

2013 IL App (1st) 110471-U

FIRST DIVISION
FILED: APRIL 29, 2013

No. 1-11-0471

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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. 10 CR 18155
)	
ESBIN CAL-OROZCO,)	Honorable
)	Thomas P. Fecarotta, Jr.,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's motion to quash arrest was erroneously denied because he was arrested without probable cause. The State established *corpus delicti* for the offense of sexual contact with an animal where defendant was seen in the middle of the night leaving the area where a horse was found tied up in an unusual position; while this did not establish all elements of the offense as defendant's confession did, it sufficiently corroborated that confession.

¶ 2 Following a bench trial, defendant Esbin Cal-Orozco was convicted of sexual contact with an animal and sentenced to two years' probation with fines and fees. On appeal, defendant contends that his motion to quash arrest was erroneously denied. He also contends that the State failed to establish the *corpus delicti* of the offense. Lastly, he seeks credit against his fines for his pre-sentencing detention.

¶ 3 Defendant was charged with "sex with [an] animal" for, on or about September 13, 2010, allegedly inserting his finger into a horse's vagina.

¶ 4 Defendant filed a motion to quash his arrest and suppress the resulting evidence, alleging that he was arrested on September 16, 2010, at Arlington Park racecourse without a warrant or probable cause.

¶ 5 At the motion hearing, police detective Richard Sperando testified that, on September 16, 2010, he sent a police officer in a police vehicle to the racecourse to arrest defendant and that defendant was indeed "arrested at the racetrack" and brought to the police station. Defendant gave a statement "after he was arrested," which the State intended to introduce at trial. Detective Sperando did not have an arrest warrant for defendant, nor did he or any other officer see defendant commit a crime or have information that defendant was seen committing a crime.

¶ 6 However, Detective Sperando had "information that [defendant] was in the area of a crime." Racecourse security guard Alfredo Jurado told Detective Sperando that, at about 1 a.m. on September 13, a horse was found tied up in a barn stall "backwards with items, including buckets, hay, and boxes piled up to a high level to a rear part of that horse," and defendant was seen riding his bicycle away from that barn. Jurado explained to Detective Sperando that horses are typically not kept tied up or with its head towards the wall, but was "unsure" whether the horse had been drugged or sexually assaulted. Detective Sperando wanted to question defendant, and to that end went to defendant's residence at the racecourse, but his employment as a horse groomer had been terminated so he was no longer at the racecourse. When defendant went to the racecourse on September 16 for a hearing regarding his employment, racecourse security informed Detective Sperando that he was there but had been terminated and thus was homeless and "going to be removed from the track." It was then that Detective Sperando sent an officer to

"go to the track and take custody of him so I could speak to him about why he was outside that barn."

¶ 7 Detective Sperando also testified that police officer Susan Burgo went to the racecourse on September 13 as the initial investigator of the incident. She interviewed defendant, who denied the allegations. While Officer Burgo later told Detective Sperando that defendant was "very evasive," she "released" him.

¶ 8 Following arguments, the court denied the motion to quash defendant's arrest. The court found that Jurado's account to Detective Sperando "gave rise to immediate suspicion of sexual or some other type of abuse to an animal" and that defendant's "close proximity" to the horse in question at about 1 a.m. "allows the police officers to at least inquire and detain [defendant] to determine what he was doing at this location" and whether there had been animal abuse. The court also noted that Detective Sperando's testimony "that [defendant] was arrested does not make it so" and found that defendant was not arrested until after he gave his statement though "there is certainly probable cause to detain this defendant and place him at least in a position of being questioned."

¶ 9 At trial, Delfino Flores testified that he was a horse groomer at Arlington Park racecourse in September 2010 and that typically eight or nine groomers collectively take care of five horses. On the night of September 12-13, Flores saw one of the horses in his care, Buzz My Bell, tied tightly facing the wall of the stall with two buckets stacked and placed behind its rear end. The horse was backwards in its stall, it is unusual for a horse to be tied in its stall, and while the buckets are used in washing the horses, they are not kept in the horses' stalls. Flores admitted that he did not see anyone tie Buzz My Bell nor did he see anyone near its stall when he found it tied up.

¶ 10 Detective Richard Sperando testified that he went to the racecourse on September 14 to investigate a report by the owners of Buzz My Bell. There, he spoke with security guard Jurado and then sought to speak with defendant. Detective Sperando "had [defendant] detained" on the 16th and interviewed him that day for about a half-hour in an interview room at the police station, using Officer Chris Sefton as an interpreter. Detective Sperando and Officer Sefton both testified that Officer Sefton gave defendant *Miranda* warnings orally and that defendant signed a Spanish-language form acknowledging his *Miranda* rights. Based on his interview with defendant, Detective Sperando wrote a statement in English, which Officer Sefton read to defendant before he made a correction to it and signed it. Officer Sefton testified that he accurately relayed questions and answers between defendant and Detective Sperando.

¶ 11 Defendant's statement was read into the record. In relevant part, defendant admitted to going from his "dorm" at the racecourse to one of the barns at about 1 a.m. for the purpose of having sexual intercourse with one of the horses. He prepared to do so, including tying the horse's head facing the wall and placing a bucket behind the horse, and he put two fingers in the horse's vagina. However, the horse's hind legs began moving, causing him to fear being kicked, so he left.

¶ 12 Defendant moved for a directed finding, arguing failure to show *corpus delicti*, and the court denied the motion. Defendant waived his right to testify and rested his case. Following closing arguments, the court found defendant guilty of sexual contact with an animal. Regarding *corpus delicti*, the court found that the circumstances in which groomer Flores found the horse corroborated defendant's confession.

¶ 13 Defendant filed a post-trial motion, arguing failure to prove *corpus delicti*, insufficiency of the evidence, and erroneous denial of his motion to suppress. Following arguments, the court denied the motion, finding that the circumstances in which the horse were found both gave police

"articulable facts that gave rise to suspicion of criminal activity and allowed them to take this defendant into custody to question him" and sufficiently corroborated defendant's confession. Following arguments in aggravation and mitigation, the court sentenced defendant to two years' probation and \$655 in fines and fees. The order assessing fines and fees shows no pre-sentencing detention credit though defendant was detained for 147 days. This appeal timely followed.

¶ 14 On appeal, defendant first contends that his motion to quash the arrest and suppress the resulting confession was erroneously denied.

¶ 15 Police-citizen encounters are divided into three tiers: arrests, which must be supported by probable cause; investigatory or *Terry* stops, which must be supported by reasonable, articulable, suspicion of criminal activity; and encounters that involve no coercion or detention and thus do not implicate constitutional rights. *People v. Grant*, 2013 IL 112734, ¶ 11; *People v. Hackett*, 2012 IL 111781, ¶ 20; *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009).

¶ 16 "A peace 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 *** and may demand the name and address of the person and an explanation of his actions. Such detention and temporary questioning will be conducted in the vicinity of where the person was stopped." 725 ILCS 5/107-14 (West 2010). In a *Terry* stop, a police officer may briefly and temporarily – that is, for no longer than is necessary to effect the purpose of the stop – detain a person he reasonably suspects to be recently or currently engaged in criminal activity, in order to verify or dispel that suspicion. *Hackett*, ¶ 20; *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 13; *People v. Scott*, 2012 IL App (5th) 100253, ¶ 12. A *Terry* analysis involves two questions; whether the detention was (1) justified at its inception and (2) reasonably related in scope to the circumstances initially justifying the stop.

People v. Wofford, 2012 IL App (5th) 100138, ¶ 22. The inquiry under the second *Terry* prong is whether the officer's actions unreasonably prolonged the duration of the detention. *Id.*

¶ 17 Probable cause for an arrest exists if the facts and surrounding circumstances, considered as a whole, are sufficient to justify a belief by a reasonably cautious person that the defendant is or has been involved in a crime. *Grant*, ¶ 11. Our analysis of probable cause is based on common sense and concerns the probability of criminal activity rather than proof beyond a reasonable doubt. *Id.* The State need not show that it was more likely true than false that defendant was involved in criminal activity. *Hopkins*, at 472. The difficulty of establishing probable cause is reduced when the police know that a crime has been committed. *Id.* at 476.

¶ 18 When a trial court's ruling on a motion to suppress involves factual determinations or credibility assessments, the findings will not be disturbed on review unless they are against the manifest weight of the evidence. *Grant*, ¶ 12. However, we review *de novo* the trial court's ultimate legal ruling to grant or deny the motion. *Id.*

¶ 19 Here, we first examine the propriety of taking defendant into custody under the circumstances known to the police at the time. In the middle of the night, defendant was seen leaving the area of a barn at the racecourse where he worked and resided as a groomer. Inside the barn, a horse was found tied in its stall with its head to the wall and buckets and other objects piled up by its rear end, unusual circumstances according to racecourse personnel. On such facts, police had a reasonable and articulable suspicion of defendant's involvement in a recent crime and thus grounds for a *Terry* stop. Conversely, we find that a reasonably cautious person would not believe under these circumstances that defendant had committed a crime, especially where the police did not know that a crime has been committed, so that there was no probable cause to arrest him on such facts. Notably, the trial court found reasonable suspicion but made no finding of probable cause.

¶ 20 However, while police questioned defendant at the racecourse that day, he was free to go. Instead, with no evidence beyond that just described, defendant was detained three days later when he returned to the racecourse. While Detective Sperando's testimony that he had defendant arrested is not by itself determinative of whether defendant was arrested, Detective Sperando's intention is a factor in the determination. *People v. Gomez*, 2011 IL App (1st) 92185, ¶ 59. Moreover, his testimony amply supports a conclusion – especially in the absence of any hearing or trial evidence to the contrary – that defendant was taken into custody of some kind rather than accompanying an officer to the police station voluntarily. Notably, the trial court found in denying the motion to suppress, and again in denying the post-trial motion, that defendant was detained or taken into custody for questioning.

¶ 21 The nature of defendant's custody as an arrest rather than a *Terry* stop is established by the undisputed fact that he was brought *to the police station* for questioning. Taking a suspect into custody and transporting him to the police station for custodial interrogation – in contrast to brief questioning at the location of the suspect's stop – is a hallmark of being arrested and requires probable cause. *People v. Wead*, 363 Ill. App. 3d 121, 134-35 (2005), citing *Dunaway v. New York*, 442 U.S. 200, 203, 207 (1979); see also *People v. Morris*, 209 Ill. 2d 137, 157 (2004) (officer had reasonable suspicion to stop suspect but exceeded scope of stop, and arrested suspect, by handcuffing and transporting him to police station). While the purpose of a *Terry* stop is investigation of suspected crime, custodial interrogation at a police station is contrary to the brief duration and limited scope of a *Terry* stop.

¶ 22 Having determined that the motion to quash the arrest should have been granted, we hold that defendant's confession resulting from that arrest is suppressed. The issue thereby presented is whether remand for a new trial would subject defendant to double jeopardy. We remand where the trial evidence, including improperly-admitted evidence, was sufficient for a rational

trier of fact to find the elements of the crime beyond a reasonable doubt, while we must reverse outright if the trial evidence was insufficient. *People v. McKown*, 236 Ill. 2d 278, 311 (2010).

¶ 23 We shall therefore consider as a threshold matter defendant's contention that the State failed to establish *corpus delicti*.

¶ 24 Our supreme court recently considered the issue of *corpus delicti* in *People v. Lara*, 2012 IL 112370. The court first described the *corpus delicti* rule:

"The *corpus delicti* of an offense is simply the commission of a crime. Along with the identity of the person who committed the offense, it is one of two propositions the State must prove beyond a reasonable doubt to obtain a valid conviction. In general, the *corpus delicti* cannot be proven by a defendant's admission, confession, or out-of-court statement alone. When a defendant's confession is part of the *corpus delicti* proof, the State must also provide independent corroborating evidence." *Lara*, ¶ 17.

However, "the independent evidence need only *tend to show* the commission of a crime. It need not be so strong that it alone proves the commission of the charged offense beyond a reasonable doubt." (Emphasis in original.) *Id.*, ¶ 18. The State need not present independent evidence corroborating every element of the charged offense before a defendant's statement may be used to prove *corpus delicti*. *Id.*, ¶ 30.

¶ 25 Specifically, the *Lara* court examined various cases in which the only evidence of penetration, the key element of criminal sexual assault and related offenses, was the defendant's confession. *Id.*, ¶¶ 31-38. The supreme court concluded:

"that none of them required clear independent proof of each element, or indeed of any particular element, of the charged offense

to satisfy the *corpus delicti* rule. In fact, *despite the absence of any physical evidence or victim testimony*, the court in all four instances found sufficient corroboration to permit an inference of sexual assault or penetration and thereby satisfy the *corpus delicti* rule, upholding the defendants' convictions." (Emphasis in original.) *Id.*, ¶ 39.

Thus, a defendant's confession to an element of the charged offense need not be independently and affirmatively verified so long as the independent evidence corresponds with the confession and corroborates some of the circumstances related in the confession. *Id.*, ¶¶ 45, 51.

¶ 26 Here, in addition to defendant's confession, there was evidence that defendant was seen at about 1 a.m. near a barn where a horse was found under unusual circumstances: tied in its stall with its head facing the wall and objects including a bucket piled up near its rear end. As defendant admitted to going to the barn at that time, where he tied the horse and placed a bucket near its rear end, this evidence, though minimal, "correspond[s] with the circumstances recited in the confession and tend[s] to connect the defendant with the crime." *Lara*, ¶ 51. We therefore conclude that the State established *corpus delicti*.

¶ 27 Because a reasonable finder of fact could conclude from defendant's corroborated confession that he committed the offense of sexual conduct with an animal, double jeopardy does not bar his retrial. Therefore, this cause will be remanded for further proceedings.

¶ 28 Lastly, the parties agree that defendant received no credit against his fines for his pre-sentencing detention though he was detained for 147 days before sentencing. Fines, but not fees, are credited \$5 for each day of pre-sentencing detention. 725 ILCS 5/110-14(a) (West 2010). In light of the fact that we are remanding this case, we leave it to the circuit court and its clerk to make the correction in any fines-and-fees order that may be issued upon remand.

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¶ 29 Accordingly, the judgment of the circuit court is reversed and this cause is remanded for further proceedings.

¶ 30 Reversed and remanded.