SECOND DIVISION
August 14, 2012

No. 1-11-0054

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 19278
	)	
WALTER RICHARDSON,	)	Honorable
	)	Raymond Myles,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

O R D E R

¶ 1 *Held*: There was probable cause to arrest defendant, so that trial counsel was not ineffective for not filing a motion to quash, where the officer found a building with signs of break-in, saw three men on the front porch of the building flee upon seeing her, and detained the three men nearby. The officer had a brief but viable opportunity to see the three men's faces from the rear of the property, so that it was not fatal to the arrest that she briefly lost sight of them as she went from the back to the front of the premises.

¶ 2 Following a bench trial, defendant Walter Richardson was convicted of burglary and sentenced to eight years' imprisonment. On appeal, defendant contends that trial counsel

rendered ineffective assistance by not filing a motion to quash his arrest for lack of probable cause.

¶ 3 Defendant and codefendants Ethan Little and Dwight Looney were charged with burglary for allegedly entering a particular building on September 30, 2009, without authority and with the intent to commit theft therein. No pre-trial motion to quash or to suppress was filed.

¶ 4 At trial, police officer Ann Jones testified that, at about 8 a.m. on the day in question, she responded alone (that is, without a partner) to a phoned report of a trespass in progress. When she arrived at the premises in question, a "two-flat" building with the windows boarded up, she noticed that the front door of the building appeared to have been pried open. She went to the rear of the premises and saw that the back entrance to the premises had also been pried or broken open. Through the gangway alongside the building, Officer Jones saw three men – defendant and codefendants – on the front porch of the building, leaning over the railing. She then heard a heavy object hit the ground and saw the three men jump over the fence and run away down the street. Officer Jones estimated that she was about 30 feet from the three men on the porch when she saw them. She informed other officers by radio that the three men had fled and described them (the description was not set forth at trial), and she went to the front or street side of the building. When she got to the street, she saw and detained defendant and codefendants, with the assistance of other officers who had arrived at the scene.

¶ 5 Though Officer Jones admitted that she had seen the faces of the men on the porch only very briefly – "a second or two" – and that she lost sight of the three men as she made her radio call and traveled from the back of the premises to the front or street side, she was certain that defendant and codefendants were those men. She noticed in detaining codefendants that their clothing was soaking wet to the touch. Officer Jones could not recall if it had been raining that day, but it was not raining at the time she stopped the men. After defendant and codefendants

were arrested, Officer Jones returned to the building, where she saw that the basement was flooding due to broken and missing pipes. She found a sink and pipes in front of the building, and in the gangway she found a bag containing tools and copper pipes. Based on a for-sale sign she found inside the building, she contacted the real-estate company for the premises.

¶ 6 Kurt Giannola testified that he was employed by a real-estate firm that owned or managed the premises in question, a two-flat residential building that was not occupied as of September 2009. After being told by police that there had been a break-in at that building, Giannola went there and found missing water pipes and a broken sink in the basement and on the first floor. There was water on the floor from the broken and missing plumbing. The rear gate of the premises, and the front door of the building, were broken. Giannola had visited the premises about a week to 10 days earlier and they were not in the aforementioned condition then; the front door had been padlocked at that time. Neither defendant nor codefendants were employed by the firm that employed Giannola, and none of them had permission to be on the premises at issue.

¶ 7 The parties stipulated that the distance from the rear gate to the front porch was 188 feet.

¶ 8 Police detective Jody Longos testified to interviewing defendant following his arrest, during which defendant gave his account of events. He was standing in the neighborhood of the building in question when a man he knew as "C-Note" approached him, told him that he (C-Note) was aware of a building that could be burglarized, and asked defendant to serve as a lookout. C-Note told defendant that six people would be involved, of which defendant knew C-Note and codefendants. Defendant stood on the sidewalk in front of the premises in question while the others entered the building. He had been there about 10-15 minutes when a man ran up to him, warned him that the police were at the rear of the premises, and then fled, followed by C-Note and another man that defendant did not know. Defendant walked away, joined by codefendants; he noticed that their clothing was wet. Defendant told Detective Longos that he

did not know specifically what C-Note, codefendants, and the others were doing inside the building but had expected that C-Note would pay him for being a lookout.

¶ 9 Defendant's motion for a directed verdict was denied. Following closing arguments, the court found defendant (and codefendants) guilty of burglary. After summarizing the testimony of Officer Jones and Detective Longos, the court noted that defendant gave a statement admitting to his involvement in the offense. The court also found that it could be reasonably inferred from the officer's credible testimony that the sound she heard was the sink she found in front of the building and that codefendants' clothing was wet due to their proximity to the damaged and disassembled plumbing.

¶ 10 Defendant filed a general post-trial motion challenging the sufficiency of the evidence, which the court denied. Defendant was then sentenced to eight years' imprisonment, and this appeal timely followed the denial of his post-sentencing motion.

¶ 11 On appeal, defendant contends that trial counsel rendered ineffective assistance by not filing a motion to quash his arrest for lack of probable cause.

¶ 12 To establish ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that prejudice resulted from that deficiency. *People v. Givens*, 237 Ill. 2d 311, 331 (2010). A defendant was prejudiced by counsel's failure to seek suppression of evidence where he shows that the unargued suppression motion was meritorious and that there is a reasonable probability that the judgment at trial would have been different without the evidence at issue. *Id*. Thus, the failure to file a motion to quash or to suppress does not establish incompetent representation when the motion would have been futile. *Id*.

¶ 13 Police may arrest a person without a warrant only where they have probable cause; that is, where the facts known to police at the time of arrest would lead a reasonably cautious person to believe that the person was committing or had committed an offense. *People v. Hopkins*, 235 Ill.

2d 453, 472 (2009). Probable cause is not proof beyond a reasonable doubt but a probability of criminal activity; indeed, it is not necessary for the State to show that it was more likely true than false that defendant was involved in criminal activity. *Id.* "Thus, the existence of possible innocent explanations for the individual circumstances or even for the totality of the circumstances does not necessarily negate probable cause." *People v. Geier*, 407 Ill. App. 3d 553, 557 (2011). The focus is upon the practical common-sense considerations that animate the actions of reasonable and prudent people rather than legal technicians. *Hopkins*, 235 Ill. 2d at 472. A police officer uses their skill and knowledge in deciding whether probable cause exists, and "may rely on training and experience to draw inferences and make deductions that might well elude an untrained person." *People v. Jones*, 215 Ill. 2d 261, 274 (2005).

¶ 14 In reviewing a trial court's ruling on a motion to quash, we give due weight to the court's inferences and uphold its findings of historical fact unless they are against the manifest weight of the evidence. *People v. Hackett*, 2012 IL 111781, ¶ 18. However, we may undertake our own assessment of those facts and may draw our own conclusions when deciding on appropriate relief, so that we review *de novo* the ultimate question of whether the evidence should be suppressed. *Id*. We are not limited in our review to the evidence from the motion hearing, but may also consider the trial evidence. *People v. Richardson*, 234 Ill. 2d 233, 252 (2009).

¶ 15 Here, Officer Jones was investigating a report of trespassing in progress, at a building that she found to have a pried-open front door and a broken rear entrance, when she saw three men on the porch of the building, leaning over the railing. She then heard a heavy object hit the ground and saw the men flee. When she came around from the rear of the premises to the front or street side, she saw and detained defendant and codefendants. Assuming *arguendo* that the men she saw on the porch were defendant and codefendants, we find probable cause for their arrest from the signs of a break-in and from the men's flight from the premises upon seeing an officer. The

basis for probable cause only becomes stronger when we consider – as we may – the additional evidence of codefendants' wet clothing and the broken pipes found in and near the building.

¶ 16 Defendant's probable cause challenge is thus, at its heart, a challenge to Officer Jones' identification of defendant and codefendants as those three men, based on seeing their faces briefly from the rear of the premises 188 feet away. The factors for assessing the reliability of identification testimony include the (1) opportunity to view the criminal at the time of the crime, (2) degree of attentiveness, (3) accuracy in previously describing the criminal, (4) level of certainty demonstrated at the confrontation, and (5) length of time between the crime and the confrontation. *In re M.W.*, 232 Ill. 2d 408, 435 (2009). Here, Officer Jones testified firmly that she briefly saw the faces of the men on the porch in daylight from the distance between the rear of the premises and the front porch thereof. We do not consider either the distance nor the duration of the viewing fatal to her identification. We have no reason to doubt that she, as a lone police officer investigating a report of a crime in progress, was paying attention, and her identification of defendant and codefendants as the three men on the porch was certain. Last but certainly not least, Officer Jones quickly went to the front of the building and saw defendant and codefendants nearby. Under such circumstances, we conclude that there was probable cause to arrest defendant so that a motion to quash his arrest would have been futile.

¶ 17 Accordingly, the judgment of the circuit court is affirmed.

¶ 18 Affirmed.