

FIFTH DIVISION
JUNE 20, 2014

No. 1-12-1926

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances under Rule 23(e)(1).

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 14618
	)	
CENO JACKSON,	)	The Honorable
	)	Catherine M. Haberkorn,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Palmer and Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's denial of defendant's motion to suppress evidence affirmed where informant's tip, along with officer's personal observation of a bulge in defendant's pants pocket, established reasonable suspicion of criminal conduct.

¶ 2 Following a jury trial, defendant Ceno Jackson was found guilty of armed habitual criminal, then sentenced to 16 years in prison. On appeal, defendant contends that the trial court erred in denying his motion to quash arrest and suppress evidence because police lacked reasonable suspicion to stop and search him.

¶ 3 Defendant's conviction arose from events that transpired shortly after midnight on August 1, 2010. At that time, Chicago police officers, acting on a tip from an anonymous informant, encountered defendant at 948 West Windsor Avenue in Chicago, Illinois, and recovered a loaded gun from his person. Defendant was then charged with numerous gun-related offenses, but tried solely on the charge of armed habitual criminal.

¶ 4 Prior to trial, defendant filed a motion to quash his arrest and suppress evidence, asserting that his warrantless arrest was improper because his conduct prior to the arrest would not reasonably be interpreted as constituting probable cause to believe that he had committed or was about to commit a crime. He thus requested that his arrest be quashed, and that any physical evidence recovered as a result of the arrest and the statements he made during the detention be suppressed.

¶ 5 At the hearing on his motion, Officer Tanovic testified that about 12:20 a.m. on August 1, 2010, he was on duty driving an unmarked police car and wearing plain clothes with his Chicago police star displayed on his bullet proof vest. He had recently received a call of a black male wearing a red shirt in the area of Sheridan and Wilson with a gun on his person, and then observed a man, who he identified in court as defendant, standing on the sidewalk at 948 West Windsor Avenue. He acknowledged that defendant was not breaking any laws at that time, nor running or short of breath, or making any threatening or unusual movements, and there was nothing protruding from his pocket. Officer Tanovic also acknowledged that he did not have a warrant to search or arrest defendant, but testified that "[b]ased on the totality of the circumstances in that he was fitting the description of a person with a gun in the immediate area of where the call came out of, once I saw him in front of 948 Windsor, I exited the car, I approached him and announced office and approached for a field interview." When Officer

Tanovic said, "police, let me see your hands," defendant raised his hands to shoulder level and did not attempt to flee. As Officer Tanovic continued to approach defendant, he observed a bulge in defendant's front right jeans pocket, and in the pat down search which followed, he felt a heavy metal object, and recovered a .25 caliber pistol.

¶ 6 On cross-examination by the State, Officer Tanovic stated that he has been an officer for 5 ½ years, and has experience with weapons due to his experience in the military starting at the age of 18. On the night of the incident, he was working with his partner, Officer Pacocha, who told him that a few minutes before they received the call of a person with a gun, he had seen a black male wearing a red shirt walking southbound on the east side of Sheridan towards Windsor. Officer Tanovic drove to Sheridan and Wilson, but did not see anyone fitting that description, then proceeded southbound on Sheridan, where he observed defendant, a black male wearing a red shirt, standing at 948 Windsor, which is about a half block south of Wilson Avenue and less than 100 feet east of Sheridan Road. This sighting occurred a few minutes after he had received the call about the man with a gun.

¶ 7 Officer Tanovic stopped his vehicle directly across from defendant, but did not turn on his siren or activate his lights, and he did not draw his gun upon exiting the vehicle. Based on the nature of the call, and his experience as an officer in that specific area, including his presence when a person was shot in the past, Officer Tanovic feared for his safety before approaching defendant, and conducted a pat down search. Based on his experience in the military and as an officer, he recognized that what he felt in defendant's pocket was a gun.

¶ 8 During closing argument, defense counsel argued that the case at bar was "practically identical" to *Florida v. J.L.*, 529 U.S. 266 (2000), where the Supreme Court held that an anonymous tip of a person carrying a gun, without more, was insufficient to justify a stop and

frisk. The trial court disagreed, stating that the presence of the bulge in defendant's pocket was a distinctive point which distinguished this case from *J.L.*, and thus denied defendant's motion to quash arrest and suppress evidence.

¶ 9 Defendant filed a motion to reconsider that ruling, and with his approval, the hearing on that motion was conducted by a judge other than the one who had ruled on his original motion. During that hearing, defense counsel argued that the bulge the officers observed in defendant's pocket did not amount to reasonable articulable suspicion because it "could have been anything," such as a cell phone or a wallet. The record also shows that a lengthy colloquy was had between the court and defense counsel, during which counsel agreed with the court's summary of the testimony presented at the hearing on the motion to quash arrest and suppress evidence. This included, in pertinent part, that Officer Tanovic had said nothing more than "hey" to defendant upon first approaching him, that Officer Tanovic observed the bulge in defendant's pants pocket before instructing him to raise his hands, and that the observation of the bulge occurred before the officers effectuated a *Terry* stop. The court then denied defendant's motion to reconsider.

¶ 10 At trial,¹ Officer Tanovic testified consistently with his testimony at the hearing on the motion to quash arrest and suppress evidence regarding the events leading up to his observation of defendant standing at 948 West Windsor. With regard to his observation of the bulge in defendant's pocket, Officer Tanovic testified that upon arriving at 948 West Windsor, he said "hey" to defendant, who then looked at the officers, and they exited their vehicle for a field interview without drawing their weapons. As they approached defendant, Officer Tanovic observed a bulge in defendant's right front pants pocket. At that point, Officer Tanovic asked

¹ The same judge who presided over defendant's motion to quash arrest and suppress evidence presided over the jury trial.

defendant to raise his hands because he believed the bulge to be a gun, given the nature of the tip and the fact that defendant fit the description of the person carrying a gun. He then conducted a pat down search of defendant's pocket, felt a heavy metal object that resembled a firearm, and recovered a fully loaded .25 caliber semi-automatic pistol from that pocket. He and Officer Pacocha then took defendant into custody, secured the gun, and transported defendant to the police station. Officer Tanovic described the inventory procedures he followed, and identified the contents of People's Exhibit 4 as the gun and bullets that he recovered from defendant on the night of the incident.

¶ 11 Officer Pacocha corroborated Officer Tanovic's description of the events leading up to their encounter with defendant and added that he was also wearing plain clothes with his police star on his vest. When they arrived at 948 West Windsor, Officer Tanovic said "hey," to defendant, and as they began to approach him, Officer Tanovic said, "police, let me see your hands." Defendant put his hands in the air, and at that time Officer Pacocha observed a bulge in defendant's right pants pocket, which he believed to be a gun. Officer Pacocha identified the contents of People's Exhibit 4 as the gun that Officer Tanovic recovered from defendant on the night of the incident.

¶ 12 Officer Pacocha further testified that he advised defendant of his *Miranda* rights at the station, and after defendant indicated his understanding of them, he told him that a man in a black Cadillac gave him the gun at Sheridan and Wilson. The man was nervous because he noticed the officers in that area, and defendant thought the man might have been on meth. After the man gave him the gun, defendant just walked away and defendant thought the man "called on [him]." Defendant also told Officer Pacocha that he knew he was not supposed to have the gun, that it is going to be a felony, and asked if they could work something out. On cross-

examination, Officer Pacocha acknowledged that defendant's statement was not reduced to writing for his signature.

¶ 13 The parties then stipulated that defendant had been previously convicted of two prior felony offenses which satisfy the requirements for charges of armed habitual criminal. After the State rested its case-in-chief, defendant elected not to testify or present any evidence, and the jury found him guilty of armed habitual criminal.

¶ 14 In this appeal, defendant solely contends that the trial court erred in denying his motion to quash arrest and suppress evidence and asks this court to vacate his conviction. He specifically contends that the officers seized him immediately by announcing their office, approaching him and ordering him to raise his hands when they observed him standing on the sidewalk. He argues that a seizure occurred before the officers noticed the bulge in his pants pocket, and that it was based entirely on the anonymous tip, which was insufficient on its own to constitute reasonable suspicion of criminality.

¶ 15 The State initially responds that defendant may not raise this issue on appeal because he did not specify the question of whether he was immediately seized as a basis for his motion to quash and suppress, or raise it at the hearing on that motion; and, at the hearing on his motion to reconsider, he expressly conceded that it was not the basis of his motion. The State points out that defendant litigated his motion to quash arrest and suppress evidence on the basis of a lack of a warrant or probable cause to justify a pat down search. Defendant replies that he has not waived this issue, as his argument has always been that the officers lacked a sufficient basis to seize him without a warrant.

¶ 16 The record supports the State's assertion that defendant did not raise the question of whether he was immediately seized as a basis for his motion to quash arrest and suppress

evidence before the trial court. The record also reflects that the sole argument raised by defendant in his posttrial motion for a new trial regarding his motion to quash arrest and suppress evidence was that the court erred in denying that motion.

¶ 17 A posttrial motion must set forth with adequate specificity the errors relied upon (*People v. Bass*, 220 Ill. App. 3d 230, 239 (1991)), and here defendant did not provide the basis he now asserts in support for his argument. As such, defendant failed to preserve this issue for appeal. *Bass*, 220 Ill. App. 3d at 239. Notwithstanding, we find, for the following reasons, that defendant's claim is without merit.

¶ 18 In reviewing an order denying a defendant's motion to quash arrest and suppress evidence, mixed questions of law and fact are presented. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). Factual findings made by the trial court will be upheld unless they are against the manifest weight of the evidence, whereas the trial court's application of the facts to the issues presented and the ultimate question of whether the evidence should be suppressed is subject to *de novo* review. *Pitman*, 211 Ill. 2d at 512.

¶ 19 Defendant contends that the trial court erred in its factual findings that the officers immediately observed a bulge in his jeans when they approached him and before they seized him, pointing to statements made by the judge who presided over the hearing on his motion to reconsider, at which no additional evidence was presented. In pertinent part, that judge stated, and defense counsel agreed, that Officer Tanovic said nothing more than "hey" upon first approaching defendant, that Officer Tanovic observed the bulge in defendant's pants pocket before instructing him to raise his hands, and that the observation of the bulge occurred before the officers effectuated the *Terry* stop. Given defense counsel's agreement with the court's recitation of the evidence that had been presented at the hearing on his motion to quash arrest

and suppress evidence, we fail to see how defendant can now complain of it. In any event, the record shows that the judge who presided at the hearing on the motion to quash and suppress made no factual determinations regarding when the officers observed the bulge, and in our *de novo* review of the ultimate question regarding the suppression of evidence, we undertake our own assessment of the facts in relation to the issues presented. *People v. Moss*, 217 Ill. 2d 511, 518 (2005).

¶ 20 The fourth amendment of the United States Constitution guarantees the right of the people to be free from unreasonable searches and seizures. U.S. Const., amend. IV; *People v. Gherna*, 203 Ill. 2d 165, 176 (2003). However, not every interaction between police and private citizens results in a seizure. *People v. McDonough*, 239 Ill. 2d 260, 268 (2010). Rather, there are three tiers of police-citizen encounters that have been recognized by courts: (1) an arrest which must be supported by probable cause, (2) temporary investigative *Terry* stops for which an officer must have a reasonable, articulable suspicion of criminal activity, and (3) consensual encounters, which involve no coercion or detention, and thus do not implicate any fourth amendment concerns. *McDonough*, 239 Ill. 2d at 268.

¶ 21 Here, as defendant points out in his opening brief, the record shows that when the officers arrived at 948 West Windsor, he was not actively walking, but rather, was standing still on the sidewalk. The record further shows that the officers were in plain clothes and had not activated their lights or sirens or drawn weapons when Officer Tanovic said "hey" to defendant, who looked at them and did not attempt to walk away. The officers then exited their vehicle and approached defendant to speak with him. It is well-settled that police do not violate the fourth amendment by merely approaching an individual on the street and speaking to him if the person is willing to listen, and under the circumstances described in this record, we find no seizure

where defendant was already stopped and standing, and responded to the officers. *People v. Smith*, 331 Ill. App. 3d 1049, 1052-53 (2002).

¶ 22 The record further shows that as the officers approached, Officer Tanovic asked to see defendant's hands, and defendant raised them. Defendant contends that because Officer Tanovic did not observe the bulge in his pants pocket until after the officer ordered him to raise his hands, the *Terry* stop was based solely on the information contained in the anonymous tip and was improper.

¶ 23 The State contends that Officer Tanovic observed the bulge prior to ordering defendant to raise his hands, and his observation of the bulge may be taken into consideration in evaluating whether the officers' further investigation was proper under *Terry*. We observe that on appeal, we may consider the evidence presented at the hearing on the motion to quash and suppress, as well as the evidence presented at trial to the extent that it supports affirming the trial court's judgment. *People v. Butorac*, 2013 IL App (2d) 110953, ¶ 14, citing *People v. Brooks*, 187 Ill. 2d 91, 127-28 (1999).

¶ 24 At the hearing on the motion to quash arrest and suppress evidence, Officer Tanovic testified that as he approached defendant for a field interview, he said, "police, let me see your hands," and that after defendant complied, he observed the bulge in his front, right pants pocket. However, at trial, Officer Tanovic testified that prior to approaching defendant, he said "hey" to him, and as he approached for a field interview, he observed a bulge in defendant's front, right pocket. At that point he instructed defendant to raise his hands because he believed the bulge to be a gun. Officer Pacocha testified to the same sequence of events and his observation of a bulge in defendant's right pants pocket, which he believed to be a gun, after Officer Tanovic instructed defendant to raise his hands.

¶ 25 The additional detail provided by the officers in their trial testimony supports the conclusion that the initial encounter led to the sighting of the bulge in defendant's pants, which corroborated the information provided by the anonymous caller that a black male wearing a red shirt was in the area of Sheridan and Wilson with a gun on his person, and provided reasonable suspicion of criminal activity to warrant a *Terry* investigation. *People v. Ledesma*, 206 Ill. 2d 571, 591-92 (2003), *overruled on other grounds by Pitman*, 211 Ill. 2d at 513. In addition, the encounter took place shortly after midnight in a location where Officer Tanovic had previously witnessed a shooting. In light of the officers' experience, the facts before them, and the common sense inferences and considerations to be drawn therefrom, we find that the composite of known facts and circumstances was sufficient to raise a reasonable suspicion of criminal activity to warrant the *Terry* stop. *Ledesma*, 206 Ill. 2d at 583, 591-92.

¶ 26 As to the propriety of the frisk that followed, we observe that an officer may pat down an individual during a *Terry* stop if the officer reasonably believes the individual is armed and dangerous (*People v. Sorenson*, 196 Ill. 2d 425, 432 (2001)). The officer must be able to point to particular facts to justify the search (*People v. Linley*, 388 Ill. App. 3d 747, 753 (2009)), and although the applicable test is objective, the officer's subjective feeling is a factor to be considered (*People v. Galvin*, 127 Ill. 2d 153, 167-68 (1989)). Here, Officer Tanovic testified that defendant matched the description of the person reportedly carrying a gun in the designated area, he believed the bulge he observed in defendant's pants pocket was a gun and he feared for his safety. Under these circumstances, we find that the pat down search was warranted (*People v. Morales*, 221 Ill. App. 3d 13, 18 (1991); *People v. Goodum*, 356 Ill. App. 3d 1081, 1085 (2005)), and the removal of the gun proper (*Morales*, 221 Ill. App. 3d at 18). Accordingly, we

find no error by the trial court in denying defendant's motion to quash arrest and suppress evidence.

¶ 27 In reaching this conclusion, we have considered *Florida v. J.L.*, 529 U.S. 266 (2000), upon which defendant primarily relies. In *J.L.*, police received an anonymous tip via telephone that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. *J.L.*, 529 U.S. at 268. Based on that tip, officers arrived at the specified bus stop and observed three black males, one of whom was wearing a plaid shirt, standing there. *J.L.* 529 U.S. at 268. Although defendant, who was in the plaid shirt, made no threatening or otherwise unusual movements and officers did not see a firearm, an officer instructed him to place his hands on the bus stop and frisked him, seizing a gun from his pocket. *J.L.*, 529 U.S. at 268. The supreme court held that the anonymous tip at issue, without more, was insufficient to justify a *Terry* stop. *J.L.*, 529 U.S. at 268. In doing so the court reasoned that in certain situations an anonymous tip that has been suitably corroborated exhibits sufficient indicia of reliability to provide reasonable suspicion to make a *Terry* stop, and found that no such corroboration was present in the case before it. *J.L.*, 529 U.S. at 270-72.

¶ 28 Here, as in *J.L.*, the officers proceeded to a particular area on the basis of a tip that a black male wearing a particular type of shirt and standing at a specified location was carrying a gun. However, in *J.L.*, and unlike here, police did not observe defendant with a gun, or have any basis aside from the allegation in the tip that he was carrying a gun, but immediately effectuated a *Terry* stop by instructing him to place his hands on the bus stop and frisked him. Prior to effectuating the *Terry* stop in this case, Officer Tanovic personally observed a bulge which he believed to be a gun in defendant's pants pocket, which corroborated the assertion of illegality in

the tip. As the trial court pointed out at the hearing on the motion to quash and suppress, this critical factor distinguishes the case at bar from *J.L.*

¶ 29 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.