2019 IL App (1st) 171733-U

No. 1-17-1733

Third Division
September 30, 2019

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 16 CR 16434
DERIEON THOMAS,	)	Honorable James Linn,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court did not err in denying defendant's motion to quash arrest and suppress evidence where the police had reasonable suspicion to believe that defendant was in unlawful possession of a handgun and probable cause existed for his arrest. The trial court did not err in denying defendant's request for discovery on the informant.

¶ 2 Following a bench trial, defendant, Derieon Thomas, was found guilty of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1) (West 2016)), predicated on his failure to possess a Firearm Owner's Identification (FOID) card or a conceal carry license, and sentenced to two years imprisonment. On appeal, defendant argues that the trial

court erred by denying: (1) his motion to suppress evidence where there was no reasonable suspicion justifying a *Terry* stop, (2) his motion to quash arrest where there was no probable cause for the arrest, and (3) discovery regarding the credibility of the confidential informant. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was arrested on October 15, 2016 and charged by indictment with ten counts of AUUW based on his possession of a handgun. Prior to trial, defendant filed a motion to quash arrest and suppress evidence, arguing *inter alia* that: (1) the anonymous tip was not reliable enough to provide a sufficient basis for a *Terry* stop; (2) if the encounter between defendant and the officers was a *Terry* stop, handcuffing defendant was not a reasonable method of restraint; (3) that defendant was arrested when he was placed in handcuffs and searched; (4) carrying a firearm without additional statutory factors is not a crime which would provide probable cause for an arrest; and (5) officers did not have probable cause for an arrest prior to the protective pat-down.

¶ 5 At the hearing on defendant's motion, the trial court heard testimony from defendant and Chicago police officer Warner. Defendant testified that he was 18 years old and not currently in school, but he previously attended classes at Ada S. McKinley. On October 15, 2016, at approximately 3 p.m., defendant was with two friends in the area of 53rd Street and May Street in Chicago. Defendant was wearing blue jeans, a gray hoodie, and blue shoes that day. He testified that he was carrying a gun in his boxer briefs, which was covered by his hoodie. As defendant was walking westbound on 53rd Street with his friends, an unmarked dark blue "Crown Vic" drove towards them. The car was moving fast and stopped approximately four feet in front of them. Defendant testified that when the car stopped, three police officers

dressed in street clothes and vests exited the vehicle and ran towards the group. The officers did not say anything or identify themselves as police. According to defendant, approximately four seconds passed after the car stopped and before he started to run southbound through an alley. Defendant's friends ran in the opposite direction. The officers split up to pursue them.

¶ 6 Defendant testified that one officer pursued him on foot and told him to stop running or he would shoot. Defendant fell a few times during the chase and jumped over a gate before hiding under a porch to catch his breath. From under the porch, defendant saw the same unmarked police car that had stopped in front of him earlier pull up nearby. The second officer exited the car and ran towards the porch. Defendant testified that he tried to get back under the porch but the second officer "grabbed" him by the front of his shirt and "slammed [him] down on the floor on [his] face." The officer asked defendant why he was running and defendant did not respond. The officer placed his knees on defendant's neck while he was facing down on the ground and handcuffed him. Defendant testified that he did not feel free to leave because the officer was "handling [him] rough." Defendant stayed on the ground for approximately a minute.

¶ 7 The officers searched defendant's pockets and patted around his leg and waist but did not find a gun. Defendant testified that the gun had fallen down to his left ankle. The officers stood defendant up and held onto him from both sides. They began walking him towards the car when one of the officers noticed a bulge in defendant's pants leg. The officers did not say anything and pushed defendant to the ground, pulled his pants to his ankle, and found a gun.

¶ 8 On cross-examination, defendant stated that he recognized the unmarked car was a police car. He was wearing tight jeans that day and carried the gun in his boxer briefs without a holster. As he saw the police, the gun fell down to the leg of his pants.

¶ 9 On redirect, defendant testified that although the gun was in his boxer briefs, it was not securely in place. Defendant clarified that the gun did not just suddenly fall down when the officers arrived. Rather, it was "slipping around" while he was walking down the street.

¶ 10 Officer Warner testified that he was assigned to the Organized Crime Gang Investigations unit. On October 15, 2016, around 3 p.m., he was working near the area of 5300 South May Street in Chicago, Illinois. Officer Warner received a call from a citizen that a black male wearing a gray hoodie and blue jeans was carrying a gun. The citizen wished to remain anonymous. Officer Warner and other officers drove around the area to follow up on the tip. From the passenger seat of the car, he observed defendant walking westbound from 53rd Street and May Street. Defendant matched the description that was provided earlier. Officer Warner did not see any other black male wearing a gray hoodie and blue jeans in that area.

¶ 11 Officer Warner testified that the officers were on the street and defendant was on the sidewalk. They were approximately 20 to 30 feet away when Officer Warner observed defendant adjust his waistband. Officer Warner also saw defendant look over his left shoulder and then look back at them while adjusting his waistband. Officer Warner then exited the vehicle and as he opened the car's door, he saw an outline of what he believed to be a handgun in the "left inner thigh panel" of defendant's "tight fitted" skinny jeans. Defendant fled and Officer Warner pursued him southbound, then westbound through an alley. As Officer Warner pursued defendant, he was still able to see the outline of what appeared to be a gun. He also observed that defendant's pants were "way down" and "the object was swaying from moving around his inner left thigh." Officer Warner caught up with defendant and Officer Castillo assisted him. Officer Castillo conducted a protective pat-down search of defendant and felt what he believed to be a gun. Officer Castillo remarked that it

was a "gun" and recovered a semiautomatic handgun from the left inner thigh of defendant's pants.

¶ 12 On cross-examination, Officer Warner testified that he first saw defendant through the car's windshield. Officers Castillo, Eric Yale, and Craig Burton were also in the car. They were driving eastbound and defendant was walking westbound on 53rd Street. Defendant was walking alongside a group of three to five young men and was the only one wearing a gray hoodie and blue jeans. Defendant was not wearing an oversized hoodie but one that stopped at his waist. The men were not running but were walking towards them and did not appear to be doing anything illegal. The officers pulled over and before exiting the car, Officer Warner observed defendant look left over his shoulder to an alley. According to Officer Warner, these were clues for an exit. In other words, it indicated that defendant was "looking for a way to exit, a way to go, to flee." Defendant looked back at the officers and was simultaneously adjusting his waistband.

¶ 13 Officer Warner then saw defendant run but did not notice if the other men ran too. Officer Warner testified that he pursued defendant because he was the only person matching the description that the officers were given and because of defendant's actions prior to the stop, such as defendant looking over his shoulder and adjusting his waistband. Officer Warner remained 15 to 20 feet behind defendant as he chased him, but eventually caught up when defendant was detained by Officer Castillo. Officer Castillo tackled defendant to the ground and handcuffed him. Officer Castillo then performed a protective pat-down search while defendant was on the ground. During the pat-down, a gun was recovered from defendant's inner thigh. The officers never asked defendant how old he was or whether he had a permit for a gun or possessed a FOID card. After the search, defendant was stood up

and taken to the police car. The officers did not ask him if he had a permit for the gun until they brought him to the police station.

¶ 14 Officer Warner also testified on cross-examination that the tip he received did not come through dispatch. Rather, he was contacted on his cell phone by a "concerned citizen." The tipster did not identify themselves or provide any contact information. Nor did the tip include information such as the name, height, and weight of the suspect. The tipster only gave a clothing description and information as to when the tipster saw the suspect. Officer Warner could not recall whether he was told the suspect's age. Officer Warner believes he spoke to the tipster again, likely that same day.

¶ 15 Officer Warner explained that he hands out cards, some with his name on them and some without, and "people will call." The card includes his cell number, or a department phone number. Officer Warner knows who is giving information by the individual's voice and "because they call." Officer Warner also explained that he knows the number of the individual calling from the caller ID. Officer Warner could look and contact the people who called again. Officer Warner also indicated that the tipster in this case was a confidential informant registered with a logbook and other information.

¶ 16 Officer Warner was also cross-examined regarding the discrepancy between the police report he drafted that same day and what he had testified to in court. Officer Warner drafted a gang investigation and supplemental report, where he referred to the tipster as a concerned citizen instead of a "registered CI" or confidential informant. Officer Warner also acknowledged that "to a point" registered CI's with the Chicago police department have records of what tips they give, which are used to verify that the information is reliable. Defense counsel then requested the court for a hearing because there was missing discovery

regarding the records for the confidential informant. The trial court denied defendant's request for hearing, stating "the way this testimony is going I am not sure it matters. But you impeached him to a degree. I'll acknowledge that."

¶ 17 Following arguments, the trial court denied defendant's motion to suppress. The trial court found the testifying officer to be a more credible and compelling witness than defendant. The court noted that that the tip was from a registered informant and the registered informant had given information before, as acknowledged by Officer Warner. The court noted that even if the tip was "more as described in the police report just a tip from some anonymous source," the officers had enough information. The court found it significant that the officers were not only alerted to somebody dressed as defendant was that day but the officers also observed defendant from a distance while still in their car. Specifically, they saw defendant looking over his shoulder and looking where the police officer believed to a possible escape route. Moreover, the officers saw "an adjustment of the waist and as [defendant] start[ed] to flee; they [saw an] outline of the gun. All before a seizure happened." Based on the totality of these facts, the trial court denied defendant's motion, finding that there was no fourth amendment violation.

¶ 18 On March 14, 2017, defendant filed a motion to reconsider. On April 4, 2017, the trial court denied the motion. The court found that the argued issues were identical to the arguments raised in defendant's motion to suppress. The court held "[t]his is not just a stop because of flight. It's not just because of a tip. It's not just because of a bulge. It's because all three happened at the same time." The court further considered defendant's age, stating "I will add that his age looked way too young to think that he had a concealed carry card on him."

¶ 19 The parties then proceeded to a stipulated bench trial and defendant was found guilty. On May 24, 2017, the trial court sentenced defendant to two years in the Illinois Department of Corrections. Defendant now appeals.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant argues that the trial court erred in denying his motion to quash arrest and suppress evidence. Defendant contends that his encounter with police officers on October 15, 2016 was not a valid *Terry* stop because it was not consensual, the officers' tip was not sufficiently reliable, and the officers lacked reasonable suspicion that he was engaged in criminal activity, and thus, his constitutional rights were violated. Alternatively, defendant argues that he was arrested without probable cause. Defendant further emphasizes that mere possession of a firearm is not a crime. Finally, defendant argues that the trial court erred in denying discovery on the credibility of the confidential informant.

¶ 22 The State responds that the trial court properly denied defendant's motion to squash arrest and suppress evidence because the officers had reasonable suspicion of criminal activity based on the information they received as well as the officer's observations of defendant. The State further argues that "[a]fter the officers conducted a proper patdown search for officers' safety, the[y] recovered a handgun; providing probable cause to arrest defendant."

¶ 23 A. Standard of Review

¶ 24 A trial court's ruling on a motion to quash arrest and suppress evidence presents both a question of law and fact. *People v. Williams*, 2016 IL App (1st) 132615, ¶ 32. Accordingly, we apply a two-part standard of review. *People v. Almond*, 2015 IL 113817, ¶ 55. Under this standard, we afford great deference to the trial court's factual findings and will not disturb

those findings unless they are against the manifest weight of the evidence. *Id.* This deferential standard of review is "premised upon the reality that the [trial] court is in 'a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in the witnesses' testimony.'" *People v. Gherna*, 203 Ill. 2d 165, 175 (2003)(quoting *People v. Gonzalez*, 184 Ill. 2d 402, 412 (1998)). However, the trial court's ultimate finding of whether the evidence should be suppressed is subject to *de novo* review. *People v. Holmes*, 2017 IL 120407, ¶ 7. Therefore, we remain "'free to engage in [our own] assessment of the facts in relation to the issues presented and may draw [our own] conclusions when deciding what relief should be granted.'" *People v. Gherna*, 203 Ill. 2d 165, 175-76 (2003)(quoting *People v. Crane*, 195 Ill. 2d 42, 51 (2001)).

¶ 25 B. Reasonable Suspicion

¶ 26 Both the fourth amendment to the United States Constitution and article I, section 6, of the Illinois Constitution guarantee the right of individuals to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. The fourth amendment imposes a "standard of reasonableness upon the exercise of discretion by law enforcement officers to safeguard the privacy and security of individuals against arbitrary invasions." *People v. McDonough*, 239 Ill. 2d 260, 266-67 (2010). As such, "reasonableness under the fourth amendment generally requires a warrant supported by probable cause." *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 13. However, there are exceptions to the warrant requirement. Our supreme court has recognized three types of police-citizen encounters that do not constitute an unreasonable seizure. These encounters include: (1) arrests, supported by probable cause; (2) brief investigative detentions, or "*Terry* stops," supported by a reasonable, articulable suspicion of criminal activity; and (3) encounters

involving neither coercion nor detention, known as consensual encounters. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006).

¶ 27 As an initial matter, we must determine when defendant was seized, as the fourth amendment is not implicated until a "seizure" occurs. *People v. Thomas*, 198 Ill. 2d 103, 110-11 (2001). "[A] person is 'seized' only when, by means of physical force or a show of authority, his freedom of movement is restrained." *United States v. Mendenhall*, 446 U.S. 544, 553 (1980). In other words, a seizure occurs "if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Id.* at 554. Here, defendant ran after seeing the officers. As such, he did not yield to authority and was not yet seized for purposes of the fourth amendment. See *California v. Hodari D.*¸ 499 U.S. 621, 626 (1991) (holding that with respect to a show of authority, a seizure does not occur if the subject does not yield to it). Rather, defendant was seized when he was tackled and a pat-down search was conducted. *Mendenhall*, 446 U.S. at 553 (providing examples of situations which would be deemed seizures, including "some physical touching of the person"). Having determined the point at which defendant was seized, our inquiry turns to whether, at that point, the police officers had properly stopped defendant pursuant to *Terry*.

¶ 28 The type of encounter at issue here is a *Terry* stop. In *Terry v. Ohio*, 392 U.S. 1, 27 (1968), the United States Supreme Court held that an officer may, within the parameters of the fourth amendment, conduct a brief, investigatory stop of a individual when the officer has a reasonable, articulable suspicion of criminal activity, such that it amounts to more than a mere "hunch." Defendant contends that the officers did not have reasonable suspicion to justify a *Terry* stop. Defendant argues that the tip provided to Officer Warner was

"anonymous" and was not sufficiently reliable as it contained "only innocent descriptive details." Defendant further contends that the officers lacked reasonable suspicion because mere observation of a "bulge" or handgun does not in itself, without any evidence of a crime, establish reasonable suspicion for a *Terry* stop. Lastly, defendant argues that the stop also cannot be justified by defendant's flight alone. Defendant examines all these facts in isolation, arguing that each of these individual factors were insufficient to justify a *Terry* stop. We disagree with his approach and conclusion.

¶ 29 Reasonable suspicion may exist even if each fact alone is "susceptible to innocent explanation." *United States v. Arvizu*, 534 U.S. 266, 267 (2002). The validity of such a stop rests upon the totality of the facts or circumstances known to the officer at the time of the stop. *People v. Adams*, 225 Ill. App. 3d 815, 818 (1992). "[T]otality of the circumstances includes both facts and any reasonable inferences drawn from those facts." *In re Edgar C.*, 2014 IL App (1st) 141703, ¶ 98. "The officer does not have to personally observe the commission of a crime to make a stop; rather, [the officer] is required to possess enough facts which lead him to 'reasonably conclude in light of experience that criminal activity may be afoot,' and that this particular individual may be involved." *Id.* ¶ 99 (citing *Terry*, 392 U.S. at 30). As such, we will look at the facts as a whole rather than consider each one in isolation.

¶ 30 Officer Warner testified that at the time he got out of the car and pursued defendant, his suspicion was based on three facts: (i) defendant was the only person in the area matching the description provided by the tip; (ii) defendant was adjusting his waistband and looking over his shoulder; and (iii) his observation of a gun's outline in defendant's tight jeans. Defendant argues that the tip provided to Officer Warner was not sufficiently reliable to create reasonable suspicion. In doing so, defendant mischaracterizes the trial court's holding and

states that the trial court treated the tip as anonymous. On the contrary, the trial court noted that the tip was from a registered informant and the registered informant had given information before, as acknowledged by Officer Warner. The court then noted that even if the tip was "just a tip from some anonymous source," the officers had enough information. Defendant argues that the trial court's ruling was erroneous as the facts relied upon to corroborate the tip were "innocent details" that did not predict any future behavior or provide any indication that defendant was engaged in criminal activity.

¶ 31 Under certain circumstances, "an informant's tip may provide police officers with reasonable suspicion to effectuate a proper *Terry* stop." *People v. Salinas,* 383 Ill. App. 3d 481, 491 (2008). "Informants' tips, like all other clues and evidence coming to a policeman on the scene may vary greatly in their value and reliability." *Adam v. Williams,* 407 U.S. 143, 147 (1972). In *Illinois v. Gates*, 462 U.S. 213 (1983), the United States Supreme Court held that the value of an informant's tip is derived from the totality of the circumstances, which includes the informant's veracity, reliability, and basis of knowledge. However, the Supreme Court cautioned against a "rigid" application where "each element [is] understood as entirely separate and independent requirements." *Gates,* 462 U.S. at 230. The Supreme Court held that a "deficiency in one may be compensated *** by a strong showing as to the other." *Id.* at 233. Though *Gates* dealt with probable cause, the Court subsequently noted that the same factors are relevant to a reasonable suspicion determination. See *Alabama v. White,* 496 U.S. 325, 328-29 (1990).

¶ 32 In determining "whether an informant's tip provides reasonable suspicion, it is important to consider the informant's reliability as well as the quality and content of the information" provided by the informant. *Salinas,* 383 Ill. App. 3d at 492. Even where a police officer

receives information from an identified informant, some corroboration or other verification of the reliability of the information is required. *Sanders*, 2013 IL App (1st) 102696, ¶ 15. A tip that includes predictive information and readily observable details will be deemed more reliable if the details are confirmed or corroborated by the police. *Id.* In addition, the tip must be "'reliable in its assertion of illegality.'" *People v. Henderson*, 2013 IL 114040, ¶ 26 (quoting *Florida v. J.L.*, 529 U.S. 266, 272 (2000)).

¶ 33 Here, Officer Warner received a tip that a black male, wearing a gray hoodie and blue jeans was carrying a gun. Although the tipster did not identify themselves or provide any contact information, Officer Warner testified that it was a confidential informant. He further indicated that this informant had previously given information. The tip included a clothing description as well as information as to when the informant saw the suspect. The tip also provided that the suspect was at 53rd Street and May Street. However, the tip did not include other identifying information such as the suspect's name, height, and weight. Therefore, we find that the information provided by the tip lacked sufficient detail.

¶ 34 "[W]here the information lacks sufficient detail and the informant does not claim to have witnessed any criminal activity, the information is not reliable without corroboration." *Salinas*, 383 Ill. App. 3d at 492. As such, we must determine whether the information provided by the tip was corroborated. Here, Officer Warner, along with other officers, arrived at the identified location within "a minute or two" after receiving the tip. The officers spotted defendant walking westbound on 53rd Street. Although there were other people in the area, defendant was the only one who matched the description. Officer Warner also saw an outline of a gun in defendant's tight jeans. Thus, the details provided by the informant were confirmed and corroborated by the officer's observations.

¶ 35 Having determined that the tip was reliable in its readily observable details, the question is whether it was reliable in its assertion of illegality. Defendant argues that the tip failed to provide reasonable suspicion of criminal activity, as simply possessing a firearm is not a crime. Citing *People v. Aguilar*, 2013 IL 112116, ¶ 16-22, he asserts that "[s]ince at least 2013, it has been established in Illinois that merely possessing a gun in public is not categorically a crime." Although mere possession of a firearm is not a crime itself, the fact that the officers were not aware of defendant's lack of a FOID card or concealed carry license, which ultimately formed the basis for the charges against him, is not dispositive given defendant's furtive and evasive behavior combined with his efforts to conceal the handgun.

¶ 36 In *People v. Gomez*, this court held that an investigative detention was valid even though the officers had no knowledge of whether the person suspected of possessing a gun was a convicted felon or otherwise lacked a FOID card. 2018 IL App (1st) 150605, ¶¶ 29-30. There, a passenger in a parked vehicle "slouched down" and made continued movements to cover his waist. This court noted that "defendant's furtive behavior and repeated efforts to conceal the weapon provided the officers with reasonable suspicion that defendant was not in lawful possession of the firearm." *Id.* ¶ 30. Here, Officer Warner observed what appeared to be an outline of a gun in defendant's tight jeans and saw defendant adjust his waistband simultaneously as he saw the officers. Officer Warner also observed defendant look over his shoulder for a possible escape route and run away upon seeing the officers. See *People v. Harris*, 2011 IL App (1st) 103382, ¶ 12 (providing that another relevant factor in deciding whether under the totality of the circumstances, the police have reasonable suspicion to justify a *Terry* stop is a person's evasive behavior, such as unprovoked flight from the

police). Accordingly, the totality of these factors supports Office Warner's reasonable suspicion that defendant was not in lawful possession of the gun and the *Terry* stop was justified.

¶ 37 We further note that defendant has requested this court to consider a Ninth Circuit case as additional authority. Defendant asks this court to apply the rationale and draw comparisons between this case and the Ninth Circuit's decision in *United States v. Brown*, 925 F.3d 1150 (9th Cir. 2019). We find *Brown* to be inapposite. In *Brown*, the Ninth Circuit held that "[t]he combination of almost no suspicion from [a] tip [of an anonymous tipster who reported that a young, black man had a gun] and [the defendant's] flight does not equal reasonable suspicion." *Id.* at 1153–54. Here, as discussed, we have a much higher degree of suspicion than in *Brown*; the tip, officer's observation of what appeared to be an outline of a gun, defendant adjusting his waistband simultaneously as he saw the officers, defendant looking over his shoulder for a possible escape route, and the eventual flight upon seeing the officers.

¶ 38 C. Probable Cause for Arrest

¶ 39 Defendant contends that when he was tackled and handcuffed by the police, this conduct amounted to an arrest as opposed to a *Terry* detention. As such, defendant argues that probable cause, a higher standard than reasonable suspicion, must exist for his arrest which the officers lacked. See *People v. Timmsen,* 2016 IL 118181, ¶ 9 (providing that reasonable articulable suspicion is a less demanding standard than probable cause).

¶ 40 "[T]here is no brightline test for distinguishing between a lawful *Terry* stop and an illegal arrest." *People v. Arnold,* 394 Ill. App. 3d 63, 70 (2009) (quoting *United States v. Glenna,* 878 F. 2d 967, 971 (7th Cir. 1989)). Restraint can be used to facilitate a *Terry* stop as it "would be paradoxical to give police the authority to detain pursuant to an investigatory stop

yet deny them the use of force that may be necessary to make that detention." *People v. Starks*, 190 Ill. App. 3d 503, 509 (1989). However, a "restriction of movement that is brief may amount to an arrest rather than a *Terry* stop if it is accompanied by use of force usually associated with an arrest, unless such use of force was reasonable in light of the circumstances surrounding the stop." *People v. Johnson*¸ 408 Ill. App. 3d 107,113 (2010). Furthermore, handcuffing does not automatically convert a *Terry* stop into an arrest, if the circumstances surrounding the stop show that the use of handcuffs was reasonably necessary to effectuate the stop and foster safety of others. *People v. Daniel*, 2013 IL App (1st) 111876, ¶¶ 39-40. The use of handcuffs is not justified on grounds of officer safety where police have no indication that the individual may be armed. *Johnson*¸408 Ill. App. 3d at 113.

¶ 41 Here, Officer Warner testified that he received a tip regarding an individual carrying a gun, defendant matched that description, and an outline of what appeared to be a gun was observed on defendant's person on two separate occasions: (1) as officers exited their vehicle; and (2) when officers pursued defendant. This indicated to the officers that defendant was armed and remained armed. Therefore, the use of handcuffs was necessary to foster safety of the officers. The officers' conduct of tackling defendant in order to effectuate the *Terry* stop was also reasonable. Defendant testified that as he was pursued, he was told to stop but he continued to run away. Defendant fell twice but continued to evade the officers, hopped over a gate, and then hid under a porch. In light of the extensive chase between the officers and defendant, the tackling of defendant to effectuate the *Terry* stop was reasonable. Accordingly, the act of handcuffing and tackling defendant was proper within the bounds of the *Terry* stop and did not constitute an arrest requiring probable cause at that point. Additionally, we note that the recovery of the gun was also proper as it was found within the course of a valid *Terry* stop and for the purpose of ensuring

officers' safety. We find that the evidence is admissible given that the gun was recovered from the defendant during a valid *Terry* stop and not an illegal arrest.

¶ 42 Our inquiry then turns to whether the officers had probable cause to arrest defendant after the recovery of the gun. An officer has probable cause to arrest a suspect 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 suspect has committed a crime. *People v. Jackson*, 408 Ill. App. 3d 107,112 (2010). The existence of probable cause depends on the totality of the circumstances at the time of the arrest. *People v. Love*¸199 Ill. 2d 269, 279 (2002). The standard to determine whether probable cause exists is the probability of criminal activity, not proof beyond a reasonable doubt. *People v. Lee*, 214 Ill. 2d 476, 485 (2005).

¶ 43 In the present case, the officers could have attempted to find out whether defendant had a FOID card or a concealed carry license but the officers did not do so right away. Had the officers asked defendant questions about a FOID card or license immediately, there would have been a strong showing of probable cause. Instead, the defendant testified that he was asked why he was running; a question to which defendant did not respond. Defendant was later asked questions pertaining to a permit when he was brought to the police station. Nevertheless, we find that the officers had probable cause based on the totality of the circumstances. Here, the officers received an informant tip describing an individual carrying a gun as well as the location the individual could be found. The officers arrived at the location and observed defendant who was the only person in the area matching that description. An important consideration here is that the officers arrived at the identified location within minutes of receiving the tip. Additionally, the observation of a gun's outline as well as defendant's actions upon seeing the police such as adjusting his waistband, looking

for a possible escape route, immediate flight, and recovery of a gun, in totality, are facts that indicated the probability that defendant was in illegal possession of a gun. Therefore, these facts combined gave police probable cause to arrest defendant.

¶ 44 C. Discovery on Informant

¶ 45 Lastly, defendant argues that the trial court erred in denying discovery regarding the confidential informant when it was revealed during the suppression hearing that the tip was provided by a "confidential informant" as opposed to a "concerned citizen" as stated in the police report. Defendant argues that he was unable to ascertain "whether the informant was identified, paid, informing the police for personal gain, or otherwise accountable for the information provided in the tip" and therefore, the trial court should have granted his discovery request.

¶ 46 A trial court's decision to limit discovery is reviewed for an abuse of discretion. *People v. Arze*, 2016 IL App (1st) 131959, ¶ 109. A trial court abuses its discretion when its decision is "fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it" or "where no reasonable man would take the view adopted by the trial court." *People v. Kladis*, 2011 IL 110920, ¶ 23. It appears that defendant solely seeks discovery for the purpose of determining whether the informant was "paid" or "identified." However, an "informant's classification as a citizen informant or a paid informant is 'unimportant.'" *Salinas*, 383 Ill. App. 3d at 492 (citing *People v. Nitz*, 371 Ill. App. 3d 747, 752 (2007) (recognizing that "[c]ourts no longer employ rigid presumptions based on the distinction between citizen informants and paid informants")). Furthermore, an informant's reliability is one factor, among many, in a totality of the circumstances' analysis. As previously discussed, the officers did not solely rely on the tip and the trial court also considered various factors,

aside from the tip, stating "the way that this testimony is going," it does not matter. Therefore, permitting discovery for the purpose of ascertaining whether the informant was identified or paid does not advance defendant's argument and the trial court did not abuse its discretion in limiting discovery by denying defendant's request.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 49 Affirmed.