

FIRST DIVISION  
November 17, 2014

No. 1-12-3386

**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).

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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. 11 CR 20285
	)	
PARIS DRAKE,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE DELORT delivered the judgment of the court.  
Justices Connors and Harris concurred in the judgment.

**ORDER**

¶ 1 **Held:** The trial court's denial of defendant's motion to quash arrest and suppress evidence was proper because its determination that the police officer testified credibly was not erroneous.

¶ 2 Following a bench trial, defendant Paris Drake was convicted of unlawful possession of a weapon by a felon and possession of a controlled substance, then was sentenced to concurrent, respective terms of four and a half and three years' imprisonment. On appeal, defendant solely contends that the trial court erred when it denied his motion to quash arrest and suppress evidence because the police officer's testimony that he saw the butt of a handgun protruding

from defendant's pocket was unbelievable and merely a *post hoc* justification for illegally detaining and searching him.

¶ 3 Defendant was charged with armed violence, unlawful use or possession of a weapon by a felon, aggravated unlawful use of a weapon, and possession of a controlled substance following a street encounter with police. Defendant filed a motion to quash his arrest and suppress evidence asserting that police did not have probable cause to arrest him.

¶ 4 At the hearing on his motion, defendant testified that about 11:53 a.m. on November 6, 2011, he was walking down Essex Avenue in Chicago talking on his cell phone and about to cross the street when two police officers in a detective car pulled up near him. Defendant waived at the driver to pass him, but instead, the officer cut him off at an angle and told him to put his hands on the car. Defendant ended his call, placed his phone in his pocket, and asked the officer what was wrong. Defendant took three steps to walk around the front of the car, and the officer told him to "hold up." Both officers then exited the car and told defendant to place his hands on the car. Defendant asked them why, and one of the officers explained that they were on their way to lunch, but decided to stop one more person, and he just happened to be that person.

¶ 5 In court, defendant put on the sweatshirt and coat he was wearing that day, and zipped up the coat to demonstrate how he looked when the police stopped him. Defendant testified that neither his waist nor the waist of his pants was visible. The court noted that defendant's jacket extended down below his waist.

¶ 6 Defendant further testified that the officer who had been driving placed defendant's hands on the car, began searching him, and found cocaine in his left coat pocket. The other officer then handcuffed defendant and asked if he had anything else on him, and defendant did

not respond. The driver frisked defendant and found a .25 caliber gun in the right coin pocket of defendant's jeans.

¶ 7 Chicago police officer Caribou testified that he and his partner, Officer Mondragon, were on patrol in an unmarked police car in the area of 7600 South Essex Avenue, an area noted for a high level of drug and criminal activity. Due to a recent shooting there, the officers were on the lookout for gang and drug activity. Officer Caribou was driving, and as they approached the area, he observed defendant walking on the sidewalk towards the corner. From a distance of five feet, Officer Caribou saw the butt of a handgun protruding from the front right coin pocket of defendant's jeans.

¶ 8 Officer Caribou testified that he jumped out of his vehicle, grabbed defendant, and recovered the .25 caliber handgun, which was loaded with seven live rounds. He then told Officer Mondragon to handcuff defendant, after which he searched defendant's pockets, and from his left jeans pocket, recovered a knotted bag containing 12 knotted bags of crack cocaine. Officer Caribou did not recall what clothing defendant wore that day, but remembered that his coat was unzipped and open. The officer denied that he told defendant that he needed to stop one more person and chose him, that he told defendant to place his hands on the car, and that he found the drugs in defendant's coat pocket. Officer Caribou acknowledged that he did not see defendant selling drugs or exchange gang symbols with anyone, and except for the gun, he did not see defendant engaged in any illegal activity.

¶ 9 The court expressly stated that it listened to the evidence presented and found "the officer to be more credible and compelling than Mr. Drake." Accordingly, the trial court denied defendant's motion to quash and suppress.

¶ 10 At trial, Officer Caribou testified substantially the same as he did at the hearing on the motion to quash and suppress, and added that, after being advised of his Miranda rights, defendant stated that he was a member of the “Bloods from Alabama,” and that he was carrying the gun because there were a lot of kids “out there” with guns. The parties stipulated that the drugs recovered from defendant’s pocket tested positive for 1.1 grams of cocaine, that defendant had a prior conviction for murder in Alabama, and that he did not have a valid firearm owner’s identification card on the date of his arrest.

¶ 11 The trial court found that Officer Caribou was a credible witness, and that there was no question that he saw defendant with a gun. The court then found defendant not guilty of armed violence, but guilty of the remaining charges, and merged the gun charges together, rendering defendant guilty of unlawful possession of a weapon by a felon and possession of a controlled substance.

¶ 12 On appeal, defendant solely contends that the trial court erred when it denied his motion to quash arrest and suppress evidence because Officer Caribou’s testimony that he saw the butt of a handgun protruding from defendant’s pocket was unbelievable and merely a *post hoc* justification for illegally detaining and searching him. Defendant maintains that his coat covered his waist, and notes that Officer Caribou could not recall what he was wearing. Defendant asserts that it is more plausible that the police stopped him because he was walking in an area with a high level of drug and criminal activity where a shooting had recently occurred. Defendant also claims that it defies logic that he would be walking around in November with his coat unzipped and a handgun visible to a passerby.

¶ 13 The State responds that there is no evidence to support defendant’s claim that Officer Caribou gave perjured testimony, and that his assertion is pure conjecture and speculation. The

State notes that the trial court specifically found the officer's testimony more credible than defendant's. It further argues that Officer Caribou's observation of the gun protruding from defendant's front pants pocket gave the officer reasonable suspicion to detain him.

¶ 14 Our review of the trial court's ruling on defendant's motion to quash arrest and suppress evidence presents questions of both fact and law. *People v. McCarty*, 223 Ill. 2d 109, 148 (2006). The trial court's factual findings are given great deference and will not be disturbed on review unless they are against the manifest weight of the evidence; however, the court's ruling on the motion is a question of law which we review de novo. *People v. Close*, 238 Ill. 2d 497, 504 (2010). At a hearing on a motion to quash and suppress, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, and drawing reasonable inferences therefrom. *People v. Ballard*, 206 Ill. 2d 151, 162 (2002).

¶ 15 The fourth amendment of the United States Constitution, which applies to the states through the fourteenth amendment, protects all citizens from unreasonable searches and seizures in their homes, effects and persons. U.S. Const., amend. IV. Encounters between police and citizens have been divided by the courts 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. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006).

¶ 16 Police may conduct an investigatory stop when they reasonably infer from the circumstances that the person is committing, is about to commit, or has committed a criminal offense. 725 ILCS 5/107-14 (West 2012); *Close*, 238 Ill. 2d at 505. To justify an investigatory

stop, a police officer must identify specific and articulable facts which, when taken together with natural inferences, make the intrusion reasonable. *People v. Scott*, 148 Ill. 2d 479, 503 (1992).

¶ 17 In this case, we find no evidence in the record to support defendant's claim that Officer Caribou's testimony was unbelievable or defied logic. While presiding over the hearing on defendant's motion to quash arrest and suppress evidence, it was the trial court's responsibility, as the fact finder, to determine the credibility of the witnesses and to resolve any conflicts in their testimony. Here, the trial court expressly found the testimony of Officer Caribou "more credible and compelling" than the testimony given by defendant. The officer testified that he saw the butt of a handgun protruding from the front right coin pocket of defendant's jeans, a situation that provided reasonable suspicion of criminal activity to warrant a *Terry* stop. Defendant testified that his coat was zipped and covered his waistband, but Officer Caribou testified that defendant's coat was unzipped and open, which allowed him to see the gun. This testimony presented a conflict in the evidence for the trial court to resolve, and it did so by finding Officer Caribou's testimony more credible than defendant's. The trial court was in the superior position to assess the credibility of the witnesses and observe their demeanor while they testified, and we find no reason to disturb its findings. *People v. Austin*, 349 Ill. App. 3d 766, 769 (2004).

¶ 18 Accordingly, we conclude that the trial court's factual findings were not against the manifest weight of the evidence, and that its denial of defendant's motion to quash arrest and suppress evidence was proper.

¶ 19 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.