FOURTH DIVISION
February 13, 2014

No. 1-12-0692

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. 11 CR 18475
	)	
KORDELL SOUTHALL,	)	Honorable
	)	Kay M. Hanlon,
Defendant-Appellant.	)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The trial court's denial of the motion to quash arrest and suppress evidence was proper under the Fourth Amendment; mittimus is corrected to reflect the trial court's oral pronouncement and proper credit for time served.

¶ 2 After a bench trial, defendant Kordell Southall was convicted of one count of theft pursuant to section 16-1(a)(4)(A) of the Criminal Code of 1961 (720 ILCS 5/16-1(a)(4)(A) (West 2010)), and sentenced to four years in prison. On appeal, defendant contends that: (1) the

trial court erred in denying his motion to quash arrest and suppress evidence; (2) his mittimus should be corrected to reflect a single conviction for theft in accordance with trial court's oral pronoucement; and (3) his mittimus should be corrected to reflect the number of days of pre-sentence credit he accrued. We affirm defendant's conviction and amend his mittimus.

¶ 3 Defendant was charged by indictment with count 1 "theft in that he knowingly obtained control over a GPS unit, exceeding $500 in value and not exceeding $10,000 in value." He was also charged with count 2 "theft in that he knowingly obtained control over a GPS unit, not exceeding $500 in value."

¶ 4 At the hearing on the motion to quash arrest and suppress evidence, Detective Steven Stotz testified that he and his partner, Ralph Gniewosz, were driving an unmarked car while conducting a routine patrol near the corner of Pine Tree and Walnut about 3:35 p.m. on August 10, 2011. He commented that the area was known Latin King gang territory. He also stated that "[w]e had sporadic vehicle burglaries in that area. We would routinely patrol through the area *** to apprehend individuals that would be breaking into cars or committing crimes in that area. It is a high crime area." As the officers were going westbound on Walnut, Stotz observed defendant and another individual riding on bikes and made eye contact with defendant. Stotz made a U-turn on Walnut and began driving in the same direction as defendant. Stotz then noticed defendant and the other individual "peddling faster, standing up to get more speed out of the bike instead of sitting down." The bikes cut through a church parking lot, and then across a parkway to a point where Stotz could no longer see them.

¶ 5 Stotz eventually curbed his car and flagged the two men down. The men stopped their bikes, and Stotz approached defendant and began to question him. Stotz asked defendant if he

could search his backpack, and defendant responded that it was "fine." Stotz found various electronics in the backpack, including a GPS that defendant claimed he had received from a friend and intended to take to a pawn shop. Stotz ran the electronics through the L.E.A.D.S. system for stolen property, and learned that the GPS had been reported stolen from Froujke Martin in May 2011. He immediately arrested defendant.

¶ 6 Defendant testified that he and his friend were riding their bikes near Pine Tree and Walnut when Detectives Stotz and Gniewosz passed him in a car and gave him a "dirty look." Defendant continued to ride his bike until Detective Stotz waved to him and asked him to stop and get off the bike. Defendant complied and Stotz began questioning him. At some point during the conversation, Stotz asked if he could search defendant's backpack. Defendant refused, and Stotz "snatched" the backpack from him and searched it. On cross-examination, defendant revealed that he was riding his bike near Barrington road, not Walnut and Pine Tree. He also admitted that he never saw Gniewosz's face, although he previously testified that both men were giving him dirty looks.

¶ 7 After hearing arguments from both the State and defendant, the trial court first recounted Stotz's testimony stating that "there had been sporadic problems involving multiple burglaries throughout the month" and found that "the manner in which [defendant] drove ***, the manner in which he sped up, the fact that he went off the roadway in an effort to avoid being followed or having any contact with the police certainly is sufficient unusual conduct to give this officer the right to stop your client." The court also found that defendant's testimony was not credible, noting that defendant's original testimony was inconsistent on cross examination. The court then denied the motion to quash arrest and suppress evidence.

¶ 8 At trial, Detective Stotz gave a consistent account of how he stopped defendant. He highlighted how defendant appeared to be nervous during their exchange, and told him that he was "pretty sure" that the GPS had been stolen.

¶ 9 Defendant testified that he had received the GPS from a friend, and that he did not believe that it was stolen. He also stated that he was on his way to the pawn shop to get the GPS priced for his friend. However, he was not able to give the friend's last name, address, or phone number.

¶ 10 The victim, Froujke Martin, testified that she paid $772.19 for the GPS, and that it had been stolen when someone broke into her car on May 10, 2011.

¶ 11 After the trial, the court found defendant guilty of theft without explicitly referencing which count. Upon being asked by the State on which count he was finding defendant guilty, the judge responded that "[t]he value of the GPS unit was $772.19. So finding of guilty on Count 1."

¶ 12 Defendant filed a motion for a new trial arguing, *inter alia*, that the court erred in denying his motion to quash arrest and suppress evidence. The court denied the motion.

¶ 13 At the sentencing hearing, the court considered defendant's criminal history, which included a misdemeanor theft conviction and a felony burglary conviction. The court also recognized that defendant was on probation for the felony conviction at the time he committed the instant offense. The court subsequently sentenced defendant to four years in prison.

¶ 14 On appeal, defendant argues that the trial court erred when denying his motion to quash arrest and suppress evidence because Detective Stotz violated his fourth amendment rights when he stopped him without reasonable suspicion and searched his backpack without his consent.

¶ 15 Initially, we address the State's argument which suggests we should strike a map appended to defendant's brief. Defendant argues that the Google map appended to his brief was properly attached. Defendant asks this court to take judicial notice of satellite photographs of the area obtained from the Internet. See *People v. Clark*, 406 Ill. App. 3d 622, 633 (2010) ("case law supports the proposition that information acquired from mainstream Internet sites such as MapQuest and Google Maps is reliable enough to support a request for judicial notice" and, when the request is made for the first time on appeal, the information may be considered for purposes of understanding the evidence presented below and the trial court's findings). The map defendant attaches to his brief illustrates the area where defendant was riding his bike and where Stotz's pursuit of defendant occurred. Because the map was submitted solely for purposes of helping this court understand the witnesses' testimony and the trial court's finding, and not to prove a matter of fact on appeal, we find that the map should not be stricken from defendant's brief.

¶ 16 We review a trial court's ruling on a motion to suppress evidence using a two-part standard. *People v. Colyar*, 2013 IL 111835, ¶ 24. First, the reviewing court affords "great deference to the trial court's factual findings, and will reverse those findings only if they are against the manifest weight of the evidence." *Id*. We review *de novo* the ultimate question of whether the arrest should be quashed and the evidence suppressed. *Id*.

¶ 17 Both the fourth amendment to the United States Constitution (U.S. Const., amend. IV) and article I, section 6, of the Illinois Constitution (Ill. Const. 1970, art. I, § 6) protect individuals from unreasonable searches and seizures. *People v. Garcia*, 2012 IL App (1st) 102940, ¶ 4. However, it is well established that a police officer may conduct a brief investigatory stop after

observing unusual conduct that gives the officer a reasonable suspicion that criminal activity may be afoot. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). We consider the totality of the circumstances in determining whether an officer had reasonable suspicion to stop an individual for investigative purposes. *People v. Tisler*, 103 Ill. 2d 226, 236 (1984); *Illinois v. Gates*, 462 U.S. 213, 230-231 (1983). Both flight from the police and being located in a high crime area can constitute just the sort of unusual conduct needed to justify a *Terry* stop. *Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000). While neither of these two factors taken alone is enough to establish reasonable suspicion, standing together they are sufficient. *Id.*

¶ 18 In this case, the trial court did not err when it denied defendant's motion to quash arrest and suppress evidence because Detective Stotz had reasonable suspicion to justify a *Terry* stop.

¶ 19 First, the court found that Stotz testified credibly at the motion to quash arrest and suppress evidence hearing that he first observed defendant riding his bike while conducting a routine patrol in a "high crime area" where there had been "sporadic vehicle burglaries" throughout the month. Defendant argues that Stotz's testimony that the area was high in crime was never substantiated. However, we find that his testimony regarding the character of the area, which he routinely patrolled, and the frequency of burglaries, was enough to establish that the area was high in crime. See *People v. Jackson*, 2012 IL App (1st) 103300, ¶ 30 (explaining that "uncontradicted and undisputed testimony, which was accepted by the trial court, was sufficient to establish that the incident occurred in a high-crime area.")

¶ 20 Second, evidence established that soon after Detective Stotz began to follow defendant in his patrol car, defendant increased his speed and looked behind himself multiple times in an apparent attempt to elude the officer. We agree with the trial court that defendant's evasive

behavior upon noticing the police amounted to the type of unprovoked flight that is sufficient to justify a *Terry* stop. *Wardlow,* 528 U.S. 119, 124-25. Defendant contends that his actions were merely "safety precautions," commonly taken when a biker is confronted with a parkway and a cul-de-sac. We reject this argument as mere conjecture. This argument was never submitted to the trial court, and there is no evidence supporting defendant's conclusion. Thus, we find that the trial court properly denied defendant's motion to quash arrest and suppress evidence because we find that the character of the neighborhood and defendant's evasive behavior gave Stotz a reasonable, articulable suspicion to justify a Terry stop. *Id.*

¶ 21 Defendant cites *People v. Kipfer*, 356 Ill. App. 3d 132 (2005), to argue that the trial court erred in denying defendant's motion to quash arrest and suppress evidence. In *Kipfer*, the arresting officer testified that he observed the defendant emerge from behind a dumpster in a parking lot of an apartment complex located in a "high crime" neighborhood at 3:30 a.m. The officer turned his squad car around and made several attempts to stop the defendant by honking his horn; the officer then exited his car and asked defendant to stop and he finally complied. The trial court found that the defendant's unusual actions in a high crime area at 3:30 a.m. were enough to support reasonable suspicion for a *Terry* stop. This court reversed the trial court's finding stating that presence in a residential area--even one known as the site of frequent criminal activity--at a late hour is not enough to warrant an investigatory stop. *Kipfer*, 356 Ill. App. 3d at 138-139. Defendant argues that our case is analogous to *Kipfer* and the trial court's finding should be reversed accordingly. We disagree. Unlike the defendant in *Kipfer*, in our case defendant made a clear attempt to flee and elude the police, which led to a brief chase that ended when Stotz flagged defendant down. Defendant's actions, coupled with the area being in a

high crime neighborhood, are the factors that the trial court relied on when making its decision that the *Terry* stop was justified. Thus, *Kipfer* is inapplicable here, because the defendant in that case, although initially reluctant to speak with officers, did not attempt to elude the officers by fleeing the scene.

¶ 22 Next, defendant contends that even if the *Terry* stop was proper, the search of defendant's backpack was not. Defendant and the State offered conflicting testimony regarding whether defendant voluntarily complied with Stotz's request to search his backpack. However, the trial court adopted the facts set forth by the State, and found defendant's testimony "incredible." On review, we find nothing indicating that the trial court's conclusion was in error. Defendant argues unsuccessfully that his response to Detective Stotz that it was "fine" to search his backpack was ambiguous, and not enough to support a finding of consent. We reject this argument. We find that defendant's response reasonably implied that he consented to Stotz's search of the backpack. Furthermore, this court must accord great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of evidence. *People v. Close*, 238 Ill. 2d 497, 504 (2010). Accordingly, finding ample evidence to support the finding that defendant consented to the search of his backpack, we defer to the trial court's judgment.

¶ 23 Finally, the State concedes, and we agree, that defendant's mittimus must be corrected. The oral pronouncement of the judge is the judgment of the court, and the written order of commitment merely evidences that judgment. *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007). Where a conflict arises between the two, the language of the court prevails over the language of the mittimus. *People v. Willis*, 184 Ill. App. 3d 1033, 1047 (1989). Here, the trial court

convicted defendant of count 1 "theft of property exceeding $500 in value but not exceeding $10,000." However, the mittimus incorrectly reflects an additional conviction for count 2 "theft of property not exceeding $500 in value" although the court never convicted defendant of the charge in its oral pronoucement. Thus, the mittimus must be corrected to accurately reflect the judgment of the court. We also correct the mittimus to reflect credit for the 182 days defendant spent in presentence custody pursuant to section 5-4.5-100(b) of the Unified Code of Corrections. 730 ILCS 5/5-4.5-100(b) (West 2012). The mittimus currently reflects that defendant spent 153 days in custody. However, defendant was arrested on August 10, 2011, and remained in custody until he was sentenced on February 8, 2012, totaling 182 days.

¶ 24 For the foregoing reasons, we order the clerk of the court to correct the mittimus to reflect a singular conviction for "theft of property exceeding $500 in value but not exceeding $10,000" and the 182 days defendant spent in presentence custody, and affirm the judgment of circuit court of Cook County in all other respects.

¶ 25 Affirmed; mittimus corrected.