2012 IL App (1st) 101396-U

SIXTH DIVISION
APRIL 27, 2012

No. 1-10-1396

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 CR 3450 (01)
	)	
ANASTACIO ESPARZA,	)	Honorable
	)	James Michael Obbish,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court. Justices Garcia and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: First, where police officers observed defendant engage in numerous suspicious activities and the police officers had reliable information from an informant that the codefendant was involved in narcotic transactions, the police officers had reasonable suspicion to conduct an investigatory stop of defendant in a motor vehicle and the motion to quash arrest and suppress evidence was properly denied. Second, the defendant is entitled to correction of his mittimus.

¶ 2 Following a joint bench trial on March 4, 2010, defendant Anastacio Esparza and codefendant Lorenzo Barrios were both found guilty of delivery of a controlled substance in excess of 900 grams and possession of a controlled substance with the intent to deliver in excess

of 900 grams. Codefendant Lorenzo Barrios is not part of this appeal. On April 12, 2010, after hearing aggravation and mitigation, the trial court sentenced defendant Anastacio Esparza to 16 years in the Illinois Department of Corrections and denied his posttrial motion for a new trial. Defendant now appeals, claiming (1) that the trial court erred by denying his motion to quash arrest and suppress evidence due to a lack of probable cause, and (2) that his mittimus should be corrected to reflect the correct offense. For the following reasons we affirm the conviction and sentence but correct the mittimus to possession of a controlled substance with intent to deliver.

¶ 3 BACKGROUND

¶ 4 Prior to a bench trial on multiple drug charges, defendant and codefendant Lorenzo Barrios filed motions to quash arrest and suppress evidence.

¶ 5 At the suppression hearing on July 14, 2009, defendant testified in support of his motion to quash arrest. Defendant testified that, on January 26, 2009, he drove to an alley near the 2600 block of South Springfield. He drove a vehicle that he had borrowed from Lore, a man he had met the previous day. In the alley, codefendant Barrios placed a black bag in defendant's vehicle and defendant drove off. Defendant said the entire event took about 10 seconds. Defendant testified that he turned onto Hamlin Avenue and two vehicles blocked his movement from the front and the back. Defendant testified that two police officers exited their vehicles with firearms drawn and announced "police, get out of the car." Defendant testified that he exited his vehicle. The officer asked if the vehicle was defendant's vehicle, and defendant said it was not. The officers searched the van. Defendant testified that the officers did not ask for permission to search the vehicle, and that defendant was not shown a warrant.

¶ 6 Following defendant's testimony, Chicago police officer Brian Luce testified that, on January 26, 2009, at approximately 11:30 a.m., he was conducting an unrelated narcotics investigation in a mall parking lot. While conducting that investigation, he noticed that the driver of a blue Dodge van was a man he recognized from a prior investigation involving the distribution of large amounts of narcotics. The driver was known as "The Walker" because, in September of 2006, after a reliable confidential informant provided information about the man, officers conducted surveillance and followed him to an address at South Narragansett, but he was not observed again. Officer Luce thought that the man probably sensed he was under surveillance at the time and discovered that his business was under investigation. Officer Luce ran the blue Dodge van's license plate and found that it was registered to that same address on South Narragansett. Officer Luce then confirmed with Officer Moravec that his recollection of the driver and the address was correct. Officer Luce further testified that, at the time of the surveillance, he had information that an unknown individual, who lived at that address on South Narragansett, was responsible for moving large bulks of currency to Mexico. After recognizing "The Walker," Officer Luce focused on the van.

¶ 7 Officer Luce testified that he was employed in law enforcement for 21 years: 8 years as a Chicago police officer assigned to the Organized Crime Narcotics Division, 2 years as an agent for the state Drug Enforcement Administration, and 11 years as a correctional investigator for the Fugitive Apprehension Unit at the Cook County Sheriff's Department. Officer Luce testified that he had participated in training seminars related to the conduct and behavior of narcotics traffickers. Officer Luce had also taken numerous classes on methods of how narcotics are

transported, stored, manufactured, sold, and narcotic money management. Furthermore, Officer Luce testified that his primary position in the Organized Crime Narcotics Division was as a surveillance officer. Officer Luce testified that he performed surveillance 8 to 10 hours each workday. Officer Luce had been found to be a qualified witness in narcotics-related activities in the federal district court in Urbana-Champaign, Illinois. Based on this testimony, the trial court found Officer Luce to be qualified as an expert witness in narcotic behavior and trafficking.

¶ 8 Officer Luce further testified, while under surveillance, "The Walker" and a male passenger made some phone calls and then drove to a parking lot of a nearby restaurant where they made additional phone calls. A short time later, defendant entered the back of the blue Dodge van and conversed with the men for approximately five minutes. Officer Luce opined that he believed he was watching a "narcotics type meet" because the blue Dodge van was parked in the very back of the parking lot a large distance from the restaurant entrance, where there were numerous open parking spots. The three men drove in the blue Dodge van to another restaurant where the van's two original occupants, including "The Walker," exited the vehicle and went into the restaurant. Defendant moved to the driver's seat and drove away from the area. Officer Luce believed that he observed a "car switch" and believed that the van would be used for the sole reason of transporting, concealing, or moving narcotics. Officer Luce testified that he had observed over 100 "car switches," which had led to hundreds of narcotics seizures and arrests, so he maintained surveillance on the blue Dodge van.

¶ 9 Officer Luce testified that, while Officer Luce followed, defendant drove the blue Dodge van to a park and circled the area several times. Officer Luce opined that defendant's circular

driving was indicative of "dusting [one's] self " or "cleaning off," a method used to detect any police surveillance or anyone who might want to rob the driver. Officer Luce testified that he had observed this behavior between 50 and 100 times and "[a]lmost every time" the individuals stopped were involved in narcotics.

¶ 10 Officer Luce testified that, defendant eventually drove the blue Dodge van into an alley alongside a house located on South Springfield and stopped at the rear of a residence. Officer Luce testified that he parked his unmarked vehicle directly across from the mouth of the alley. Officer Luce observed codefendant Barrios exit the rear of the house on South Springfield carrying "a weighted squared off black duffle bag," that looked like a hockey bag. Barrios placed the bag down on the ground, opened the sliding passenger door of the blue Dodge van, picked up the large duffle bag, placed the bag in the back of the van, and closed the van door. Defendant immediately drove away when the van door closed without defendant and Barrios ever speaking. Based on his knowledge and experience, Officer Luce testified that he had a "solid opinion" that a narcotics transaction had taken place. Officer Luce based his opinion on observations of the "car switch," confidential informant information confirming the South Narragansett address as a site where narcotic activity has occurred, defendant "dusting" himself off, making numerous cell phone calls, the suspicious meeting in the restaurant parking lot, and the composition of the black duffle bag.

¶ 11 Officer Luce testified that he informed Officers Moravec and Colon over the radio that a heavy black duffle bag was placed into the blue Dodge van, and that the van was traveling east through the alley south of 26th street. Officer Luce informed Officers Moravec and Colon to stop

the blue Dodge van. Officer Luce stated that he remained in his vehicle on South Springfield. Officer Luce testified that, less than five minutes later, Moravec informed Officer Luce that he stopped the blue Dodge van, driven by defendant, and after obtaining defendant's oral consent to search the van, found the black duffel bag filled with "a bunch of bricks of cocaine." Officer Luce later arrested codefendant Barrios and, with Barrios' consent, searched the basement of Barrios' parents' home.

¶ 12 Officer Moravec, a member of a narcotics investigation team that included Victor Gurolla, Brian Luce, and Joe Colon, also testified at the suppression hearing. On January 26, 2009, Officer Moravec received a radio message from Officer Luce and went to a restaurant to assist Officer Luce in surveillance of defendant's van from about noon to 12:40 p.m. Officer Moravec testified that he told Officer Luce they had recent information from a reliable informant that there were large amounts of money collected from that location on South Narragansett as a result of drug activity.

¶ 13 Officer Moravec testified that, after defendant drove away from Barrios' residence, he observed defendant on Hamlin Avenue. Officer Moravec parked his automobile in front of the van and Officer Colon parked his vehicle behind the van. Officer Moravec approached the vehicle with his Chicago police badge in his right hand; his left hand was in his rear pocket holding his firearm. Officer Moravec testified that Officer Colon approached the passenger side of the van with his firearm at his side. Officer Moravec said "Chicago police" and told defendant to turn the vehicle off. Officer Moravec explained that he was part of a narcotics investigation and asked defendant to exit the vehicle. When defendant opened the door, Officer Moravec

smelled a "pungent odor coming from the vehicle." Officer Moravec identified the odor as acetone, which is used in processing cocaine. Officer Moravec testified that he knew immediately when the blue Dodge van's door opened and he smelled the acetone that there was cocaine in the vehicle.

¶ 14 Officer Moravec further testified that he patted defendant down. Officer Moravec asked defendant if he could search the van, and defendant answered that neither the vehicle nor its contents were his. Officer Moravec again asked for defendant's consent to search the van and defendant replied "go ahead." Officer Moravec found a black duffel bag inside the van filled with approximately 50 kilograms of cocaine. Officer Colon then handcuffed defendant and advised him of his *Miranda* rights.

¶ 15 Officer Gurolla testified at the suppression hearing that he was involved in a prior investigation involving the South Narragansett address. Officer Gurrola testified that Officer Luce radioed him around 11:30 a.m. on January 26, 2009. Officer Luce asked Officer Gurolla if he recalled the South Narragansett address. Officer Gurolla replied that it was "a good address" or "the right address" from a previous investigation. Officer Gurolla testified that, in 2007, he received information that large amounts of money were being shipped from the Narragansett address. Officer Gurolla identified a copy of a page from a notebook that listed the address and a description of the blue Dodge van and the page was entered into evidence.

¶ 16 At the end of the hearing, the trial court ruled that the police action was an investigatory stop, supported by reasonable suspicion and denied defendant's motion to suppress the evidence.

¶ 17 At codefendant Barrios' and defendant's bench trial on March 4, 2010, Officers Luce and

Moravec testified consistently with their testimony at the suppression hearing. At the end of the trial, defendant renewed his motions to quash arrest, and the trial court stood by its earlier denial of the suppression motions, and also found defendant guilty of possession of a controlled substance with intent to deliver. The trial court found that the police officers conducted a lawful investigatory stop, stating:

> "With respect to the stop of [defendant,] I believe that that was a valid stop. I [do not] believe that he was arrested immediately. I believe he was stopped, what's considered an investigatory stop, based on reasonable suspicion that a crime was under way."

On April 23, 2010, the trial court denied defendant's posttrial motion for a new trial and sentenced him to 16 years in the Illinois Department of Corrections.

¶ 18 ANALYSIS

¶ 19 Defendant appeals, claiming that he was arrested without probable cause and, therefore, the evidence recovered from the van must be suppressed. Defendant also claims that the mittimus should be corrected to reflect the correct offense. Defendant claims that he was convicted of possession of a controlled substance with intent to deliver; however, his mittimus reflects a conviction for manufacture or delivery of a controlled substance. On May 3, 2010, defendant filed a notice of appeal, and this appeal followed.

¶ 20 I. Motion to Quash Arrest and Suppress Evidence

¶ 21 On appeal, defendant claims that the trial court erred by denying his motion to quash his arrest and suppress evidence. Defendant contends that a full-blown arrest occurred at the

moment the police officers "boxed in" defendant's moving vehicle, approached defendant holding their weapons, and issued commands to defendant. Defendant claims that the information available to the police officers at this moment did not rise to the level of probable cause, which would have been needed to justify a full-blown arrest. Defendant further claims that the police officers did not have reasonable suspicion to stop defendant.

¶ 22 A. Standard of Review

¶ 23 Defendant first claims that defendant was arrested without probable cause and we should suppress the fruits of the arrest. When reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Johnson,* 237 Ill. 2d 81, 88 (2010). "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." *Johnson,* 237 Ill. 2d at 88; *People v. Bridgewater*, 235 Ill. 2d 85, 90 (2009).

¶ 24 However, a reviewing court may make " ' "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." *Johnson*, 237 Ill. 2d at 88-89 (quoting *People v. Cosby*, 231 Ill. 2d 262, 271 (2008) (quoting *People v. Luedemann*, 222 Ill. 2d 530, 542-43 (2006))); *Bridgewater*, 235 Ill. 2d at 92-93.

¶ 25 In addition, a reviewing court may affirm the trial court's ruling on any basis found in the record. *Johnson,* 237 Ill. 2d at 89.

¶ 26 B. Stop or Arrest

¶ 27 Defendant claims that a full-blown arrest occurred at the moment when the police officers blocked his vehicle, approached defendant with their firearms drawn, and ordered him to turn off his van. However, the trial court held that this was not an arrest, but rather a valid investigatory stop. The trial court further held that defendant was arrested only after the search of the van had revealed approximately 50 kilograms of cocaine.

¶ 28 The fourth amendment to the United States Constitution protects people against unreasonable searches and seizures. U.S. Const., amend. IV; *Johnson*, 237 Ill. 2d at 89. Generally, a search is considered reasonable if police officers first obtain a warrant supported by probable cause. *Johnson*, 237 Ill. 2d at 89. However, the United States Supreme Court has recognized numerous exceptions to the warrant requirement. The Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968), created an exception, which is commonly called a "*Terry* stop." In a *Terry* stop, a police officer may detain a person for a brief investigation if the officer reasonably believes that criminal activity is afoot. *Terry*, 392 U.S. at 27.

¶ 29 After *Terry*, the courts have divided police-citizen encounters into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or "*Terry* stops," which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) voluntary encounters between police and citizens that involve no coercion or detention and thus do not implicate any fourth amendment interests. *People v. Estrada*, 394 Ill. App. 3d 611, 616 (2009) (citing *Luedemann*, 222 Ill. 2d at 544); *People v. Roa*, 398 Ill. App. 3d 158, 165 (2010).

Since the State does not claim that this was a voluntary encounter, the issue for us is whether this was an arrest or a *Terry* stop.

¶ 30 This distinction is important because, in contrast to an arrest, a *Terry* stop allows an officer to stop and detain an individual on only reasonable suspicion, rather than the higher level of probable cause. *People v. Ross*, 317 Ill. App. 3d 26, 27 (2000). An officer "may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense." 725 ILCS 5/107-14 (West 2008).

¶ 31 An arrest requires a stronger justification than an investigatory stop because an arrest is a lengthier seizure of the person. *People v. Leggions*, 382 Ill. App. 3d 1129, 1133 (2008). An investigatory stop is distinguishable from an arrest based on "the length of detention and the scope of investigation following the initial stop, not the initial restraint of movement." *Ross*, 317 Ill. App. 3d at 30. A *Terry* stop is a short detention of the person, "a detention lasting no longer than is necessary to perform a brief investigation." *Leggions*, 382 Ill. App. 3d at 1133; *People v. Hess* , 314 Ill. App. 3d 306, 310 (2000). A detention for a period longer than is necessary to perform a brief investigation is considered to be an arrest. *Leggions*, 382 Ill. App. 3d at 1133.

¶ 32 Defendant contends that he was arrested at the point when the two police officers "boxed his vehicle," approached defendant with their firearms drawn, and issued commands to the defendant. Defendant contends he was under arrest when the officers restrained his movement because defendant was forced to submit to their authority. However, because *Terry* stops

constitute a seizure, a suspect "is no more free to leave than if he were placed under a full arrest." *Johnson*, 408 Ill. App. 3d at 113.

¶ 33 Other factors also indicate that this interaction was merely a *Terry* stop. Defendant was never told he was under arrest, but simply was told to place his hands on the steering wheel and to "shut off" his van. Also, only three to five minutes passed between the time Officer Moravec informed Officer Luce that he stopped the defendant and the time the 50 kilograms of cocaine was discovered. See *People v. Lopez*, 229 Ill. 2d 322, 346 (2008) (holding that the length of the interrogation is a factor in considering whether a reasonable person would not have felt free to leave). It was not until after the police officers found the cocaine from inside the black duffle bag, that the police officers handcuffed defendant, advised him of his *Miranda* rights, and told him he was under arrest. See *People v. Gabbard*, 78 Ill. 2d 88, 93 (1979) (holding that handcuffing the defendant constituted an arrest); *People v. Barlow*, 273 Ill. App. 3d 943, 949 (1995) (holding that advising a person of their *Miranda* rights is recognized as a common indicia of arrest).

¶ 34 Defendant contends that he was under arrest at the point when the officers blocked defendant's moving van, approached defendant with their firearms drawn, issued commands, and outnumbered the defendant. To support his argument that he was arrested when he was "boxed in" by the officer's vehicle, defendant cites to *Luedemann*, 222 Ill. 2d 530. While *Luedemann* does state that blocking vehicles may be coercive, our supreme court in *Luedemann* held that the defendant was not "seized" when the police officer parked his vehicle in the middle of the street and whether the defendant was "boxed in" is only one of many factors to consider. *Luedemann*,

222 Ill. 2d at 555-60. In addition, officers cannot sensibly be "denied the use of force necessary to effectuate [a] detention." *Ross*, 317 Ill. App. 3d at 32. Although a restriction of movement that is brief may amount to an arrest rather than a *Terry* stop if it is accompanied by the use of force usually associated with an arrest, the stop is not transformed into an arrest if the use of force was reasonable in light of the circumstances surrounding the stop. *Johnson*, 408 Ill. App. 3d at 113. In the case at bar, the police officers reasonably suspected defendant of being involved in a significant drug transaction and the use of force was reasonable in light of the circumstances.

¶ 35 Contrary to what defendant asserts, the use of commands and ordering defendant to turn off his vehicle does not transform a detention to an arrest. See *People v. Synnott*, 349 Ill. App. 3d 223, 228 (2004) (holding that following a lawful stop, the police may, as a matter of course, order the driver and the passengers out of the vehicle pending the completion of the stop without violating the protections of the fourth amendment). Police officers must be granted some authority to detain a person pursuant a *Terry* stop. See *Ross*, 317 Ill. App. 3d at 32 (finding that the rationale for allowing "such restraint during an investigatory stop recognizes the paradox that would occur if the police had the authority to detain a person pursuant to a stop yet were denied the use of force that might be necessary to effectuate the detention"). Although defendant contends that he was "outnumbered by the two officers," the Illinois Supreme Court has held that two arresting officers are not coercive or indicative of an arrest. See *Luedemann*, 222 Ill. 2d at 554 (holding that a stop is less offensive if only one or two officers approach a suspect).

¶ 36 Lastly, although Officer Moravec approached defendant's vehicle with his left hand in his rear pocket holding his firearm and Officer Colon approached the passenger side of the van with

his firearm at his side, one police officer drawing his firearm was reasonable in light of the circumstances. The officers suspected defendant of being involved in a significant drug transaction and Officer Colon drawing his firearm does not transform a *Terry* stop into an arrest. See *Ross*, 317 Ill. App. 3d at 32 (holding that the status or nature of an investigatory stop is not affected by the drawing of a gun by the police officer); *Leggions*, 382 Ill. App. 3d at 1133 (holding that because it would be illogical to grant police officers the authority to make an investigatory stop while denying them the authority to enforce or effectuate that stop, the status or nature of the investigatory stop does not change merely by virtue of the officer's drawing a gun).

¶ 37 For these reasons, we conclude that a stop, rather than an arrest occurred, when the officers blocked defendant's vehicle, approached defendant with one officer's firearm drawn, and ordered defendant to turn off his vehicle.

¶ 38 C. Reasonable Suspicion for Stop

¶ 39 Since we conclude that it was a stop and not an arrest, the stop must be supported by reasonable suspicion. Defendant argues that the lower court held that defendant's actions did not establish reasonable suspicion. However, the trial court specifically held that the police officers had reasonable suspicion to conduct a *Terry* stop of defendant, stating:

> "With respect to the stop of [defendant,] I believe that that was a valid stop. I [do not] believe that he was arrested immediately. I believe he was stopped, what's considered an investigatory stop, based on reasonable suspicion that a crime was under way."

The trial court based this decision on numerous factors including the police officer's expertise, defendant's suspicious conduct, and the information provided by reliable informants.

¶ 40 On appeal, we find that the stop was justified by reasonable suspicion. The trial court held that, originally, defendant was detained as part of a lawful and reasonable *Terry* stop. In a *Terry* stop, "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21. The officer's suspicion must amount to "more than an inarticulate hunch" but need not rise to the level of probable cause. *People v. Close*, 238 Ill. 2d 497, 505 (2010). The Illinois Supreme Court has held that, when a court assesses the officer's suspicion, the facts should be "considered from the perspective of a reasonable officer at the time that the situation confronted him or her." *People v. Thomas*, 198 Ill. 2d 103, 110 (2001).

¶ 41 In the case at bar, the officers had reasonable, articulable suspicion to conduct a *Terry* stop of defendant at the moment the police officers blocked defendant's vehicle. Officer Luce observed "The Walker" and defendant sitting in a Dodge van parked in the back of the parking lot, a large distance from the restaurant entrance. Officer Luce recognized "The Walker" from a prior investigation involving the distribution of large amounts of narcotics. In addition, Officer Luce also had recent information from a reliable informant that there were large amounts of money collected from the South Narragansett address, the address the Dodge van was registered to, as a result of drug activity.

¶ 42 Officer Luce, who had 21 years of law enforcement experience and specializes in narcotics transaction, believed he had observed a narcotics transaction. See *People v. Mata*, 178

Ill. App. 3d 155, 160-61 (1988) (holding that a "trained police officer is given a great deal of latitude in assessing the 'whole picture' based upon the totality of the circumstances, including considerations of modes or patterns of operation of certain kinds of lawbreakers"). Officer Luce conducted a lengthy observation of defendant and observed defendant engage in numerous suspicious activities. Officer Luce observed defendant conduct a "car switch," and as an expert witness, Officer Luce testified that he had observed similar "car switches" over a 100 times and he believed that vehicle was "part of a narcotics transaction." Officer Luce further observed defendant drive the van to a park and circled the area several times, indicative of criminal activity. Finally, Officer Luce observed codefendant Barrios place "a weighted squared off black duffle bag" inside the van and observed defendant immediately drive away without defendant and Barrios ever speaking. During the lengthy surveillance, Officer Luce conveyed all his observations to Officers Moravec and Colon. The reasonable suspicion necessary to stop a defendant may be established on the basis of the aggregated and cumulative information known to the police officers working in concert. See *People v. Campbell,* 161 Ill. App. 3d 147, 152 (1987). Based on the information Officers Moravec and Colon received from Officer Luce, Officers Moravec and Colon had reasonable, articulable suspicion to conduct an investigatory stop of defendant. See *People v. Lawson*, 298 Ill. App. 3d 997, 1002 (1998) (holding that police officers are permitted to rely and act on information received in official police communications). Accordingly, based on all of these factors, the trial court correctly concluded that the officers had the reasonable suspicion required for a *Terry* stop.

¶ 43 D. Justification for Search

¶ 44 There is no question that the reasonable suspicion ripened into probable cause for an arrest once the police found 50 kilograms of cocaine in the van driven by defendant. However, defendant challenges the justification for the search of the van.

¶ 45 The State claims that the search was justified because defendant consented to the search of the vehicle. Defendant claims that "neither officer asked for permission to search" defendant's vehicle. In direct contradiction of defendant's testimony, Officers Moravec and Luce both testified that Officer Moravec asked for defendant's consent to search the vehicle and received it. Resolving this credibility dispute, the trial court found that Officer Moravec asked defendant for consent to search the van, stating, "I believe that Officer Moravec's testimony as to what actions [defendant] took were consistent with someone trying to avoid any connection to the van or to what was in it." On appeal, defendant makes no claim that the police resorted to duress or coercion to obtain consent; instead, he claims that the consent never occurred. Faced with a pure credibility dispute, without contrary evidence on either side, we cannot say that the trial court's resolution of this credibility dispute was against the manifest weight of the evidence. See *In re G.O.*, 191 Ill. 2d 37, 50 (2000) (holding that a reviewing court will accord great deference to the trial court's factual findings, and a reviewing court will reverse those findings only if they are against the manifest weight of the evidence).

¶ 46 Even if defendant did not consent to the police officers' search of the van, the officers had probable cause to search the vehicle after defendant exited the vehicle, pursuant to the automobile exception to the fourth amendment. Under the automobile exception to the fourth

amendment, police officers may conduct a warrantless search of a vehicle if: (1) they lawfully stop the vehicle; and (2) they have probable cause to believe that the vehicle contains contraband or evidence of criminal activity. *People v. Stroud*, 392 Ill. App. 3d 776, 803 (2009).

¶ 47 As stated above, we have already found that the vehicle was lawfully stopped. Thus, we can next consider whether the police officers had probable cause to search.

¶ 48 Probable cause to search a vehicle exists where the "totality of the facts and circumstances known to the officer at the time of the search, interpreted in light of the officer's experience, would cause a reasonably prudent person to believe that a crime had occurred and that evidence of the crime is contained in the automobile." *People v. Christmas*, 396 Ill. App. 3d 951, 957 (2009). In addition, "police officers may undertake a warrantless search of a closed container found in a vehicle when the officers have probable cause to believe that evidence of criminal activity will be found in the container." *People v. James*, 163 Ill. 2d 302, 312 (1994).

¶ 49 In this case, we hold that the facts known to Officers Moravec and Colon at the time they searched the vehicle are sufficient to have led a reasonably cautious person to believe that defendant had committed a crime and evidence of that crime was contained in the black duffle bag located inside the vehicle.

¶ 50 Officer Luce testified that he observed defendant commit a "car switch" where defendant entered a vehicle parked towards the rear of a restaurant parking lot and the driver and an unknown passenger existed the vehicle. See *United States v. Garza-Hernandez*, 623 F.2d 496, 499 (7th Cir. 1980) (holding that the "car switch" technique used by the defendant was an important factor that would warrant a man of reasonable caution in the belief that the defendant's

vehicle contained heroin). Officer Luce further observed defendant "dusting himself off" by driving suspiciously in circles, indicative of criminal activity. See *Garza-Hernandez*, 623 F.2d at 499 (holding the constant use of circuitous driving by all parties to the transportation of the narcotics is the "single most important factor" that gave rise to the reasonable belief that the vehicle contained heroin). Furthermore, Officer Luce testified that he observed codefendant Barrios place a heavy-looking black duffle bag in defendant's vehicle and observed defendant drive away without exchanging any words. In deciding whether probable cause exists, a law enforcement officer may rely on his or her training and experience to draw inferences and make deductions that might well elude an untrained person. *Jones*, 215 Ill. 2d at 274. Officer Luce, an experienced police officer that had worked for 10 years on narcotics and participated in over 1,000 narcotics arrests, testified that he believed that he had witnessed an illegal narcotics transaction.

¶ 51 In addition, Officer Luce recognized "The Walker" from a prior narcotics investigation where he had received information from a reliable and not anonymous informant. Officer Luce further had recent information from a reliable informant that there were large amounts of money collected from that location on South Narragansett as a result of drug activity. Although defendant contends that the information the informant gave was old and no longer reliable, the most important factor in determining whether the probable cause is "stale" is the continuity of the offense. *People v. Damian*, 299 Ill. App. 3d 489, 492 (1998); *People v. McCoy*, 135 Ill. App. 3d 1059, 1066 (1985). Furthermore, Officer Luce did not rely solely on the tip from the informant; rather, Officer Luce based his opinion on observations of the "car switch," defendant "dusting

himself off," defendant making numerous cell phone calls, codefendant Barrios placing a black bag in defendant's vehicle without exchanging any words, the composition of the black bag, and the confidential informant information confirming the South Narragansett address. Officer Luce conveyed all his observation to Officers Moravec and Colon.

¶ 52 Furthermore, Officer Moravec testified that he smelled a "pungent odor coming from the vehicle" when defendant opened the door, and the officer identified the odor as acetone, which is used in processing cocaine. The Illinois Supreme Court has held that "distinctive odors can be persuasive evidence of probable cause [to search.]" *People v. Stout*, 106 Ill. 2d 77, 87 (1985). Based on the totality of the facts and circumstances known to the officers, we conclude that the officers had probable cause to search defendant's vehicle. Accordingly, the police officers had probable cause to arrest defendant when the search uncovered 50 kilograms of cocaine in the van driven by defendant. Therefore, we cannot say that the trial court erred in denying defendant's motion to suppress the evidence.

¶ 53 II. Defendant's Mittimus

¶ 54 Defendant contends, and the State agrees, that his mittimus should be corrected to reflect the correct offense. Defendant was convicted of possession of a controlled substance with intent to deliver. At the conclusion of the bench trial, the trial court pronounced from the bench that defendant was "found guilty of possession of a controlled substance with intent to deliver in excess of 900 grams." His mittimus, however, reflects a conviction for manufacture or delivery of a controlled substance.

¶ 55 The oral pronouncement of the judge is the judgment of the court, and the written order of commitment is merely evidence of that judgment. *Jones*, 376 Ill. App. 3d at 395 (citing *People v. Smith*, 242 Ill. App. 3d 399, 402 (1993)). When the oral pronouncement of the court and the written order are in conflict, the oral pronouncement controls. *Jones*, 376 Ill. App. 3d at 395.

¶ 56 Pursuant to Illinois Supreme Court Rule 615 (eff. Aug. 27, 1999), a reviewing court on appeal may correct the mittimus at any time without remanding the cause to the trial court. *People v. Edwards*, 337 Ill. App. 3d 912, 931 (2002); *People v. Davis*, 303 Ill. App. 3d 684, 688 (1999); *People v. Mitchell*, 234 Ill. App. 3d 912, 921 (1992). Accordingly, we direct the clerk of the circuit court to correct the mittimus to reflect defendant's conviction for possession of a controlled substance with intent to deliver.

¶ 57 CONCLUSION

¶ 58 For the foregoing reasons, we affirm the trial court's denial of defendant's motion to quash his arrest and suppress evidence and correct the mittimus.

¶ 59 Affirmed; mittimus corrected