2017 IL App (1st) 170802-U

SIXTH DIVISION
Order filed: December 8, 2017

No. 1-17-0802

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 16 CR 18672
	)	
CLIFTON TAYLOR,	)	Honorable
	)	James B. Linn,
Defendant-Appellee.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: We reverse and remand the matter for further proceedings where the circuit court erred in granting the defendant's motion to quash his arrest and suppress the evidence against him.

¶ 2 The State appeals from the circuit court's order granting the defendant, Clifton Taylor's, motion to quash his arrest and suppress the evidence against him. The State argues that the circuit court improperly granted the defendant's motion because the encounter between the defendant and the police officers was a consensual field interview. For the following reasons, we reverse and remand this cause for further proceedings.

¶ 3 Due to an incident that occurred on November 30, 2016, and which is described in detail *infra* ¶ 4, the defendant was charged by indictment with two counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(2), (a)(3)(A-5) (West 2016)).

¶ 4 On February 15, 2017, the defendant filed a motion to quash his arrest and suppress the evidence against him, alleging that he was subject to an unreasonable seizure because police officers arrested him without a search or arrest warrant and did not have probable cause that he had committed, or was about to commit, a crime. At the hearing on the motion, Officer Castellon testified that, on November 30, 2016, he was patrolling with his two partners—all of them were dressed in plain clothes—when he received call reporting the sale of narcotics near 1720 West Arcade Place in Chicago. When the officers arrived at that location, they observed the defendant "stepping out" of his vehicle; he was alone, his car was legally parked, and he was not committing any crimes. Approximately five seconds after first seeing the defendant, the officers approached him without their guns drawn. According to Officer Castellon, he did not believe that the defendant was involved in the alleged drug activity; instead, the officers wanted to conduct "a field interview to see if he had any information" regarding the call. When asked what happened next, Officer Castellon stated that, "[a]s a matter of practice, we always asks [*sic*] anybody we talk to if they have any weapons on them for officer safety." In response to this question, the defendant admitted that he was carrying a gun on the right side of his body and that, although he had a firearm owner's identification card, he did not have a concealed carry license. One of Officer Castellon's partners, Officer Brian Hunt, then recovered the gun from the defendant's person. Until then, none of the officers had touched the defendant. Officer Castellon further testified that they did not yell at the defendant while interacting with him.

¶ 5 The circuit court granted the defendant's motion to quash and suppress. In so holding, the court noted that it found Officer Castellon's testimony to be "credible and compelling." The court went on to explain:

> "[Officer Castellon] responds to a call about narcotics being sold at a certain location. He goes there. He doesn't see anything indicative of narcotics. He does see [the defendant] getting out of a car. At that point, there was no indication that [the defendant] may have been the subject of the call. He thought maybe a witness to something.
>
> The first thing he asked him is, ['']Do you have a gun,['] or, ['']Do you have anything—any weapons on you?['] And the conversation then changed to a weapons investigation of [the defendant], as opposed to anything about narcotics."

¶ 6 On March 1, 2017, the State filed a motion to reconsider. At the hearing on the motion, the State argued that the encounter between the defendant and the three officers was consensual and, thus, did not violate the fourth amendment of the United States Constitution (U.S. Const., amend. IV). The circuit court denied the motion, explaining that "[t]here was not any scintilla of evidence that [the defendant] was involved in any kind of narcotics activity whatsoever."

¶ 7 The State now appeals.

¶ 8 On appeal, the State argues that the circuit court erred in granting the defendant's motion to quash his arrest and suppress the evidence against him because a seizure did not occur until after the police officers learned that the defendant possessed a gun without a concealed carry license. We agree.

¶ 9 A circuit court's decision on a motion to quash arrest and suppress evidence presents both questions of law and fact. *People v. Williams*, 2016 IL App (1st) 132615, ¶ 32. The factual

findings of the circuit court are given great deference and a reviewing court will not disturb those findings unless they are against the manifest weight of the evidence. *Id.* "At a hearing on a motion to quash and suppress evidence, the [circuit] court is responsible for determining the credibility of the witnesses, weighing the evidence, and drawing reasonable inferences therefrom." *Id.* The actual ruling on the motion, however, raises a question of law that we review *de novo*. *Id.*

¶ 10 The fourth amendment of the United States Constitution and article I, section 6, of the Illinois Constitution afford people the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6; *People v. Timmsen*, 2016 IL 118181, ¶ 9. "The touchstone of the fourth amendment is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.' " *Timmsen*, 2016 IL 118181, ¶ 9 (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)). "It is well settled that not every encounter between the police and a private citizen results in a seizure." *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006) (citing cases). Rather, encounters between police officers and citizens fall into one of the following three tiers or categories: "(1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or '*Terry* stops,' which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) encounters that involve no coercion or detention and thus do not implicate fourth amendment interests." *Id.* The third tier is a consensual encounter and does not constitute a seizure under the fourth amendment. *Id.*

¶ 11 In this case, the critical issue is *when* the seizure occurred. The State contends that the encounter between the police and the defendant was a consensual field interview until the officers learned that the defendant was carrying a gun without a concealed carry license. The defendant, on the other hand, contends that the officers seized him immediately. Neither party

disputes that the officers had probable cause to arrest the defendant once he admitted that he was carrying a firearm.

¶ 12 A seizure occurs " '[o]nly when [an] officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen[.]' " *Florida v. Bostick*, 501 U.S. 429, 434 (1991) (quoting *Terry*, 392 U.S. at 19). When a person's movement is hindered, the appropriate test in determining whether a seizure has occurred is "whether a reasonable person in [the] defendant's position would have believed he was free to decline [the officer's] requests or otherwise terminate the encounter." *Luedemann*, 222 Ill. 2d at 551. When a person's movement is not restrained, however, the test is "whether a reasonable innocent person would feel free to leave under the circumstances." *Williams*, 2016 IL App (1st) 132615, ¶ 37. The "analysis requires an objective evaluation of the police officer's conduct, not the subjective perception of the person involved." *Id.*

¶ 13 In determining whether a seizure occurred, courts consider the following four factors, which were established in *United States v. Mendenhall*, 446 U.S. 544 (1980): "(1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person; or (4) using language or tone of voice compelling the individual to comply with the officer's requests." *People v. Almond*, 2015 IL 113817, ¶ 57. If one of these factors is absent, it is "highly instructive" as to whether a defendant was seized. *Luedemann*, 222 Ill. 2d at 554.

¶ 14 We find that, in this case, the second, third, and fourth *Mendenhall* factors are absent. There was no evidence that, when they first arrived at the scene, Officer Castellon and his partners displayed their weapons, touched the defendant, or used language or tones of voice indicating that compliance with any request was required. The defendant, however, contends

that the circuit court did not err in granting the motion to quash arrest and suppress evidence because the first *Mendenhall* factor "along with other circumstances indicating coercive police behavior" were present and establish that he was seized before he admitted that he possessed a gun. According to the defendant's argument, three officers, who were conveying "a sense of urgency and compulsion[,]" approached him while he was getting out of his car; thus, "physically hemm[ing]" him against it. The defendant goes on to argue that the first question that the officers asked him "had an accusatory cast" and that there was no testimony showing that "casual exchange was taking place" or that he was not being investigated for criminal wrongdoing. We find that the record does not support these arguments and the first *Mendenhall* factor is absent. Although the presence of three officers may have been *subjectively* threatening to the defendant, there is no evidence suggesting that the officers approached the defendant in an *objectively* threatening manner.

¶ 15 We initially note that the record is scant—Officer Castellon was the only witness called at the hearing on the motion and his testimony is a mere seven pages of transcript. On to finding that the evidence does not support the defendant's arguments: first, we find that, other than Officer Castellon's testimony that the officers approached the defendant five seconds after first seeing him, there was no evidence indicating that the officers conveyed a sense of urgency or compulsion. For example, they did not turn on their emergency lights or run towards the defendant. Second, there is nothing in the record that establishes how the officers or the defendant were positioned during the encounter or that the defendant was "physically hemmed" against his vehicle. Even if the defendant was standing against his car when the officers approached him, in *Almond*, our supreme court rejected a similar argument by explaining: "Nor is there any evidence that [the officer] 'backed' [the] defendant into the wall. To the contrary, [the officer] testified that [the] defendant and the other men were already next to a wall at the

back of the store when [he] arrived. [The officer] simply walked to their location." *Almond*, 2015 IL 113817, ¶ 61. The same is true here; the officers walked to the defendant's location in order to converse with him. Third and finally, the record rebuts the defendant's assertion that the officers "had an accusatory cast" in immediately asking him if he had a gun and that there was nothing indicating that he was not being investigated for criminal wrongdoing. Officer Castellon testified that he did not believe the defendant was a suspect in the sales of narcotics and that, as a matter of officer safety, he asks civilians if they possess weapons. See *People v. Lopez*, 229 Ill. 2d 322, 331, 351 (2008) (In determining whether the defendant was seized the court noted, *inter alia*, that one of the officers testified that the "defendant was not considered a suspect at the time" he was asked to go to the police station "and was not the target of the detective's investigation."); but see *In re Tyreke H.*, 2017 IL App (1st) 170406, ¶ 54 ("the officer's subjective motivation, and his or her reason for stopping a citizen—suspicion of a crime, to ask a question, perhaps to perform a community caretaking function—are irrelevant to the question of whether a seizure occurred."). There is no testimony regarding how Officer Castellon phrased the question or what tone he used. Moreover, our court has previously held that "[t]he police have the right to approach citizens and ask potentially incriminating questions, and an officer does not violate the fourth amendment merely by approaching a person in public to ask questions if the person is willing to listen." *People v. Fields*, 2014 IL App (1st) 130209, ¶ 21. We, therefore, find that the first *Mendenhall* factor is absent.

¶ 16 The defendant relies on two cases from a foreign jurisdiction—*Hill v. State*, 39 So. 3d 437, 440 (Fla. Dist. Ct. App. 2010), and *State v. Dixon*, 976 So. 2d 1206, 1209 (Fla. Dist. Ct. App. 2008)—in support of his argument that the manner in which the officers approached him indicated that the first *Mendenhall* factor was present and that their encounter was not consensual; however, there is Illinois case law on point. See *People v. Kveton*, 362 Ill. App. 3d

822, 836 (2005) ("the nature of the officers' arrival and Officer Klecka's immediate accusation of wrongdoing conveyed a sense of gravity and urgency that made [the] defendant reasonably believe that he was the target of a drug investigation and was not free to leave."); *People v. Thomas*, 315 Ill. App. 3d 849, 857 (2001) ("Had the defendant stopped when his path was obstructed, had he submitted to Officer Melton's show of authority, a seizure of the kind offensive to our constitution would have occurred."). "Although comparable decisions from other jurisdictions may be considered for their persuasive value, '[w]hen there is Illinois case law directly on point, we need not look to case law from other states for guidance,' [because] we have our own precedent to follow." *In re A.C.*, 2016 IL App (1st) 153047, ¶ 47 (quoting *Kostal v. Pinkus Dermatopathology Laboratory, P.C.*, 357 Ill. App. 3d 381, 395 (2005)).

¶ 17 Although several officers approached the defendant, we find that there were no *Mendenhall* factors or other coercive actions present in this case and a reasonable person would not have felt that he was not free to leave under the circumstances. Therefore, the circuit court erred in granting the defendant's motion to quash his arrest and suppress the evidence against him, and we reverse and remand the matter for further proceedings.

¶ 18 Reversed and remanded.