

No. 1-12-1494

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 229
)	
LAMONT COLEMAN,)	Honorable
)	Catherine M. Haberkorn,
Defendant-Appellant.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Trial court did not err in refusing to quash defendant's arrest and suppress the evidence absent showing that his outstanding traffic warrant was illegally obtained or unlawfully executed; fines and fees order modified.

¶ 2 Following a bench trial, defendant Lamont Coleman was found guilty of two counts of possession of a controlled substance and sentenced to concurrent terms of four and one-half years' imprisonment. On appeal, defendant contends that the State failed to establish probable cause to justify his warrantless arrest. Defendant also challenges the propriety of various

pecuniary penalties imposed by the trial court and contends that he is entitled to a *per diem* credit for the time he spent in presentence custody.

¶ 3 In his pretrial motion to quash arrest and suppress evidence, defendant alleged that his initial detention was unlawful because it was not based on probable cause to believe that he had committed a crime, and that his subsequent arrest was made without the authority of a valid search or arrest warrant, "or was made pursuant to a warrant but only after police unnecessarily delayed" the stop. Defendant thus sought to quash his arrest and suppress the evidence seized as a result, including any statements and gestures alleged to have been made during the detention following arrest.

¶ 4 At the suppression hearing, defendant testified that at about 3:30 p.m. on November 30, 2010, he was walking on North Dearborn Street in Chicago when he was approached by two plain clothes police officers at the intersection of North Dearborn and West Chestnut Streets. The officers pulled in front of him, effectively blocking his path, exited their unmarked car and told him to put his hands on the hood of their vehicle. He was then handcuffed, patted down, and placed in the back seat of the unmarked police vehicle. Defendant stated that the officers did not show him an arrest warrant, and when he was searched at the police station, the police recovered contraband.

¶ 5 On cross-examination by the State, defendant acknowledged that 90 baggies of contraband were recovered from his person at the police station. He also testified to the events leading up to his encounter with the police officers. Defendant stated that he left a friend's house near West 35th Street and the Dan Ryan Expressway, rode the train to North State and East Lake Streets, purchased something to eat at a restaurant, then walked up North Dearborn Street where

he was stopped by police as he was trying to cross at Chestnut Street. The officers did not ask for his name or date of birth, but told him to put his hands on the hood of their vehicle. He was then handcuffed and frisked by Officer Rodriguez, who had arrested him before, and placed into the unmarked police vehicle. At that point, he was asked his name and date of birth, which led to the discovery of an outstanding traffic warrant. The warrant check took about five minutes.

¶ 6 The parties stipulated that defendant had previously been convicted of possession of a controlled substance, aggravated battery of a peace officer, criminal damage to property, and manufacture or delivery of a controlled substance. The trial court denied the State's motion for a directed finding and the State presented the testimony of Officer Zaragoza.

¶ 7 Officer Zaragoza testified that about 3:30 p.m. on November 30, 2010, he and his partner, Officer Rodriguez, were on tactical patrol, in plain clothes and driving an unmarked vehicle, when they were flagged down by a concerned citizen named "Steve"¹ who told them that he had just observed a black male wearing a black jacket and blue jeans selling narcotics. Officer Zaragoza regularly encountered Steve while on patrol. Steve worked in the area as a valet, and described a hand-to-hand transaction in which the black male accepted money from a black female in exchange for unknown items and then walked up North Dearborn Street. Steve pointed out defendant, who was walking in that direction about 100 feet away.

¶ 8 Officer Zaragoza further testified that he and his partner pulled alongside the curb on North Dearborn Street, exited their vehicle and approached defendant for a field interview. He initially asked defendant his name and date of birth, which his partner entered into the portable data terminal (PDT) of their vehicle. About five minutes later, his partner indicated to him that

¹ Steve's full name does not appear of record.

defendant had a warrant. At that point, Officer Zaragoza patted defendant down, handcuffed him and took him into custody. At the police station, Officer Zaragoza conducted a custodial search of defendant and recovered a plastic bag containing 90 knotted bags of suspect crack cocaine and five Ziploc bags of suspect heroin, which fell out of defendant's pants.

¶ 9 On cross-examination, Officer Zaragoza acknowledged that he did not observe defendant engaging in any transactions, and that his report of the case did not mention Steve by name. He also stated that he was unaware of the warrant for defendant's arrest when he first observed him on the street. On redirect examination, Officer Zaragoza clarified that his report indicated that he was flagged down by a concerned citizen who had just observed what he believed was a narcotics transaction.

¶ 10 During argument, defense counsel contended that the motion should be granted because defendant was detained, handcuffed, patted down and "forced to submit to the search well before the police officer had any probable cause whatsoever to detain." Counsel also argued that Officer Zaragoza's failure to mention Steve in his report undermined his credibility. The State asked that the motion be denied because the evidence established that the officers discovered defendant's outstanding warrant based on information obtained from defendant during the initial stop.

¶ 11 In denying the motion to quash arrest and suppress evidence, the trial court found that the police had articulable suspicion to stop defendant based on information from Steve and that the outstanding warrant justified his subsequent arrest. The trial court commented that the initial stop of defendant required a reasonable articulable suspicion and not probable cause to detain, as argued by defense counsel. The court explained, "[t]he police officers are flagged down by a

citizen, who gives them articulable suspicion to interact with the defendant. They discover the defendant has a warrant. At that point, the defendant is under arrest for the warrant." The court also credited the testimony of Officer Zaragoza over that of defendant regarding the version of events leading to defendant's arrest, and noted that the discovery of the suspect narcotics occurred at the police station, which seemed to corroborate the officer's testimony that defendant was arrested on the outstanding warrant.

¶ 12 At the next status date, September 21, 2011, defense counsel adopted defendant's *pro se* motion to reconsider the ruling on the motion to quash his arrest and suppress evidence in which he alleged that probable cause was lacking because the officers did not know of the warrant until after they detained him. Counsel thus argued that the initial stop and detention were invalid. The trial court denied the motion to reconsider, reiterating that the police had articulable suspicion to stop him, which led to the discovery of an outstanding warrant for defendant's arrest.

¶ 13 At trial, Officer Zaragoza provided testimony similar to that given at the suppression hearing. He added that he and his partner were traveling east on West Chicago Avenue and, based on a conversation with someone in the area of North Dearborn Street and West Chicago Avenue, they approached defendant for a field interview. He also testified that he recovered \$164 during the custodial search of defendant at the police station, which he inventoried along with the contraband under separate inventory numbers.

¶ 14 Further evidence at trial included stipulated testimony regarding the forensic analysis and positive identification of the contraband as cocaine and heroin. After granting defendant's motion for a directed finding as to the charges of unlawful possession with intent to deliver, the trial court found defendant guilty of two counts of unlawful possession of a controlled substance.

Defendant subsequently filed an unsuccessful motion for a new trial alleging, *inter alia*, that the court wrongly denied his motion to quash arrest and suppress evidence.

¶ 15 In this court, defendant first contends that the State failed to establish probable cause to justify his warrantless arrest where the only evidence presented by the State established that the arresting officer's partner told him there was an outstanding warrant obtained by an unidentified officer, at an unknown time, for an unknown offense. The State initially argues that defendant has forfeited this issue for failing to raise the validity of the warrant at the pretrial motion, or in his posttrial motion as required by *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). The record shows, however, that defendant contested the propriety of his arrest without a "valid *** arrest warrant" in his pretrial motion to quash and suppress, raised a variant thereof in his *pro se* motion to reconsider the trial court's denial of that ruling, and asserted in his motion for a new trial that the trial court wrongly denied his pretrial motion. We find that these objections were sufficient to preserve the issue for appeal. *People v. Mohr*, 228 Ill. 2d 53, 65 (2008).

¶ 16 When reviewing a trial court's ruling on a motion to quash an arrest and suppress evidence, we accord great deference to the trial court's factual findings unless they are against the manifest weight of the evidence, but review *de novo* the legal question of whether suppression is warranted under those facts. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009). In determining whether the trial court correctly found probable cause to arrest defendant, we are not confined to the evidence presented at the pretrial suppression hearing, but may also consider evidence that was presented at trial. *People v. Sims*, 167 Ill. 2d 483, 500 (1995).

¶ 17 Section 107-2 of the Code of Criminal Procedure of 1963 provides that a valid arrest may be made when a warrant has issued, or there are reasonable grounds to believe that a warrant for

the person's arrest has been issued or that a crime has been committed. 725 ILCS 5/107-2(1)(a)-(c) (West 2012); *People v. Jones*, 196 Ill. App. 3d 937, 954 (1990). For purposes of arrest, "reasonable grounds" and "probable cause" are synonymous, and the legality of an arrest is measured by the presence or absence of probable cause, *not* by the presence or absence of a warrant. (Emphasis added.) *Jones*, 196 Ill. App. 3d at 954; *People v. Tyler*, 128 Ill. App. 3d 1080, 1087 (1984).

¶ 18 Although a person cannot be detained for custodial questioning on less than probable cause, an arrest supported by a duly authorized warrant is a valid arrest. *People v. Williams*, 233 Ill. App. 3d 1005, 1010 (1992). Generally, when an accused person or a subpoenaed witness fails to appear in court, the judge will issue a bench warrant ordering that person arrested and brought before the court; such warrants are clearly valid and based on probable cause. *People v. Allibalogun*, 312 Ill. App. 3d 515, 518 (2000).

¶ 19 Here, the evidence presented in the trial court supported the court's conclusion that the initial encounter was a valid investigatory stop under *Terry v. Ohio*, 392 U.S. 1 (1968), which led to the discovery of the outstanding traffic warrant for defendant and authorized his arrest. *People v. McDonald*, 15 Ill. App. 3d 620, 623 (1973). In *Terry*, the United States Supreme Court recognized a limited exception to the warrant requirement which allowed police officers, under appropriate circumstances, to briefly stop a person for temporary questioning when the officer reasonably believed that the person had committed or was about to commit a crime. *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 13. "To justify a *Terry* stop, a police officer must be able to point to specific and articulable facts which, combined with the rational inferences from those facts, reasonably warrant the intrusion." *Id.* ¶ 14. "Whether an investigatory stop is reasonable

is determined by an objective standard [citation], and the facts are viewed from the perspective of a reasonable officer at the time of the stop [citation]." *Id.*

¶ 20 "Reasonable suspicion is a less exacting standard than probable cause." *People v. Ward*, 371 Ill. App. 3d 382, 412 (2007). "The facts supporting the officer's suspicions need not meet probable cause requirements, but they must justify more than a mere hunch." *People v. Thomas*, 198 Ill. 2d 103, 110 (2001). The decision to make an investigatory stop is based on the totality of the circumstances. *Sanders*, 2013 IL App (1st) 102696, ¶ 14. For example, "[a] Terry stop may be initiated based upon information received from a member of the public." *Id.* ¶ 15 (citing *People v. Nitz*, 371 Ill. App. 3d 747, 751 (2007). "Ordinarily information from a 'concerned citizen' is considered more credible than information from a paid informant or a person who provided the information for personal gain." *Sanders*, 2013 IL App (1st) 102696, ¶ 15.

¶ 21 In this case, the police acted upon information from Steve, a concerned citizen and valet whom Officer Zaragoza regularly encountered while on patrol. A trier of fact could rationally infer that Officer Zaragoza would be able to locate Steve based on his employment. Steve identified the defendant in person as someone who had engaged in a suspected drug transaction. Given these circumstances and the rational inferences to be drawn therefrom, the circuit court did not err in ruling the police could briefly detain and question the defendant. See *id.* ¶ 31.

¶ 22 During their brief conversation with defendant, one of the police officers checked the police computer and determined there was an arrest warrant outstanding against defendant. Although defendant had the right to show that his arrest was illegal even with a warrant (*McDonald*, 15 Ill. App. 3d at 623), he had the burden to prove that the warrant was invalid (*People v. Cregan*, 2014 IL 113600, ¶23). Defendant failed to carry his burden of proof in this

case. *McDonald*, 15 Ill. App. 3d at 623. Nothing in the record, including defendant's testimony, indicates a reason for the officers to doubt that there was a valid, outstanding warrant for defendant's arrest (*People v. Dillon*, 102 Ill. 2d 522, 525 (1984)), and that they acted in conformity with it. Under these circumstances, we conclude that the traffic warrant provided a valid basis for defendant's arrest and that the trial court did not err in refusing to quash defendant's arrest and suppress the evidence obtained therefrom.

¶ 23 Defendant also challenges the propriety of various pecuniary penalties imposed by the trial court and contends that he is entitled to a \$5-per-day credit against his fines for the time he spent in presentence custody. The State concedes, and we agree, that defendant's \$500 controlled substances fee, \$30 children's advocacy center fee, and \$5 drug court fee are all fines subject to a \$5-per-day credit for the time he spent in presentence custody. 725 ILCS 5/110-14(a) (West 2010); *People v. Morrison*, 375 Ill. App. 3d 545, 552 (2007); *People v. Williams*, 2011 IL App (1st) 091667-B, ¶19. These charges total \$535 and defendant is entitled to that amount in credit from his presentence incarceration credit. *Williams*, 2011 IL App (1st) 091667-B, ¶ 19. Lastly, we agree with the parties that defendant's electronic citation fee should be vacated because it is only applicable to violations of the Illinois Vehicle Code, which did not occur here. 705 ILCS 105/27.3e (West 2012).

¶ 24 For the reasons stated, we amend the fines and fees order as indicated, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 25 Affirmed as modified.