2013 IL App (1st) 113341-U

FOURTH DIVISION
June 28, 2013

No. 1-11-3341

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 11 CR 6505
	)	
BRANDEN TOWNSEND,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial court erred in granting defendant's motion to quash arrest and suppress evidence; judgment reversed and cause remanded for further proceedings.

¶ 2 The State appeals from an order of the circuit court of Cook County, granting defendant's pretrial motion to quash arrest and suppress evidence. The State contends that the court's ruling was manifestly erroneous where the police had reasonable, articulable suspicion to stop defendant which escalated into probable cause for his arrest.

¶ 3 The record shows that defendant was arrested on March 29, 2011, and charged with one count of possession of a controlled substance with intent to deliver and one count of possession of cannabis with intent to deliver. In his motion to quash arrest and suppress this evidence, defendant alleged that his arrest was made without the authority of a valid search or arrest warrant, and that his conduct prior to his arrest could not reasonably be interpreted by police as constituting probable cause that he had committed or was about to commit a crime. He thus requested that the court quash his arrest in the absence of authority or probable cause to effect it, and to suppress any evidence directly or indirectly discovered and produced as a result of the arrest and detention.

¶ 4 At the suppression hearing, Chicago police officer Peter Amelio testified that on March 29, 2011, he was in an unmarked vehicle with two partners in the area of 2504 East 77th Street. The officers were in plain clothes, but their badges were displayed on the outside of their clothing. As they were patrolling, Officer Amelio observed defendant walking in the middle of the intersection of 77th Street and Essex Avenue with another individual. When he was 25 feet from defendant, he observed a large, "irregular size," bulge in the front of defendant's pants under his belt, near the groin area. At this point, the officer did not know what the bulge represented, and stayed in his vehicle continuing to observe defendant, who then looked in his direction, grabbed the bulge, hiked up his pants, and walked towards the north sidewalk. Officer Amelio explained that pulling up pants, looking away from an officer, making furtive movements toward a specific area of the body or clothing are all typical indications that an individual is concealing a weapon or narcotics.

¶ 5 The officers drove their car parallel to defendant, and exited the vehicle. One of the officers called out to defendant, "[p]olice, hey, come over here." Defendant looked in their direction, immediately grabbed at the bulge, then fled eastbound on 77th Street. After taking 10

steps, Officer Amelio cut him off, and defendant stopped, placed his hands in the air, and stated quickly, "[I] got weed, I got weed." At that point the officer detained defendant, who was not free to leave.

¶ 6 Officer Amelio noted that the bulge in defendant's pants could have been a weapon because "[g]uys will say, I got weed, I got weed, just to downplay what they have," and conducted a protective pat-down of defendant. When he placed his hand on the bulge, he felt a large, softball-sized object, and defendant told him, "[t]hat's it, that's the weed right there." The officer removed the item which was a shopping bag with two softball-sized plastic bags, each containing suspect cannabis. Officer Amelio also recovered suspect cocaine from defendant's shirt pocket.

¶ 7 The State moved for a directed finding, arguing that police had reasonable suspicion to stop defendant and recover the object on him, and once they recovered the suspect cannabis, they had probable cause to arrest him and to recover the cocaine from his shirt pocket. Defendant responded that the officers exerted their authority over him when they ordered him to come over to them, and at that point they subjected him to an unlawful detention. He argued that his case was similar to *People v. Moore*, 286 Ill. App. 3d 649 (1997), where the court found that the stop was not justified under *Terry* because the facts known to the officers at the inception of the stop were insufficient to render the stop valid. Defendant maintained that he, likewise, was "not stopped justifiably because the stop was not proper at its inception."

¶ 8 The court denied the State's motion for a directed finding because the search of defendant "was not authorized at its inception." Defendant then rested on his motion to quash arrest and suppress evidence, and the State argued that when a defendant flees, even after being ordered to stop, he is not seized. The State maintained that the police had probable cause and reasonable

suspicion to stop defendant when he was cut off by police during his flight, and said, "I got weed."

¶ 9 The court was not persuaded and granted defendant's motion to quash defendant's arrest and suppress evidence. In doing so, the court disagreed with the State's recitation of the facts and application of the law. The court found this case distinguishable from *People v. Ramirez*, 244 Ill. App. 3d 136 (1993), cited by the State, because police did not have any information concerning defendant, and were on routine patrol when they happened to see defendant standing in the intersection, unlike *Ramirez*, where defendant dropped the contraband before he ran.

¶ 10 The State filed a motion to reconsider the court's ruling, alleging that once defendant fled, reasonable suspicion attached to his actions, and that unprovoked flight is simply not a mere refusal to cooperate with police. The State maintained that in light of *Illinois v. Wardlow,* 528 U.S. 119 (2000), defendant's claim that, in order for the flight from the encounter to provide reasonable suspicion, the police action must be justified from its inception, was no longer good law.

¶ 11 The court disagreed and denied the State's motion to reconsider. In doing so, the court stated that this case was distinguishable from *Wardlow*, and concluded that the order to stop was invalid from its inception, and thus the subsequent search was invalid.

¶ 12 On appeal, the State contends that the circuit court's order granting defendant's motion to quash the arrest and suppress the evidence was manifestly erroneous. The State maintains that the court misapplied the fourth amendment to the facts which preceded defendant's seizure, that police had reasonable, articulable suspicion to effect a *Terry* stop of defendant based on his repeated grabbing at the irregular bulge in his pants and his headlong flight from police, and probable cause to search defendant when he told them that he possessed contraband.

¶ 13 On review of a trial court's ruling on a motion to suppress, great deference is accorded to the trial court's factual findings and credibility determinations, and the reviewing court will reverse those findings only if they are against the manifest weight of the evidence. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). However, we review *de novo* the legal challenge to the denial of the motion to suppress. *Sorenson*, 196 Ill. 2d at 431.

¶ 14 The State first maintains that defendant was not seized when police called out to him and he fled, and thus, no fourth amendment analysis can be properly conducted. Defendant responds that this argument should be given little weight where he was "immediately seized" by police. However, he then states that the seizure was "effected successfully after ten steps," and that the initial stop and subsequent frisk were unconstitutional where there was a lack of reasonable, articulable suspicion to stop him from the inception.

¶ 15 The fourth amendment of the United States Constitution guarantees the right of the people against unreasonable searches and seizures. U.S. Const., amend. IV. Not all encounters between police and a private citizen result in seizures (*People v. Luedemann*, 222 Ill. 2d 530, 544 (2006)), however, and a seizure does not occur simply where police approach and question a citizen (*United States v. Drayton*, 536 U.S. 194, 200-01 (2002)).

¶ 16 Three tiers of police-citizen encounters were identified by the supreme court in *Luedemann*, 222 Ill. 2d at 544, to wit: 1) arrests, which must be supported by probable cause; 2) brief investigative detentions, *Terry* stops, which must be supported by a reasonable, articulable suspicion of criminal activity; and 3) consensual encounters which do not implicate fourth amendment interests. Here, the State maintains that the stop was proper pursuant to *Terry,* where defendant did not submit to the officers' request to come over and engaged in headlong flight, thereby providing the officers with reasonable, articulable suspicion to perform a *Terry* stop.

Defendant responds that there was no reasonable, articulable suspicion to stop him from the inception, and thus there was no justification for the officers to seize him.

¶ 17 A police officer may lawfully stop a person when he has reasonable, articulable suspicion that the person has committed, or is about to commit, a crime. *Terry v. Ohio*, 391 U.S. 1, 21-22 (1968). The determination of reasonable suspicion must be based on commonsense judgment and inferences about human behavior, and requires taking the whole picture into account. *People v. Austin*, 365 Ill. App. 3d 496, 504-05 (2006). This includes the officer's experience and inferences the officer draws based on that experience. *People v. Holland*, 356 Ill. App. 3d 150, 155-56 (2005).

¶ 18 Here, while on patrol, Officer Amelio observed defendant crossing the street, and the large, irregular sized bulge in his pants. Defendant then gave furtive glances at police, before hiking up his pants, and scurrying away; the officer believed defendant was attempting to hide contraband, and called out to him. Defendant, however, immediately started to flee. Under these circumstances, a competent officer would be expected to act quickly and be justified in investigating the situation further without implicating the fourth amendment. *Austin*, 365 Ill. App. 3d at 505. The record shows that the officers were in plain clothes, and that they did not display their weapons or initially touch defendant, but called out to him to come over. Defendant's reaction to that call shows that defendant was not seized at that time. *California v. Hodari D.*, 499 U.S. 621, 626-27, 629 (1991); *People v. Thomas*, 198 Ill. 2d 103, 112 (2001).

¶ 19 Nonetheless, we find under the recent supreme court decision in *People v. Henderson*, 2013 IL 114040, that even if the initial encounter amounted to an unlawful seizure, defendant's flight negated any impropriety in it, and the subsequent arrest and search in this case were proper. In *Henderson*, police stopped the car in which defendant was a passenger based on a tip from an anonymous citizen that the car possibly contained a gun. *Henderson*, ¶¶26, 31. Defendant was

ordered out of the car, but then broke away from the officer who was walking him over to another officer, and fled, dropping a gun in the process. *Henderson*, ¶¶4-5. The supreme court found the vehicle stop effected an illegal seizure of defendant; however, the court held that it must consider whether the chain of causation proceeding from the unlawful conduct has become so attenuated or interrupted by some intervening circumstance so as to remove the taint imposed upon that evidence by the original illegality. *Henderson*, ¶¶31, 33. The court also set forth the factors relevant to an attenuation analysis which include the temporal proximity of the illegal police conduct and the discovery of the evidence, the presence of any intervening circumstances and the purpose and flagrancy of the official misconduct. *Henderson*, ¶33. The court noted that the Supreme Court had rejected a "but for" test under which evidence would be deemed inadmissible simply because it would not have been discovered "but for" the illegal actions, then concluded that defendant's flight ended the seizure and anything happening thereafter was, by its very nature, no longer tied to the initial stop where the officers' misconduct was not flagrant. *Henderson*, ¶¶34, 37, 50.

¶ 20 As applied to this case, we find that defendant's act of fleeing after being asked to "come over" by the officers, was an intervening circumstance that ended any taint that may have existed from the original stop. *Henderson*, ¶¶37. Defendant, however, maintains that his 10 steps was not headlong flight, as argued by the State. The record shows that defendant's reaction was to flee and that he was thwarted in this endeavor after he was cut off and stopped by the police officer.

¶ 21 Defendant further maintains that his actions were not of the type of evasion that was contemplated in *Thomas* that would turn ungrounded suspicion into a reasonable, articulable suspicion warranting a *Terry* stop. The record here shows that defendant fled from police, and there was nothing to suggest that he was merely exercising his right to continue on his way.

Thomas, 198 Ill. 2d at 114. Moreover, and contrary to defendant's contention, unprovoked flight, standing alone, is sufficient to establish reasonable, articulable suspicion where police merely asked defendant to come over, but he fled instead of just walking away. *Thomas*, 198 Ill. 2d at 112-13.

¶ 22 Defendant further contends that, even assuming the stop in this case was justified, the search was unconstitutional as the authority to perform a *Terry* stop does not automatically confer authority to frisk an individual. He maintains that for the frisk to be lawful, the officer must have specific articulable facts from which he can reasonably assess that defendant was armed and presently dangerous, and that in this case the record does not support any facts to demonstrate that Officer Amelio subjectively believed defendant was armed and dangerous.

¶ 23 The record shows that the officers in this case observed a very large, irregular bulge in the groin area of defendant's pants, and when they asked him to come over, he grabbed at the bulge, hiked up his pants, and fled. At that point, Officer Amelio was unsure if the bulge contained a weapon. However, after defendant was cornered by Officer Amelio, and made the inculpatory statement regarding the cannabis on him, the officer had probable cause to believe that defendant was committing a crime, and thus the search that followed was a lawful search incident to an arrest. *People v. Morales*, 221 Ill. App. 3d 13, 18-19 (1991); *People v. Ott*, 209 Ill. App. 3d 783, 789 (1991); *People v. Price*, 88 Ill. App. 3d 1095, 1109-10 (1980).

¶ 24 Accordingly, we conclude that the trial court erred in granting defendant's motion to quash arrest and suppress evidence, and we reverse that order, and remand the cause for further proceedings.

¶ 25 Reversed; cause remanded.