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No. 3–09–0454

Order filed July 29, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellee,	)	Peoria County, Illinois,
	)	
v.	)	No. 08–CF–731
	)	
GREGORY EUGENE DAVIS,	)	Honorable
	)	James E. Shadid,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE CARTER delivered the judgment of the court.  
Justices McDade and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not err in denying the defendant's motion to quash arrest and suppress evidence.

¶ 2 The defendant, Gregory E. Davis, was indicted for unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2008)) and unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2008)). The defendant filed a motion to quash arrest, citing a lack of probable cause. The defendant also sought to

suppress evidence discovered as a result of his arrest. The trial court denied the defendant's motion. Following a stipulated bench trial, the defendant was convicted of both charges and sentenced to 15 years in prison. The defendant appeals, arguing that his conviction was based on unlawfully obtained evidence. We affirm.

¶ 3

#### FACTS

¶ 4 On June 20, 2008, the defendant was charged by information with unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2008)) and unlawful possession of a controlled substance (720 LCS 570/402(a)(2)(A) (West 2008)). The defendant pled not guilty to the charged crimes and filed a motion to quash his arrest and suppress evidence.

¶ 5 The trial court heard the defendant's motion on March 25, 2009. At the hearing, Officer John Couve testified that he and several other officers executed a search warrant at 2411 North Flora Avenue, Peoria. Prior to executing the search warrant, Couve stated that he observed a dark-colored Chevrolet Malibu pull into the alley behind the residence. This vehicle departed approximately 30 minutes later. Thereafter, the search warrant was executed, and police uncovered slightly less than one ounce of cocaine. An individual was arrested at the residence and agreed to become a confidential source (CS).

¶ 6 Couve testified that the CS "stated [his] supplier's name was Greg, gave a description of Greg, and stated that earlier [Greg] was driving a dark-colored Malibu and delivering cocaine around Peoria area." The CS identified the defendant as "Greg," his cocaine supplier, from a booking photograph. The CS told Couve that the defendant usually delivered cocaine to him at the 2411 North Flora Avenue address. Couve testified that this was the first time the CS had

provided information to the police.

¶ 7 Relying on the CS's statements, Couve searched the police database and discovered the defendant's address was 210 East Thrush Avenue, Peoria. Couve then assigned Officer Erin Barisch to conduct surveillance on the address. Barisch told Couve that he observed the defendant standing in front of the address and a dark gray Chevrolet Malibu parked nearby.

¶ 8 Couve also had the CS set up a controlled delivery of cocaine to the 2411 North Flora Avenue address. Couve listened in as the CS called the defendant from the police station to arrange the delivery. Following the call, the CS told Couve that the defendant would be leaving his residence and traveling to 2411 North Flora Avenue. The CS stated that Couve would arrive "within a short amount of time" but did not provide a specific time. In the intervening time, other police officers began surveillance on the defendant's home address and at 2411 North Flora Avenue.

¶ 9 Sergeant Jerry Bainter testified that he was the main surveillance officer at 2411 North Flora Avenue on the day of the defendant's arrest. Bainter stated that Barisch observed a dark-colored Chevrolet Malibu leave 210 East Thrush Avenue and drive towards North Flora Avenue. Thereafter, Bainter observed the defendant park his vehicle in front of 2411 North Flora Avenue. Upon arriving there, the defendant exited his vehicle and walked towards the front door of the residence. Police then moved in and arrested the defendant. Bainter stated that the officers ordered the defendant to the ground and placed him in handcuffs. The defendant was compliant throughout the arrest.

¶ 10 Bainter testified that he reapproached the handcuffed defendant and asked him "if he had anything illegal on him[.]" The defendant purportedly replied that he had a package of cocaine in

his pocket and permitted the evidence officer to remove it. The subsequent search uncovered cocaine in a "couple of pockets, and \*\*\* also a large amount of currency in one of the [defendant's] pockets."

¶ 11 During direct examination by the State, Bainter agreed that it was "common for people \*\*\* involved in the distribution of drugs to possess firearms" and to "possess other weapons, [such as] knives[.]" Bainter stated that his investigation did not reveal that the defendant carried a weapon. However, a handgun and ammunition were discovered at the defendant's residence when police executed a search warrant after his arrest.

¶ 12 Following the hearing, the trial court denied the defendant's motion to quash arrest and suppress evidence. The defendant then agreed to a stipulated bench trial and was found guilty of both counts. The defendant was sentenced to 15 years in prison. The defendant appeals.

¶ 13 ANALYSIS

¶ 14 The defendant argues on appeal that the trial court erred in denying his motion to quash arrest and suppress evidence because the police lacked probable cause to arrest him.

Furthermore, he contends that the evidence uncovered after his arrest was the fruit of an unlawful search and an interrogation conducted without *Miranda* warnings.

¶ 15 It is undisputed that the police did not have an arrest warrant or search warrant. Additionally, the State concedes that the defendant was under arrest at the time the evidence was discovered on his person. Thus, we limit our analysis to the legality of the defendant's arrest and the evidence discovered subsequent to his arrest.

¶ 16 When reviewing a motion to suppress, we accord great deference to the factual findings of the trial court and reverse them only if they are against the manifest weight of the evidence.

*People v. Cosby*, 231 Ill. 2d 262 (2008). We review the ultimate issue of whether the evidence should be suppressed *de novo*. *Id.*

¶ 17 A warrantless arrest must be supported by probable cause. *People v. Wear*, 229 Ill. 2d 545 (2008). An officer has probable cause to arrest when "the facts known to [him] 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 563; see also 725 ILCS 5/107–2(1)(c) (West 2008).

¶ 18 A confidential informant may provide probable cause to arrest an individual if the informant's tip proves reliable. *People v. Tisler*, 103 Ill. 2d 226 (1984). A trial court must look to the totality of the circumstances to establish an informant's reliability. *Illinois v. Gates*, 462 U.S. 213 (1983). In conducting this analysis, an informant's veracity, reliability and basis of knowledge are highly relevant. *Id.* However, these factors are not separate and independent requirements for a probable cause finding. *Id.* Rather, *Gates* instructs us that "probable cause is a fluid concept." *Id.* at 232. An informant's reliability may be established by independent corroboration of the information provided to police. *People v. Wilson*, 45 Ill. 2d 581 (1970).

¶ 19 In the present case, information from the CS provided probable cause to arrest the defendant. Although the CS was a first time informant, he possessed first-hand knowledge, having been involved in prior criminal activity with the defendant. See *People v. Sparks*, 315 Ill. App. 3d 786 (2000) (credibility of an informant's tip is bolstered by the informant's involvement in criminal activity with the defendant). Further, police corroborated the CS's statements that the defendant was driving a dark-colored Chevrolet Malibu, and would arrive at his residence to deliver cocaine a short time after he made the delivery call. The CS also accurately described the defendant's physical appearance, which was verified when he selected the defendant's photograph

out of a booking lineup. In light of the totality of these circumstances, the CS's tip provided probable cause to arrest the defendant.

¶ 20 We further find that the cocaine and currency found on the defendant after his arrest was lawfully seized in a search incident to arrest. 725 ILCS 5/108–1 (West 2008). Therefore, the trial court did not err in denying defendant's motion to suppress the evidence found on the defendant's person at the time of his arrest.

¶ 21 We next examine the defendant's contention that his post-arrest statement that he had cocaine in his pocket was the result of an unlawful interrogation. Despite the defendant's argument, we find that his postarrest statement had little bearing on the discovery of the evidence on his person, which was the result of a search incident to a lawful arrest. Alternatively, the defendant's statement that he had cocaine in his pocket was lawfully obtained under the public safety exception to the *Miranda* warning requirement. *New York v. Quarles*, 467 U.S. 649 (1984). Although Bainter did not specifically ask the defendant if he had a weapon on him, the record indicates that it was not uncommon for individuals like the defendant to carry weapons. The record supports this presumption, as the subsequent search of the defendant's home discovered a gun and ammunition. Consequently, the defendant's postarrest statement was lawfully obtained under the public safety exception.

¶ 22 Finally, we find that the evidence obtained at the scene provided probable cause for the court to issue a search warrant for the defendant's home. See 725 ILCS 5/108–3 (West 2008). Therefore, the evidence discovered in the defendant's home was lawfully obtained. As a result, we affirm the trial court's denial of the defendant's motion to quash arrest and suppress evidence.

¶ 23

## CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 25 Affirmed.