2014 IL App (2d) 130265-U
No. 2-13-0265
Order filed March 10, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 12-CM-3697
CARLOS HERNANDEZ,	)	Honorable Brian J. Diamond,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Pat-down search of defendant was constitutionally permissible where officer had probable cause to arrest defendant for operating a bicycle without a headlight in a public school parking lot.

¶ 2 Defendant, Carlos Hernandez, appeals an order of the circuit court of Du Page County denying his motion to suppress evidence (and quash his arrest) that, he asserts, was obtained as the result of an illegal search. Specifically, during the course of a pat-down search, a small metal pipe and less than 2.5 grams of cannabis were discovered in defendant's possession. For the reasons that follow, we affirm.

¶ 3 The facts of this case are relatively straight-forward. The only witness to testify at the hearing on defendant's motion was Officer Troy Kern. Kern testified that he was on duty at about 1 a.m. on August 23, 2012. He observed defendant riding his bicycle through a school parking lot. The bicycle did not have a headlight. Kern stated that there had been burglaries in the area, but he could not recall being advised of any criminal activity occurring that night. Kern testified that he stopped defendant because the bicycle had no headlight, the school was closed, and there had been burglaries in the area. Kern did not cite defendant regarding the absence of a headlight on his bike.

¶ 4 Kern testified that he did not suspect defendant possessed any narcotics. When asked whether he feared for his safety, he replied that defendant did have "a little bit of an attitude" and he emphasized that he was investigating what he deemed to be a "suspicious person."

¶ 5 During cross-examination, Kern stated that it was dark when he confronted defendant and that he was alone. When he initiated the stop, defendant said that he "wasn't doing anything wrong." Defendant was "being a little loud, boisterous and it seemed like [he was] a little upset that I detained him." However, Kern felt that defendant was "not overly aggressive" (later clarifying that defendant "wasn't really mad or yelling, but he was upset"). The following colloquy then took place between Kern and the prosecutor:

> "Q. But when he was speaking loud, at any point did you have concern that there might be a safety issue for yourself?
>
> A. Possibly.
>
> Q. Yes or no?
>
> A. I guess no."

¶ 6 The prosecutor then asked whether Kern was "concerned that there might be a safety issue for the school having somebody lurking around the area?" Kern responded affirmatively. He also answered affirmatively when the State inquired whether that was the reason he conducted the pat-down. Kern then testified that during the pat-down, he felt an object that, from his experience as a police officer, he recognized to be a "marijuana smoking pipe." Kern asked defendant "if it was a bowl." Defendant stated that it was. Kern then arrested defendant.

¶ 7 The trial court then ruled as follows:

> "First of all, the standard is objective, and so I think the officer had probable cause. It's 1:00 in the morning. The defendant is seen leaving the vicinity of the church building. The officer indicated he is trespassing on school property at that time, also that he is operating his vehicle without a headlight in violation of [a] statute. I think at this juncture the officer had probable cause to arrest. Whether or not he actually cited him for those offenses or not, I think his search under the circumstances was justified under the law, so I'm going to deny the motion at this juncture."

We review the trial court's findings of historical fact using the manifest-weight standard and whether the search was constitutional based on the properly-found facts *de novo*. *People v. Prinzing*, 389 Ill. App. 3d 923, 931-32 (2009). We ultimately agree with the trial court.

¶ 8 However, we also agree with defendant that this search cannot be justified as a pat-down search in the course of a *Terry* stop. Recently, our supreme court explained when a pat-down search is permissible:

> "Ultimately, the *Terry* Court held that when a police officer observes unusual conduct that reasonably leads him to conclude criminal activity may be afoot and the individual he is dealing with is armed and presently dangerous, the officer is permitted to

> stop the individual and make reasonable inquiries. If, however, 'nothing in the initial stages of the encounter serves to dispel [the officer's] reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.' The Court also indicated that courts reviewing the propriety of these types of investigatory stops must decide each case on its own unique facts." *People v. Colyar*, 2013 IL 111835, ¶ 37 (quoting *Terry v. Ohio*, 392 U.S. 1, 30-31 (1968)).

A number of important points are set forth in this paragraph. In the first sentence, the court states that even if the officer suspects an individual is "armed and presently dangerous," an officer's first step is to stop the individual and make reasonable inquiries. Only if such reasonable inquiries fail to dispel the officer's suspicion may the officer conduct a pat-down search. Moreover, the individual must be "presently dangerous." Finally, our supreme court notes that cases such as this one are *sui generis*.

¶ 9 Here, by his own testimony, Kern conceded that he did not fear for his own safety. Of course, whether a seizure is justified is assessed using an objective standard (*People v. Close*, 238 Ill. 2d 497, 505 (2010)); however, to the extent an officer's subjective perception of the situation sheds light on what a reasonable officer would believe under the circumstances, it may be considered (see *People v. Thomas*, 80 Ill. App. 3d 1121, 1125 (1980) ("Although an objective analysis of the situation confronting the officer is the standard generally used, a court cannot ignore an acknowledgement by the police officer that the arrest was based merely on suspicion.")). Moreover, aside from a general claim about burglaries in the area, which in itself

would not justify a stop (*People v. Jackson*, 2012 IL App (1st) 103300, ¶ 22 (citing *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000)), nothing suggests that defendant was armed or dangerous.

¶ 10 Finally, the ultimate rationale proffered by the State—that defendant may have been dangerous to the school in some way—would amount to an unprecedented expansion of an officer's ability to conduct a pat-down search. Justifying a search on such a relatively general and nonspecific concern about crime control would go beyond *Terry's* bounds that an individual may be stopped where it is reasonable to suspect that he or she has committed, is committing, or is about to commit a crime. *Jackson*, 2012 IL App (1st) 103300, ¶ 16. It is unclear from what facts a reasonable officer would conclude that defendant was in some way *presently* dangerous to the unoccupied school, much less how anything in defendant's possession that Kern might have discovered during the search would have constituted such a danger. In any event, the State sets forth no authority finding reasonable suspicion to exist on similar grounds. In short, a reasonable person in Kern's position would not reasonably suspect defendant was armed and presently dangerous.

¶ 11 Nevertheless, we uphold the trial court's judgment, as the search in this case is justifiable as a search incident to arrest. The trial court found that probable cause existed to arrest defendant for two offenses, trespassing and operating a vehicle without a headlight. Having reviewed the statutes addressing trespassing, it is unclear to us that defendant's conduct falls within any of them. See 720 ILCS 5/21-2 *et seq.* (West 2012). However, the undisputed facts indicated that defendant was operating a bicycle that did not have a headlight, which is a traffic offense in accordance with section 11-1507 of the Illinois Vehicle Code (Code). 625 ILCS 5/11-1507 (West 2012). Failure to obey this provision is a petty offense. 625 ILCS 5/11-202 (West 2012).

¶ 12 At oral argument, the question arose as to whether section 11-1507 of the Code applied, as defendant was stopped in a school parking lot rather than on a road. Section 11-1507, by its own terms, is not limited to roadways: "Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light." 625 Ill. 2d 5/11-1507 (West 2012). However, section 11-1502 of the Code states that "[e]very person riding a bicycle upon a highway *** shall be subject to all of the duties applicable to the driver of a vehicle by this Code." 625 Ill. 2d 5/11-1502 (West 2012).

¶ 13 Assuming, *arguendo*, that this provision limits the application of section 11-1507 to highways, the statute applies to defendant nevertheless. The Code defines "highway" as follows: "The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel or located on public school property." 625 ILCS 5/1-126 (West 2012). Defendant was, of course, stopped in a school parking lot.

¶ 14 Defendant contends that there is no evidence in the record indicating that the parking lot he was stopped in belonged to a *public* school. The State asks that we take judicial notice of the fact that Georgetown Elementary School is, in fact, public. It is well-established that we can take judicial notice of "readily verifiable facts" where it will facilitate the efficient resolution of a case, even where judicial notice was not sought before the trial court. *Aurora Loan Services, LLC v. Kmiecik*, 2013 IL App (1st) 121700, ¶ 37. This principle has been applied to information obtained on the internet. See *People v. Crawford*, 2013 IL App (1st) 100310, ¶ 118 n. 9 (citing *People v. Clark*, 406 Ill. App. 3d 622, 633-34 (2010)). A search of the term "Georgetown Elementary" leads to an elaborate web page with links to information about Georgetown Elementary School. See http://georgetown.ipsd.org/ (last visited March 6, 2015). It states that

Georgetown Elementary School is part of "Indian Prairie School District 204." See http://georgetown.ipsd.org/ (last visited March 6, 2015). The school district is a public entity. See *Board of Education of Indian Prairie School District No. 204 v. Du Page County Election Comm'n*, 341 Ill. App. 3d 327, 329 (2003). As such, we notice the fact that Georgetown Elementary School is a public school.[1]

¶ 15 Since probable cause to arrest defendant existed, the search was permissible. In *People v. Brannon*, 2013 IL App (2d) 111084, ¶ 23, this court held:

> "Based on this evidence, the officers had probable cause, prior to the search of defendant's jacket pocket, to arrest defendant for willfully failing or refusing to comply with a lawful order or directive, in violation of section 11–203 [of the Illinois Vehicle Code]. Because they had the authority to arrest him for a petty offense, they could conduct a search of his person. Therefore, the search of the jacket pocket, whether a frisk or otherwise, was valid."

In this case, Kern had probable cause to arrest defendant for a violation of another section of the Illinois Vehicle Code. The violation of both the section at issue here and the one at issue in *Brannon* constituted a petty offense. Accordingly, as in *Brannon*, Kern could conduct a search incident to his authority to arrest defendant for a petty offense (see also *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001)). Moreover, he could do so before he actually arrested defendant (see

[1] We further note House Resolution 1042 of the 97th General Assembly, which "[c]ongratulates Molly Martin on her retirement as a music educator," states, "WHEREAS, In 1993, she began teaching music in Indian Prairie School District 204 in Naperville, first at Patterson Elementary School, where she taught for 18 years, and later at Georgetown Elementary, where she taught for one year."

People v. Kolichman, 218 Ill. App. 3d 132, 142-43 (1991)) and regardless of whether he subsequently arrested defendant for the offense for which probable cause initially existed (*People v. Rossi*, 102 Ill. App. 3d 1069, 1073 (1981) ("Finally, the fact that the arrest of defendant did not take place before the search and was not for the original offenses does not vitiate the existence of probable cause for the search incident to arrest.")).

¶ 16 As such, the trial court correctly ruled that once probable cause existed to arrest defendant for the petty offense of operating a bicycle at night without a head lamp (625 ILCS 5/11-1507 (West 2012)), Kern could conduct a search incident to his authority to arrest. We therefore affirm the trial court's judgment.

¶ 17 Affirmed.