THIRD DIVISION
November 30, 2012

No. 1-11-0250

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 19204
	)	
ANTONIO PIERCE,	)	Honorable
	)	Lawrence Flood,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Salone and Justice Sterba concurred in the judgment.

O R D E R

¶ 1 *Held:* Trial court did not err when it denied defendant's motion to suppress evidence, because the police had reasonable suspicion of criminal activity sufficient to support a temporary detention where defendant was seen running up the steps of a house in a high crime area as the police approached him in a police car. Conviction and sentence affirmed.

¶ 2 Following a bench trial, defendant Antonio Pierce was found guilty of possession of a controlled substance and sentenced to four years' imprisonment. During a pretrial motion to suppress, defendant argued that he was illegally arrested. The State responded that defendant was properly detained for questioning pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968) and *Illinois v. Wardlow*, 528 U.S. 119 (2000) where he was seen fleeing up the stairs of a front porch in a high

crime area when approached by the police. The trial court agreed with the State, denied the motion to suppress, and convicted defendant in a subsequent bench trial. Defendant timely appealed.

¶ 3 On appeal defendant presents four interrelated alternative contentions: 1) the trial court's findings following his motion to suppress the evidence were against the manifest weight of the evidence; 2) the State was required to demonstrate probable cause for an arrest because defendant was seized on private property; 3) the State was required to demonstrate probable cause for an arrest because defendant was moved from the front porch of a private residence to a police car in the street prior to questioning in violation of *Florida v. Royer*, 460 U.S. 491 (1983); and 4) assuming the police testified credibly, their testimony was insufficient to establish reasonable suspicion under *Wardlow*. We affirm.

¶ 4 At the hearing on defendant's motion to suppress, defendant testified that on September 29, 2009, he was sitting on the porch of a recently deceased friend's home with about 10 other people discussing plans for the funeral. Defendant testified that he was drinking vodka from a plastic cup when he was arrested by a police officer. The officer handcuffed defendant " 'for precautionary measures' " and walked him to a police car. At the car, the officer patted defendant down, unzipped his pants, and discovered a bag of pills in defendant's crotch.

¶ 5 Chicago police officer Steven Barsch testified that on September 29, 2009, he was on patrol with Officer Vahl and another officer. They were driving an unmarked car with a "municipal plate." As they approached a home on West 52nd Street, they stopped, because they observed several known members of the Black P Stones gang sitting on the steps. Vahl was familiar with the area and had previously executed a search warrant at the home and recovered narcotics and a handgun. As they approached the house, defendant fled up the stairs and stuffed an unknown object into his pants. Vahl pursued defendant and detained him at the top of the stairs.

¶ 6 Chicago police officer Vahl testified that on September 29, 2009, he was on patrol with Barsch and another officer. The officers were in plain clothes but wearing vests and driving an unmarked police car. As the car approached a home located on West 52nd Street, Vahl "slowed or stopped" the car in front of the residence. Defendant looked in the direction of the police car and fled up the stairs of the porch. There were three or four other individuals on the stairs, but only defendant ran. Vahl was familiar with the area and testified that the block was known for narcotics sales, specifically of a compound known as MDMA or ecstasy. Vahl had previously participated in the execution of a search warrant at the residence and the police had recovered suspect heroin and a firearm.

¶ 7 Vahl further testified that as defendant ran up the stairs he stuffed an unknown object in the waistband area or crotch of his pants. Vahl was approximately four to six feet from defendant when defendant reached into his pants. The door to the residence was closed and Vahl detained defendant at the top of the steps. Vahl did not know what was behind the door, and wanted to separate defendant from the other individuals on the porch, so he walked defendant back to the police car. As they reached the rear of the police car, a bag containing 98 colored pills suspected to be ecstacy fell from defendant's pants leg. Vahl heard the bag hit the ground and saw it as it emerged from defendant's pants.

¶ 8 At the bench trial, Vahl testified consistently with his testimony at the suppression hearing. The parties stipulated that a forensic chemist tested the pills and determined that 15 of them contained MDMA. Defendant did not testify. Following argument by the parties, the trial court found defendant guilty of possession of a controlled substance and subsequently sentenced him to four years' imprisonment. Defendant timely appealed.

¶ 9 When a defendant challenges the trial court's ruling on a motion to suppress evidence, a reviewing court will employ a bifurcated standard of review. See *People v. Luedemann*, 222 Ill. 2d

530, 542 (2006) (adopting the standard expressed in *Ornelas v. United States*, 517 U.S. 690, 699 (1996)). Findings of historical fact are reviewed only for clear error and deference is given to the trial court's inferences, or in other words the findings of fact are subjected to the deferential manifest weight of the evidence standard. *Id.* The ultimate conclusion to be drawn from those facts, however, is a legal issue and those issues are reviewed *de novo*. *Id.*

¶ 10 We turn first to defendant's contention that the trial court's findings of fact are against the manifest weight of the evidence. Defendant argues that the trial court's findings must be reversed as contrary to human experience because it was unbelievable that Officer Vahl could catch defendant at the top of the stairs, in light of the inherent head start defendant had as a result of his location at the foot of the stairs. We disagree.

¶ 11 Defendant's argument is based entirely on speculation. He assumes that Vahl and defendant are equally swift and assumes that both were running at top speed. These facts simply do not appear in the record. Furthermore, we find that he is making a great deal out of the limited distance, approximately 10 feet across the yard, that Vahl had to cross in order to catch up with defendant. It is equally possible that defendant was simply slower that Officer Vahl or hindered in his attempt to flee by his alcohol consumption or his perceived need to stuff ecstacy down his pants. More importantly, this was an issue that the trial court was in a far better position to resolve. See *People v. Cash*, 396 Ill. App. 3d 931, 938 (2009) citing *People v. Gherna*, 203 Ill. 2d 165, 175 (2003). Defendant raised a similar impossibility argument during the motion to suppress, and the trial court rejected it. We do not find that the facts as described by Officer Vahl were so contrary to human experience that we can reverse the factual findings of the trial court. Therefore, we reject defendant's contention.

¶ 12 Having determined that the trial court's factual findings were not against the manifest weight of the evidence, we turn then to the issues which we may review *de novo*, namely, whether accepting those facts as true defendant was illegally seized.

¶ 13 Defendant contends that the State was required to establish probable cause to support the seizure because defendant was seized on private property. The State responds that the seizure was proper if supported by reasonable suspicion because defendant was in a public place. We agree with the State.

¶ 14 Defendant's arguments appear to be based on the premise that "public place" is the opposite of "private property" and that we can determine the scope of fourth amendment protection by considering the common law regarding real property and the tort of trespass to land. Defendant repeatedly emphasizes that defendant was on private property at the time he was seized and that Vahl trespassed on that property within the meaning of the common law. These arguments are unavailing because they simply ignore the well established definition of "public place" in fourth amendment jurisprudence. The Supreme Court rejected defendant's argument more than 30 years ago in *United States v. Santana*, 427 U.S. 38 (1976). In rejecting the defendant's argument that the doorway to a home is not a public place, the court reiterated that the significant test is whether a defendant is in an area where she had any expectation of privacy. *Santana*, 427 U.S. at 42. The court went on to note: " 'What a person knowingly exposes to the public, even in his own house or office, is not a subject of Fourth Amendment protection.' " *Santana*, 427 U.S. at 42, quoting *Katz v. United States*, 389 U.S. 347, 351 (1967).

¶ 15 In the case before us, although defendant was on private property, he was also at all times exposed to public view; as he sat on the steps, as he ran up the steps, and as he approached the front door. Defendant at all times knowingly exposed himself to public view and accordingly, he was not entitled to any more protection under the fourth amendment than if he had been on the public street.

Santana, 427 U.S. at 42. We note that "the Fourth Amendment has drawn a firm line at the entrance to the house" (*Payton v. New York*, 445 U.S. 573, 590 (1980)), but that is a threshold that, quite literally, neither defendant nor Vahl crossed. Defendant makes much of the " 'right of a man to retreat into his home and there be free from unreasonable governmental intrusion.' " *Id.* quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961). However, we do not believe that either *Payton* or *Silverman* contemplated head long flight when they referred to retreat. Two cases from Illinois illustrate this point, *People v. Rivera*, 233 Ill. App. 3d 69 (1990) and *In re D.W.*, 341 Ill. App. 3d 517 (2003).

¶ 16 In *Rivera*, the police observed the defendant in a bar. We note that the bar was almost undoubtedly private property, but a public place. See *Rivera*, 233 Ill. App. 3d at 76. The defendant saw the police officers and ran through a basement door and down a flight of stairs. The police pursued the defendant and seized him in the basement. The *Rivera* court examined opinions from outside Illlinois and concluded:

> "Our review of the foregoing authorities leads us to conclude that the police, in certain limited circumstances, may be authorized to make a warrantless entry into a private premises for the purpose of effectuating a *Terry* stop provided the police have a lawful basis to stop a suspect in a public place and the suspect reacts by suddenly fleeing to a private sanctuary, thereby thwarting any opportunity to conduct the detention at a public location." *Id.*

¶ *17* In *In re D.W.*, the reviewing court was faced with a similar situation. A police officer received a tip from citizen-informant that drug sales were occurring in front of an apartment building. When the officer approached the building, he encountered the respondent who matched the citizen's description of the offender. The officer gestured to the respondent indicating that he wished to talk to him. At that point, the defendant, who was in a group of three others, ran into the

apartment building. The other individuals remained where they were. The police officer pursued the respondent into the building and followed him into an apartment, where the respondent was observed attempting to hide a bag of suspect cocaine. The State argued that combined with the tip and the respondent's actions were enough to create probable cause to support an arrest. The reviewing court held that the respondent's flight, along with the high crime nature of the neighborhood was enough to create a reasonable suspicion that a crime had been committed, but not enough to rise to the level of probable cause. *In re D.W.*, 341 Ill. App. 3d at 526. The court went on to hold that reasonable suspicion was insufficient to allow an arrest in the respondent's apartment and that exigent circumstances did not exist. *Id.* at 529.

¶ 18 We note the potential conflict between these two cases, *i.e.*, that while *Rivera* would allow pursuit of a suspect into a private place based solely on the need to conduct a *Terry* stop, *In re D.W.* would allow pursuit only in the presence of exigent circumstances. It might be possible to resolve this conflict, perhaps on the basis that *In re D.W.* involved flight into the suspect's residence but *Rivera* involved flight into a nonresidential private area. However, we are not called upon to resolve the apparent conflict today. In the case at bar, defendant never reached a private space, residence or not. Instead, he remained at all times in an area fully visible to the public, and therefore not subject to the fourth amendment considerations applicable to a private area. Because defendant never entered the home toward which he fled, we conclude that probable cause was not required to seize him, but rather that reasonable suspicion was sufficient to support a temporary detention.

¶ 19 Defendant next contends that even if reasonable suspicion would have been sufficient to support a temporary detention, the detention escalated into a full custodial arrest when he was escorted to the police car thereby triggering the need to support the detention with probable cause. Defendant supports this contention with citation to *Florida v. Royer*, 460 U.S. 491 (1983).

¶ 20 In *Royer*, the defendant was stopped at an airport to investigate circumstances suggesting that he was involved in narcotics trafficking. The police officers asked to examine the defendant's identification and airline ticket, but then asked him to accompany them to a small interrogation room while they examined his luggage. The Supreme Court held that although the initial stop might have been justified under *Terry*, the detention to which he was ultimately subjected was a more serious intrusion on his personal liberty than is allowable under mere suspicion of criminal activity. *Royer*, 460 U.S. at 502. In the case before us, defendant argues that the permissible scope of a *Terry* stop was exceeded because Vahl escorted him from the steps of the building to the police car. We disagree.

¶ 21 Key to our analysis is this observation by the *Royer* Court:

> "The predicate permitting seizures on suspicion short of probable cause is that law enforcement interests warrant a limited intrusion on the personal security of the suspect. The scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case. This much, however, is clear: an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Royer*, 460 U.S. at 500.

¶ 22 Here, we find nothing so unreasonable about Vahl's decision to move defendant toward the police car to verify or dispel the officer's suspicion. In addition, Vahl had reasonable concerns for his own safety; he was standing in front of a house where he had previously recovered drugs and a weapon, and he was surrounded by several known gang members. Furthermore, the intrusion was slight, Vahl's police car was only about 10 feet from the spot where he first spotted defendant.

Therefore, unlike *Royer*, we find that the investigative methods employed here were reasonable in scope.

¶ 23 Defendant finally contends that the police lacked the reasonable suspicion necessary to temporarily detain him for questioning. In *Terry*, the Supreme Court held that a police officer may conduct a brief investigatory stop when the officer observes unusual conduct which leads him to reasonably believe that criminal activity may be afoot. *Terry*, 392 U.S. at 30. In *Wardlow*, the Court held that flight from the police in a high crime area can constitute just that sort of unusual conduct. *Wardlow*, 528 U.S. at 124-25. We find that the case before us fits squarely into the facts of *Wardlow*, and that its holding is controlling.

¶ 24 Here, Vahl testified that the block on which the residence was located was a high crime area known for ecstacy sales. Further, he testified that the house where defendant was sitting had been the target of a search warrant and that drugs and weapons had been recovered. When the police approached the residence, defendant, and defendant alone, attempted to flee into the house. The combination of defendant's presence in a high crime area, and his flight as the police approached are more than sufficient to arouse the suspicions of a reasonable police officer. *Wardlow*, 528 U.S. at 124-25. Therefore, we conclude that Vahl was permitted to temporarily detain defendant for questioning.

¶ 25 Defendant argues that there were many possible innocent explanations for his apparently sudden decision to run up the stairs. This is undoubtedly true, but does not establish a violation of the fourth amendment. See *Wardlow*, 528 U.S. at 125. It is the defendant's flight coupled with his presence in an area of expected criminal activity that grants the police officer latitude to investigate, by detaining the defendant. *Id. Terry* accepts the risk that the police will sometimes detain innocent citizens while investigating potential criminal activity. *Id*. at 126.

¶ 26 Defendant argues that the evidence at the suppression hearing did not make it clear that he knew the police were approaching when he fled because they were in an unmarked car and wearing plain clothes. This argument is unavailing. Vahl and his partners were in an unmarked car, but it bore a distinctive "M plate" identifying it as a municipal vehicle. Furthermore, although in plain clothes, the officers were wearing bullet proof vests. It strains credulity to suggest that in a high crime neighborhood such a vehicle and its occupants would not stand out and immediately be identified as the police.

¶ 27 Further defendant argues that there was less reason to be suspicious because unlike the police officers in *Wardlow*, Vahl and his partners were not "engaged in a specific investigation" of drug sales. We are not persuaded by this distinction. Vahl and his partners were patrolling a high crime area known for drug sales. They stopped to "observe" because they spotted known gang members in front of a known drug house. The totality of the circumstances suggest that they were alert for suspicious behavior at that time.

¶ 28 Finally, defendant argues that his actions were less suspicious because none of the other individuals on the porch fled. However, there is nothing in *Wardlow* or any other authority we have reviewed that suggests that drug dealers always work in groups and that an individual's activities can only be viewed as suspicious in light of the activities of those around him. Defendant was detained because his actions, coupled with his presence in an area known for narcotics sales, and visiting a residence known for narcotics sales, created a reasonable suspicion of criminal activity.

¶ 29 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed

¶ 30 Affirmed.