 27 Reasonable suspicion must be based on specific and articulable facts and not a mere hunch. *Miller*, 2014 IL App (2d) 120873, ¶ 22. In determining whether reasonable suspicion

existed for a seizure, a court should examine the totality of the circumstances. *Miller*, 2014 IL App (2d) 120873, ¶ 22.

¶ 28 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 person. *People v. Linley*, 388 Ill. App. 3d 747, 749 (2009). Such a cursory search of the person is justified if, in light of the totality of the circumstances, a reasonably prudent person in that situation would believe that his safety or that of others is threatened. *People v. Davis*, 352 Ill. App. 3d 576, 580 (2009).

¶ 29 We begin our analysis with the issue of when defendant was first seized. A seizure occurs only when an officer, by means of physical force or show of authority, restrains the liberty of a citizen. *People v. Gherna*, 325 Ill. App. 3d 157, 161 (2001) (citing *Terry*, 392 U.S. at 19 n.16). The court must look at the totality of the circumstances to decide if a reasonable person would have believed that he was not free to leave. *Gherna*, 325 Ill. App. 3d at 161 (citing *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). Examples of such circumstances include: (1) the threatening presence of several officers; (2) an officer displaying a weapon; (3) an officer physically touching the citizen; and (4) an officer using language or a tone of voice indicating that compliance with his request was compelled. *Gherna*, 325 Ill. App. 3d at 161.

¶ 30 Here, defendant is not entirely clear as to when he believes he was seized. At one point in his brief he suggests that the seizure occurred when he was placed in the squad car. At another, he seems to say that it was when he was asked to exit the vehicle. The State does not address the issue. Assuming that defendant was seized when he was asked to exit the vehicle, there was proper justification for the seizure.

¶ 31 The officers here received a dispatch of suspicious activity at 974 Wilma Lane. The basis of that information was a 911 call from an individual who stated that she was a current occupant

of that residence. Although the parties characterize the caller as anonymous, she was not, as she essentially identified herself by providing the address where she was located. Moreover, she provided the information by calling 911. See *People v. Smulik*, 2012 IL App (2d) 110110, ¶ 7 (recognizing that a tip provided via 911 is not truly anonymous even if the caller does not identify herself); see also *Navarette v. California*, 572 U.S. ___, 134 S. Ct. 1683, 1690 (2014) (anonymous informant's use of 911 is relevant circumstance as to officer's justifiable reliance on the information reported). Therefore, the caller here is better characterized as a citizen informant. As such, only a minimum of corroboration or other verification of the reliability of the information was required. See *Miller*, 2014 IL App (2d) 120873, ¶ 24.

¶ 32 In that regard, when Officer Rosko arrived at 974 Wilma Lane, he observed a white station wagon parked in the driveway with three occupants. That was completely consistent with the 911 report of a white vehicle parked in front with several subjects inside, which was sufficient verification for the officers to have relied on the citizen report as support for their suspicions.

¶ 33 Additionally, the vehicle itself was backed into the driveway. That furthered Officer Rosko's suspicions, as a visitor to someone's home does not ordinarily back into the driveway.

¶ 34 Armed with the citizen complaint and his observations of the vehicle and its occupants, Officer Rosko exited his squad car and approached the vehicle. As he did, he observed the occupants fidgeting and moving their hands. It appeared to him that they were trying to hide or grab something. Additionally, Officer Sacomano was alarmed because he observed defendant engaging in movements that appeared as though he was trying to hide a weapon. When he ordered defendant to put his hands on the dashboard, defendant initially did not comply. When Johnson rolled down his window, Officer Rosko smelled burnt cannabis, a smell he was quite

familiar with from his extensive experience as a police officer. That smell alone gave him probable cause to search the vehicle. See *People v. Stout*, 106 Ill. 2d 77, 86-88 (1985) (smell of burnt cannabis emanating from a vehicle provides probable cause to search the vehicle). A *priori*, the totality of the facts provided Officer Rosko with ample reasonable suspicion to detain defendant and his companions.

¶ 35 Defendant contends, alternatively, that his detention was illegal because placing him in a squad car elevated the stop to an arrest and that there was no probable cause to justify such a seizure. That argument fails, however, as an investigative detention based on reasonable suspicion does not morph into an arrest simply by placing the suspect into a squad car. *People v. Ross*, 317 Ill. App. 3d 26, 32 (2000); *People v. Walters*, 256 Ill. App. 3d 231, 236-37 (1994) (handcuffing suspect and placing him in squad car did not convert *Terry* stop into arrest). Absent any other indicia of an arrest, defendant was not under arrest when the officers searched the vehicle. Thus, probable cause for his detention was unnecessary.

¶ 36 Defendant also argues that any reasonable suspicion dissipated once the officers frisked them and found no weapons. That argument lacks merit, however, as the officers' reasonable suspicions concerning weapons in the vehicle continued after the frisk. That was especially so considering that the officers observed movements consistent with attempting to hide a weapon in the car. Indeed, Officer Sacomano testified that, after the frisk, his concern that defendant might be armed was alleviated only in terms of whether defendant had a weapon "on him." He never spoke to whether he was no longer concerned about weapons in the car. In any event, even if the frisk had dissipated any reasonable suspicion as to weapons, the officers retained their reasonable suspicion of criminal activity so as to justify the continued detention.

¶ 37 Because the officers had reasonable suspicion to justify detaining defendant and his companions, defendant's challenge to the search of the vehicle, to Johnson's consent, and to his postarrest statements necessarily fails.

¶ 38 **III. CONCLUSION**

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County denying defendant's motion to suppress.

¶ 40 Affirmed.