2011 IL App (1st) 100133-U

SECOND DIVISION
October 18, 2011

No. 1-10-0133

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. 09 MC4 6394
	)	
HAROLD RINGO,	)	Honorable
	)	Paula M. Daleo,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Quinn and Justice Connors concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court properly denied defendant's motion to quash arrest and suppress evidence when the initial stop of defendant's vehicle was justified pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), and its progeny.

¶ 2 Following a stipulated bench trial, defendant Harold Ringo was convicted of possession of cannabis and sentenced to six months of conditional discharge. Defendant appeals contending that the trial court erred in denying his motion to quash arrest and suppress evidence because there were no specific and articulable facts to justify a stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). For the reasons that follow, we affirm.

¶ 3 At the hearing on defendant's motion to quash arrest and suppress evidence, defendant testified that he drove his Nissan Pathfinder to 2127 South 22nd Avenue to pick up a friend who had been in a fight at a party. His friend had called him 20-30 minutes earlier. As soon as he arrived, a police car pulled up behind his vehicle. Defendant began to exit the vehicle to retrieve his friend, but an officer told him to get back inside the vehicle. While he was complying, an officer approached and started searching him. The officer then searched the car and discovered cannabis belonging to defendant and his friends.

¶ 4 Sergeant Darrel Miller testified that he responded to the location after a radio call indicated that there was a "huge" fight with a gun possibly involved and that the gun was located in a vehicle leaving the area. He did not remember if he received a description of the car or the person allegedly carrying the gun. Miller was three blocks away when he received the call and he went directly to 2127 South 22nd Avenue. When he arrived, it was "utter chaos." There were 30 people in the street, three cars pulling away, and groups of people walking. He positioned his car to prevent two cars, a Pathfinder and a Malibu, from leaving. He had not seen either vehicle do anything illegal.

¶ 5 As Miller walked up to the Pathfinder, he could smell cannabis. As Miller removed defendant and the three other occupants from the vehicle, he heard a voice saying there was a gun in one of the vehicles. He then spoke to the female driver of the Malibu, who indicated that she was on her way home from work and merely driving through the area. After permitting the Malibu to leave, Miller spoke to defendant and his friends.

¶ 6 Miller asked whether defendant and his friends were involved in the fight. Defendant indicated that they were trying to leave. Miller smelled a "strong" odor of cannabis coming off defendant and his friends so he searched them and then the vehicle. Miller found a bag, large enough to hold a gun, containing 15 individually wrapped bags of cannabis.

¶ 7 The parties stipulated to the foundation of the 911 tape, which was then played in open court. After listening to the tape, the court indicated that the only things audible over the screams were that there were two "subjects with guns," and a man and a Ford were involved. The tape is not included in the record.

¶ 8 In rebuttal, Miller testified that he was not told before he arrived that a Ford was involved, just that there were multiple guns and multiple vehicles. He also testified that the voice on the 911 call sounded like the person who lived at 2127 South 22nd Street.

¶ 9 Ultimately, the trial court denied the motion to quash arrest and suppress evidence finding that once defendant rolled down the window and Miller smelled the cannabis, a situation was created with the potential for two crimes, gun possession and cannabis possession. Once Miller smelled the cannabis coming from the Pathfinder, he had sufficient probable cause to search it.

¶ 10 The defense then filed a motion to reconsider, arguing that the original stop was not justified because at the time that Miller stopped the Pathfinder, he had not seen defendant do anything illegal. Additionally, because defendant's vehicle was parked, the Pathfinder did not fit the description of what the vehicle mentioned in the 911 call was actually doing, *i.e.*, leaving. The State responded that based on the radio dispatch, the possible gun, and the fact that defendant's vehicle was parked on the same block, it was reasonable for Miller to stop the Pathfinder to inquire further.

¶ 11 After the trial court denied the motion to reconsider, defendant signed a jury waiver. The parties then stipulated to the facts elicited during the hearing on the motion to quash arrest and suppress evidence and that the testimony of defendant and Miller at the hearing would be the same at trial. The State stipulated that 2.8 grams of the substance recovered from the Pathfinder tested positive for cannabis and that 5.9 grams were not analyzed. After the parties rested, the

court found defendant guilty of the possession of cannabis and sentenced him to six months of conditional discharge.[1]

¶ 12 Before reaching the merits of defendant's appeal, this court must address the State's contention that defendant waived this issue by failing to file a posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, because the parties proceeded by way of a stipulated bench trial, defendant was not required to file a posttrial motion to preserve review of the trial court's ruling on the motion to quash arrest and suppress evidence. See *People v. Nitz*, 371 Ill. App. 3d 747, 750 (2007). Thus, the fourth amendment issue is properly before this court and we may address it on the merits.

¶ 13 When reviewing a trial court's suppression ruling, this court applies a two-part standard of review. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). The trial court's factual findings and credibility determinations are entitled to great deference and will be reversed only if they are against the manifest weight of the evidence. *People v. Slater*, 228 Ill. 2d 137, 149 (2008). However, the trial court's ultimate legal ruling as to whether suppression was warranted is reviewed *de novo*. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008).

¶ 14 The fourth amendment to the United States Constitution guarantees the right of the people to be free from unreasonable searches and seizures. *People v. Gherna*, 203 Ill. 2d 165, 176 (2003). Reasonableness under the fourth amendment generally requires a warrant supported by probable cause. *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001). However, in *Terry* the Supreme Court recognized a limited exception to this 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.

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[1]Although defendant initially stated that he was pleading guilty, the court proceeded to admonish defendant of the ramifications of a jury waiver and conducted a stipulated bench trial. After sentencing defendant, the court admonished him as though he had entered a guilty plea.

Terry, 392 U.S. at 21-22. A vehicle stop, as in this case, is analogous to a *Terry* stop and is generally analyzed pursuant to *Terry* principles. *People v. Jones*, 215 Ill. 2d 261, 270 (2005).

¶ 15 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, warrant the intrusion. *People v. Thomas*, 198 Ill. 2d 103, 110 (2001). While these facts need not rise to the level of probable cause, a mere hunch is not sufficient. *Thomas*, 198 Ill. 2d at 110. Whether an investigatory stop is reasonable is determined by an objective standard (*Nitz*, 371 Ill. App. 3d at 751), and the facts are viewed from the perspective of a reasonable officer at the time of the stop (*Thomas*, 198 Ill. 2d at 110). A reviewing court "must 'be mindful that the decision to make an investigatory stop is a practical one based on the totality of the circumstances.' " *People v. Harris*, 2011 IL App (1st) 103382, ¶ 11 (Sept. 2, 2011), quoting *In re S.V.*, 326 Ill. App. 3d 678, 683 (2001).

¶ 16 A *Terry* stop may be initiated based upon information received from a member of the public. *Nitz*, 371 Ill. App. 3d at 751. A tip received by telephone may form the basis of a *Terry* stop if the tip is reliable and allows the officer to reasonably infer that a person was involved in criminal activity. *People v Shafer*, 372 Ill. App. 3d 1044, 1049-50 (2007). Even when the information comes from an identified informant, some corroboration or other verification of the truthfulness of the information is required. *People v. Linley*, 388 Ill. App. 3d 747, 751 (2009) (finding "some authority" for the application of a less rigorous standard of corroboration when the tip contains an imminent threat to public safety).

¶ 17 Defendant's sole contention on appeal is that Miller effected the investigatory stop without having the requisite degree of suspicion to support it. He argues that based on the 911 call, Miller should only have stopped a Ford. In the alternative, defendant argues if Miller was not told that a Ford was involved, without a description of either a suspect or a car, Miller did not have enough information to justify stopping anyone.

¶ 18 In the case at bar, the radio call was based upon the 911 call received from someone at the party. Information conveyed through 911 emergency services carries a fair degree of reliability even if the caller does not give a name because the police maintain records of those calls. *Shafer*, 372 Ill. App. 3d at 1050-51. While defendant is correct that the 911 caller indicated that a Ford was involved, the record also indicates that upon hearing a recording of the phone call, the court stated that because of all the screaming, all the court was able to hear was that there were two suspects with weapons and that a man and a Ford were somehow involved.

¶ 19 Here, even if this court were to impute the knowledge that a Ford was involved, Miller still had reasonable suspicion to stop defendant's vehicle upon his arrival because he was told that there were multiple guns and multiple vehicles. See *People v. Ewing*, 377 Ill. App. 585, 594 (2007) (acknowledging that Illinois court have not yet directly addressed whether information known to civilian 911 dispatchers may be imputed to police, highlighting a split in the federal circuits regarding this issue, and finding cases that extend the imputed knowledge doctrine to include information discussed in calls to 911 operators to be more persuasive then those that did not) . Miller testified that when he arrived, he was faced with chaos–numerous people were milling about on the street and three cars were about to leave; all of these facts corroborated the information in the 911 call. See *Linley*, 388 Ill. App. 3d at 751. At the time, Miller knew that a fight had already taken place, that a possible gun or guns were involved, and that there were multiple suspects. The situation was potentially dangerous and Miller had to act quickly. See *Thomas*, 198 Ill. 2d at 110 (viewed as a whole, the situation facing the officer must be so far from the ordinary that any competent officer would be expected to act quickly).

¶ 20 Defendant's car was parked near the address. This court has previously found that a defendant's proximity in time and place to a crime scene justified a *Terry* stop. See *People v. Hubbard*, 341 Ill. App. 3d 911, 918-19 (2003) (a defendant's proximity in time and place to a crime scene justified his detention); *People v. Walters*, 256 Ill. App. 3d 231, 235-36 (1994) (a

reasonable suspicion supporting a *Terry* stop may be based in part upon the observation of suspects similar to those believed to be fleeing from a recent crime when the individuals were found in the general area where a fleeing suspect could be expected to be found, considering the time and distance from the crime scene). From Miller's perspective at the time, stopping all the cars that looked to be leaving a scene where a possible gun or guns were shown in a fight was a practical way to prevent the gun or guns from leaving the scene. See *Harris*, 2011 IL App (1st) 103382, ¶ 11 (the decision to conduct an investigatory stop is a practical one considering the circumstances).

¶ 21 This court also rejects defendant's contention that absent a description of either a suspect or a car, Miller lacked the reasonable suspicion to stop anyone.

¶ 22 *People v. Shafer*, 372 Ill. App. 3d 1044 (2007), is instructive. In that case, an officer was informed, via police radio, that a Wendy's employee had called to report an intoxicated person causing a disturbance in the drive-thru lane. *Shafer*, 372 Ill. App. 3d at 1047. When the officer arrived at the Wendy's, he saw a car leaving the parking lot, so he stopped it shortly thereafter even though he had not observed any traffic violations. *Shafer*, Ill. App. 3d at 1047. When the officer then spoke to the driver, he smelled alcohol and had a difficult time understanding the man, so he arrested the driver for driving under the influence of alcohol. *Shafer*, 372 Ill. App. 2d at 1047.

¶ 23 In determining the tip was reliable and provided the officer with the required level of suspicion to justify the stop, the court concluded that information regarding drunk driving required "less rigorous" corroboration than tips about things that did not present an imminent danger to the public. *Shafer*, 372 Ill. App. 3d at 1052-53 (collecting cases). The court also noted that the call was not an anonymous tip, that emergency calls to law enforcement should not be regarded with the same skepticism that is generally applied to information provided by paid informants, and that the caller was a witness sharing her observations. *Shafer*, 372 Ill. App. 3d at

1054. Thus, the court rejected the defendant's claim that the police officer acted solely upon conclusory and uncorroborated opinions and concluded "that the telephone tip provided [the officer] with the requisite quantum of suspicion" to justify the *Terry* stop. *Shafer*, 372 Ill. App. 3d at 1055.

¶ 24 Here, Miller knew when he arrived at the scene that there were multiple suspects with guns and that a car leaving the scene contained a gun. He arrived at the address within moments of receiving the call and stopped two cars. Like the officer in *Shafer*, he did not observe either car perform an illegal act, but acted quickly to prevent an imminent danger facing the public, two potential suspects who had no compunction about showing a gun or guns during a fight. As in *Shafer*, the 911 call from an eyewitness which indicated an imminent danger to the public provided Miller with the "quantum of suspicion" necessary to justify the *Terry* stop of defendant's vehicle. *Shafer*, 372 Ill. App. 3d at 1055.

¶ 25 Accordingly, as Miller had a reasonable, articulable suspicion to justify the *Terry* stop of defendant's car, the trial court did not err when it denied the motion to quash arrest and suppress evidence. *Cosby*, 231 Ill. 2d at 271.

¶ 26 For the reasons stated above, we affirm the judgment of the trial court of Cook County.

¶ 27 Affirmed.