

SIXTH DIVISION
September 12, 2014

No. 1-12-3562

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 allowed 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 10884
)	
LEONARD CLARK,)	Honorable
)	William Hooks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

O R D E R

¶ 1 **Held:** The circuit court did not err in denying defendant's motion to quash arrest and suppress evidence; defendant's conviction for possession of a controlled substance with intent to deliver affirmed.

¶ 2 Following a jury trial, defendant Leonard Clark was found guilty of possession of a controlled substance with intent to deliver and sentenced to four years' imprisonment. On appeal, defendant solely contends that the circuit court erred in denying his motion to quash arrest and suppress evidence because police lacked probable cause to arrest him.

¶ 3 The incident leading to the charges filed against defendant in this case took place on May 20, 2010, when an undercover police officer on surveillance observed defendant make a hand-to-hand narcotics transaction in a high drug trafficking area on the south side of Chicago. He alerted enforcement officers, who then detained and searched defendant, and recovered 1.3 grams of heroin and eight dollars from him.

¶ 4 Prior to trial, defendant filed a motion to quash arrest and suppress evidence, alleging that the officers did not have probable cause to arrest him, and violated his constitutional right to be free from unreasonable searches and seizures. At the suppression hearing, Chicago police officer Aloysius Reeves¹ testified that about 10 a.m. on May 20, 2010, he was working as a surveillance officer in the vicinity of 741 East 43rd Street, an area known for high narcotics activity. He testified that he had been a Chicago police officer for 12½ years, and participated in several hundred narcotics investigations, a few hundred of which involved the street sale of heroin.

¶ 5 Officer Reeves further testified that he observed defendant standing on the sidewalk about 50 feet away, when an unknown black male approached defendant and handed him an unknown amount of rolled up U.S. currency. Officer Reeves recognized the currency based on the size and shape of the bills. He then saw defendant retrieve a clear plastic bag from his right jacket pocket, take out a small item, and tender that item to the unknown individual. The

¹ Officer Reeves' first name is spelled "Eloysius" in the pretrial hearing, and "Aloysius" at trial. We use the latter spelling as indicated by his signature in the record.

unknown individual walked away, and defendant began to cross 43rd Street. Based on his experience as a police officer, Officer Reeves believed that he had just observed a narcotics transaction, then radioed enforcement officers in the vicinity, and gave them a description of defendant and his location. The enforcement officers were unable to catch the unknown individual, but they detained defendant, reached into his right jacket pocket, and retrieved a clear plastic bag, which contained five smaller Ziploc bags, the contents of which later tested positive for 1.3 grams of heroin. In the custodial search that was conducted at the police station, the officers recovered eight dollars from defendant. Officer Reeves acknowledged that the officers did not have a search or arrest warrant for defendant.

¶ 6 No further testimony was presented, and following the arguments of opposing counsel, the circuit court denied the motion, finding that the police officers had probable cause to search defendant following Officer Reeves' observation of defendant's actions. The court particularly noted the credible, unimpeached testimony of Officer Reeves, and determined from the totality of circumstances in the high crime area, including the officer's assessment from 50 feet away, that U.S. currency was tendered in exchange for a suspect narcotic from a plastic bag, provided sufficient probable cause to conduct a search.

¶ 7 The case proceeded to a jury trial, where Officer Reeves' testimony regarding the incident was substantially consistent with that given at the suppression hearing. He added that on May 20, 2010, he was assigned to the Troubled Building Investigative Unit, which investigates drug crimes in buildings across Chicago. That morning, he and his team formulated an investigation plan based on which area received the most citizen complaints of drug transactions, and decided to conduct a surveillance in the area around 43rd Street, between Cottage Grove Avenue and Evans Street. As the designated surveillance officer, Officer Reeves' role was to "be the eyes,

and also the ears in some instances" of the investigation, and to radio enforcement officers located nearby to take custody of the individuals he identified. He testified that at approximately 8:55 a.m., the team set up surveillance at 740 East 43rd Street, where Officer Reeves was dressed in civilian clothing and concealed in an undercover police van, about 50 feet across the street from where defendant was standing.

¶ 8 Officer Allen Hadac testified that he has been a Chicago police officer for 15 years, and was one of the enforcement officers who detained defendant at 741 East 43rd Street. Acting on Officer Reeves' observations, Officer Hadac reached into defendant's right jacket pocket and retrieved a clear plastic bag containing five smaller yellow-tinted Ziploc bags. The parties stipulated that the bags contained a total of 1.3 grams of heroin.

¶ 9 The jury found defendant guilty of possession of a controlled substance with intent to deliver, and the trial court subsequently denied his motion for a new trial, or in the alternative, to be found guilty of the lesser included offense of simple possession. In this appeal from that judgment, defendant solely claims that the trial court erred in denying his motion to quash arrest and suppress evidence. He maintains that the officers lacked probable cause to arrest him, thereby rendering the narcotics recovered from him inadmissible, and his conviction unsustainable.

¶ 10 The State initially contends that defendant failed to properly preserve this issue because he failed to raise it in his post-trial motion, and that this court should decline to review it. The State further claims that the doctrine of plain error does not apply.

¶ 11 Defendant concedes that he failed to raise this claim in his post-trial motion, but asserts, in pertinent part, that the forfeiture exception for constitutional issues that was recognized in *People v. Enoch*, 122 Ill. 2d 176, 190 (1988), applies here because the denial of his motion to

suppress raises a Fourth Amendment violation. *People v. Cregan*, 2011 IL App (4th) 100477, ¶ 16. The supreme court has since granted leave to appeal in that case, and determined that in the interests of judicial economy, constitutional issues that were properly raised at trial and may be raised later in a post-conviction petition are not forfeited by defendant's failure to raise them in a written post-trial motion. *People v. Cregan*, 2014 IL 113600, ¶15-18. As applied here, where defendant asserted a violation of his constitutional right to be free from unreasonable searches and seizures in his pretrial motion to suppress, we find that the constitutional-issue exception applies (*Id.* at ¶20), and we may consider his claim that the trial court erred in denying his motion to quash arrest and suppress evidence based on a lack of probable cause to arrest.

¶ 12 An arrest executed without a warrant is proper only if it was supported by probable cause. *People v. Jackson*, 232 Ill. 2d 246, 274–75 (2009). Probable cause exists when "the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *Id.* at 275. Whether probable cause exists in a given case is governed by commonsense considerations, and the determination of the probability of criminal activity, rather than proof beyond a reasonable doubt. *People v. Grant*, 2013 IL 112734, ¶ 11; *Jackson*, 232 Ill. 2d at 275. The existence of probable cause is determined from the totality of the circumstances confronting the officer at the time of the arrest (*People v. Sims*, 192 Ill. 2d 592, 615(2000)), and the officer's knowledge, based on his law enforcement experience, is a relevant consideration in a probable cause analysis (*Grant*, 2013 IL 112734 at ¶ 11).

¶ 13 The record here shows that Officer Reeves, a veteran narcotics officer, was a member of an investigative unit assigned to ferret out drug crimes in the city. On the morning in question, he was the surveillance officer in the specifically designated area, where numerous citizen

complaints of drug transactions had been received. In that capacity, Officer Reeves observed defendant from his vantage point about 50 feet away, approached by an unknown black male, who tendered an unknown amount of rolled up currency to him. In return, defendant retrieved a plastic bag from his right jacket pocket, removed a small, unidentified object from the bag, and handed it to the unknown male. Officer Reeves testified that based on his knowledge, training and experience as a police officer, he believed that he had just observed a narcotics transaction. He then radioed the enforcement officers, who retrieved a plastic bag containing smaller bags of heroin from defendant's right jacket pocket. After reviewing the totality of the circumstances known to the officers at the time of the apprehension, we find that they had probable cause to believe that defendant had conducted a narcotics transaction with the unknown male who approached him, and was thus subject to arrest. *Sims*, 192 Ill. 2d at 615.

¶ 14 Defendant objects, however, that the single hand-to-hand transaction was insufficient to indicate that defendant was involved in an illegal drug sale rather than an innocent exchange. He maintains that Officer Reeves' identification of the rolled up item as currency was merely an assumption based on his experience. The record, however, does not support defendant's interpretation of Officer Reeves' testimony.

¶ 15 Under questioning by defense counsel at the hearing on the motion to suppress, Officer Reeves testified that although he could not identify the particular denomination of the currency or see any of the faces on the currency he observed in the transaction, he assumed it was one of them based on his experience. At trial, Officer Reeves further testified that he believed that the item tendered to defendant was United States currency, based on the size and the shape of the bill, and it looked like a "rolled up American U.S. currency."

¶ 16 When considered in this context, it is clear that Officer Reeves had sufficient articulable facts to support the reasonable suspicion that defendant had committed a crime, where currency was being exchanged for a narcotic substance. *People v. Hopkins*, 235 Ill. 2d 453, 475 (2009).

¶ 17 That conclusion is not diminished by the fact that Officer Reeves could not identify the small item defendant retrieved from the plastic bag, for probable cause in narcotics cases is not conditioned on prior visual identification of a narcotic substance (*People v. Rucker*, 346 Ill App. 3d 873, 889 (1st Dist. 2003)), or because only one transaction was observed, for repetition is unnecessary where police possess more specific information that a crime is being committed (*People v. Grant*, 2013 IL 112734 ¶ 17). As the supreme court has repeatedly pointed out, the determination of whether probable cause exists is governed by commonsense considerations, and that calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt. *Hopkins*, 235 Ill. 2d at 472; *Jackson*, 232 Ill. 2d at 275; *Sims*, 192 Ill. 2d 614–15. We find that standard was met in this case, and that the trial court did not err in denying defendant's motion to quash arrest and suppress evidence.

¶ 18 Defendant contends, nevertheless, that the observation of an exchange of unidentified items does not support probable cause to believe that a drug transaction has occurred, citing *People v. Oliver*, 368 Ill. App. 3d 690, 697 (2006), *People v. Moore*, 286 Ill. App. 3d 649, 653 (1997), *People v. Holliday*, 318 Ill. App. 3d 106, 111 (2001), *People v. Blake*, 268 Ill. App. 3d 737, 738, 741 (1995), and *People v. Stewart*, 217 Ill. App. 3d 373, 375 (1991). We have examined these cases and find them factually inapposite to the case at bar. In *Oliver*, 368 Ill. App. 3d at 698, probable cause was found lacking where the surveillance officer could not assess who was giving what to whom, and in *Moore*, 286 Ill. App. 3d at 651, the same result was obtained where the officer saw what appeared to be an exchange of money, but he could not

observe who was giving or receiving the money, or if anything else was exchanged. In *Holliday*, 318 Ill. App. 3d at 111, the officer could not see what was exchanged in an observation lasting one to two seconds and made from a moving car; in *Blake*, 268 Ill. App. 3d at 738, 741, the officer could not see what was exchanged; and in *Stewart*, 217 Ill. App. 3d at 375, the officer could not see what was exchanged or between whom. Here, by contrast, Officer Reeves clearly observed defendant receiving money from a man who approached him on the street in a high narcotics activity area and tendered an unknown item from a plastic bag concealed in his right jacket pocket.

¶ 19 We have also examined *People v. Byrd*, 408 Ill. App. 3d 71 (2011), and *People v. Trisby*, 2013 IL App (1st) 112552, cited by defendant, and find that neither alter our conclusion in this case. In *Byrd*, 408 Ill. App. 3d at 77, this court held that there was no probable cause to believe that a single hand-to-hand transaction involved the sale of contraband, where the officer did not see what was exchanged, or question the alleged buyer; and in *Trisby*, 2013 IL App (1st) 112552 at ¶¶ 15, 17, this court held that there was no probable cause for a warrantless search where the officer saw defendant take money from an unknown woman in a high crime area, but was unable to identify the object passed.

¶ 20 As set forth above, the supreme court has repeatedly stated that whether probable cause exists in a given case is governed by commonsense considerations, the calculation of which concerns the probability of criminal activity, that does not require a showing that the belief that the suspect has committed a crime be more likely true than false. *Hopkins*, 235 Ill. 2d at 477, citing *Jackson*, 232 Ill. 2d at 275. Applying this reasonableness standard to the totality of the particular facts and circumstances presented to the officers in the case at bar at the time defendant was apprehended, we conclude that the officers had probable cause to effectuate

defendant's arrest (*Hopkins*, 235 Ill. 2d at 477), and accordingly hold that the trial court did not err in denying defendant's motion to quash arrest and suppress evidence. *Jackson*, 232 Ill. 2d at 275. We therefore affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.