2012 IL App (3d) 110537-U

Order filed June 20, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Whiteside County, Illinois,
Plaintiff-Appellant,	)	
	)	Appeal Nos. 3-11-0537 and 3-11-0850
v.	)	Circuit No. 10-CF-440
	)	
DANIEL M. PATTERSON,	)	Honorable John L. Hauptman,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justice Carter concurred in the judgment.
Presiding Justice Schmidt dissented.

ORDER

¶ 1 *Held:* The arresting officer did not have reasonable suspicion to stop the vehicle in which the defendant was a passenger.

¶ 2 Defendant, Daniel M. Patterson, was charged with aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1) (West 2010)) after the car in which he was riding was stopped by a Whiteside County sheriff's deputy. The trial court granted defendant's motion to quash arrest and suppress evidence. On appeal, the State argues that the arresting officer had reasonable suspicion

to stop the vehicle that defendant was riding in. We affirm.

¶ 3 FACTS

¶ 4 On January 11, 2011, defendant was charged by information with aggravated unlawful use of a weapon. On March 23, 2011, defendant filed a motion to quash arrest and suppress evidence.

¶ 5 On June 30, 2011, the matter proceeded to a hearing on defendant's motion. Sergeant John Booker of the Whiteside County sheriff's department testified that on December 26, 2010, around 5:30 p.m. he received a call from Darby Brown, a resident of Tampico. Brown reported that he had observed "suspicious activity" at the house of David Gibbons across the street. In particular, an unidentified man wearing a cowboy hat had run out the front door, and a window in the home had been damaged. Brown had not seen how or by whom the damage to the window had been done and did not tell Booker when it might have happened. The man in the cowboy hat reportedly left the scene in a blue colored car with an Arizona license plate, number "AJW 3000[.]" Brown requested that the police investigate.

¶ 6 While en route to Tampico, Booker received a call from Sergeant Bruce Franks of the Prophetstown police department. According to Booker, Franks told him that a Daniel Patterson, who was possibly the person Brown had seen run out of the house, had been telling people in the Tampico area that he carried a gun at all times. Franks further told Booker that there was a custody or visitation issue between Gibbons and his former wife and Patterson was somehow involved. However, their conversation was not in depth because Booker was trying to respond to the house.

¶ 7 When Booker arrived at the residence, he noticed that a window had been detached from

the residence as if it "had been knocked out of the *** house[.]" Booker knocked on the door, and Gibbons answered. Gibbons stated that he did not see the damage to the window occur and provided little other relevant information. Booker left the residence and patrolled the area for the blue car Brown had described.

¶ 8 Booker saw a car that matched the description that Brown had provided two blocks from the Gibbons residence. Booker made an investigative stop and found that the vehicle was registered to Daniel Patterson. Booker instructed the driver, who smelled strongly of alcohol, to get out of the vehicle and put his hands on the trunk lid. He then asked the passenger, who was wearing a cowboy hat, if he was Daniel Patterson. The passenger stated that he was, and Booker instructed him to put his hands on the dash. Booker saw a gun in Patterson's right hip area. When asked, Patterson acknowledged that he had a firearm. Booker took the gun and ordered him out of the car and into the prone position.

¶ 9 Franks testified that he heard Booker was headed to the Gibbons residence in Tampico on December 26, 2010. Franks had previous information that he thought might be relevant to Booker's investigation, namely that Gibbons' former wife was Patterson's fiancee. Franks testified that he explained to Booker that Patterson had told Lexi Alborn and Gibbons that if anybody interfered with Gibbons' daughter, whom Gibbons had fathered with Patterson's fiancee, then "somebody is going to get killed and he had a gun." Alborn told Franks that she had not seen a gun.

¶ 10 The trial court granted defendant's motion to quash arrest and suppress evidence. The court found that the vehicle defendant was riding in had not violated any traffic laws, and concluded, based on expressed factual findings, that Booker had no reasonable, articulable

suspicion that criminal activity had occurred which would justify the stop. The State appeals.

¶ 11 ANALYSIS

¶ 12 The State argues that defendant's motion to quash arrest and suppress evidence should not have been granted because Booker had reasonable suspicion to stop the car that defendant was riding in.

¶ 13 We apply a two-part standard of review to a trial court's ruling on a motion to quash arrest and suppress evidence. *People v. Hopkins*, 235 Ill. 2d 453 (2009). First, we will defer to the trial court's findings of fact, unless they are against the manifest weight of the evidence. *Id*. Second, we review the court's ultimate determination of whether the evidence should be suppressed *de novo*. Id.

¶ 14 The fourth amendment of the United States Constitution and article I, section 6, of the Illinois Constitution protect citizens from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Generally, a police officer must obtain a warrant, supported by probable cause, before he may search persons or property. *People v. James*, 163 Ill. 2d 302 (1994). However, in *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court found that it is in the public interest to allow police officers a limited ability to seize individuals for an investigatory stop. See also 725 ILCS 5/107-14 (West 2010). Such stops need not be supported by probable cause so long as an officer has reasonable suspicion based upon specific and articulable facts that a person has committed, or is about to commit a crime. *People v. Brownlee*, 186 Ill. 2d 501 (1999). This doctrine extends to the investigative stop of a vehicle. See *People v. Fenner*, 191 Ill. App. 3d 801 (1989).

¶ 15 In the instant case, Booker did not have reasonable suspicion to stop the car that

defendant was riding in. First, the record does not contain any evidence that the driver had committed a traffic violation that would give rise to the stop. Second, the information Booker received from Brown's call or his subsequent discussion with Gibbons did not reasonably indicate that a crime had previously taken place at the Gibbons residence. Brown only told Booker that he had observed suspicious activity that consisted of a damaged window and defendant running out of the residence – through the front door and not the window – and getting into a blue car with Arizona license plates. At the residence, Gibbons answered the door, clearly showing that he was alive. When asked about his demeanor, Booker reported that Gibbons appeared intoxicated and unforthcoming but did not indicate that he seemed distraught, upset, or injured in any way. Gibbons provided no additional information to Booker that suggested defendant had committed a criminal offense or even that a crime had been committed. Finally, the information Booker received from Franks was reported differently by the two officers when they testified. We note, as did the trial court, that Booker's testimony that Franks told him defendant carried a gun at all times was not corroborated by Franks' testimony.

¶ 16 The trial court made the following factual findings, to which we defer because they are not against the manifest weight of the evidence. Having received Darby Brown's report of what Brown believed to be "suspicious activity," it was reasonable for Booker to respond and to investigate. He spoke to Gibbons and the "bottom line [was] that he didn't provide any information." The court opined that Booker could clearly drive around and look for the Arizona car, but he could only stop it if given a reason. The judge noted that, at that point, Booker had no reasonable, articulable suspicion that a crime had been, was being, or might be committed.

¶ 17 He then considered whether a reasonable, articulable suspicion developed when Booker

got the additional information about Patterson from Sgt. Franks, and concluded that it did not. The court summarized that information as "vague," noting that it was unclear when Franks had received it and that the information itself amounted to defendant being somehow interested in a custody dispute involving Gibbons, and there were "I will call them threats" of something that might happen at some later time if the custody result displeased him or his girlfriend. The trial court also stated that although Sgt. Franks had heard from someone who heard defendant say he had a gun, the officer acknowledged that neither he nor the informant had seen it.

¶ 18 Overall, we find that the court's factual findings are not contrary to the manifest weight of the evidence. Since there was not enough evidence to generate a reasonable, articulable suspicion that defendant had committed or was about to commit a criminal offense to warrant the stop, the trial court did not err in quashing the defendant's arrest and suppressing the evidence garnered through that arrest.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Whiteside County is affirmed.

¶ 21 Affirmed.

¶ 22 PRESIDING JUSTICE SCHMIDT, dissenting:

¶ 23 The majority correctly notes that traffic stops, such as the one at issue, "need not be supported by probable cause, so long as an officer has reasonable suspicion based upon specific and articulable facts that a person has committed, or is about to commit a crime." *Supra* ¶ 14. Nevertheless, it concludes that "Booker did not have reasonable suspicion to stop the car that defendant was riding in" due to the fact that "the information Booker received *** *did not reasonably indicate* that a crime had previously taken place at the Gibbons' residence."

(Emphasis added.) *Supra* ¶ 15. In arriving at this conclusion, the majority drives past certain Illinois Supreme court cases.

¶ 24 In *People v. Close*, 238 Ill. 2d 497 (2010), our supreme court noted that, in a traffic stop scenario, a "police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. [Citation.] The officer's suspicion must amount to more than an inarticulate hunch [citations], but need not rise to the level of suspicion required for probable cause. [Citation.] In judging the police officer's conduct, we apply an objective standard: would the facts available to the officer at the moment of the seizure *** warrant a man of reasonable caution in the belief that the action taken was appropriate? [Citations.]" (Internal quotation marks omitted.) *Close*, 238 Ill. 2d at 505. Our supreme court has further articulated this principle by noting that, "[r]easonable suspicion exists when articulable facts which, taken together with the rational inferences from those facts, *** warrant a reasonably prudent officer to investigate further." (Internal quotation marks omitted.) *People v. Lampitok*, 207 Ill. 2d 231, 255 (2003).

¶ 25 The majority ignores the reasonable inferences that the officer was entitled to draw from the information he received. At the time of the stop, Booker knew from the neighbor (Brown's) call that suspicious activity occurred at the Gibbons' residence. He knew a window had been broken at the residence and possessed a detailed description of a vehicle driven from there. He knew someone wearing a cowboy hat ran from the residence and got into the vehicle before it left. He knew defendant was involved in a custody dispute with Gibbons.

¶ 26 Booker also received information from Sergeant Franks that defendant had made threats against Gibbons, telling people that he had a gun, had a domestic issue involving Gibbons and

would use the gun. Franks informed Booker that Franks believed defendant, involved in the Gibbons' custody dispute and the threat against Gibbons, was a suspect in relation to the suspicious activity and broken window at the Gibbons' residence. Having identified defendant as a suspect, and knowing that defendant said he had a gun, Franks called Booker out of concern for officer safety to let him know that there may be a gun involved in the situation to which Booker was responding. Booker possessed the information contained in the call from Franks, and provided by the neighbor, before he ever arrived at the Gibbons' residence.

¶ 27 Once at the Gibbons' residence, he observed the broken window as reported by the neighbor. He attempted to gather more information from Gibbons, who he knew was on probation. Gibbons, smelling of alcohol, was less than forthcoming. Booker believed Gibbons was not truthful when Gibbons denied knowing anything about the broken window.

¶ 28 With Gibbons unwilling to provide any further information, Booker thought it prudent to investigate further by patrolling for the suspect vehicle. At the time Booker found and stopped the suspect vehicle in which defendant was riding, he believed defendant was a suspect in the incident reported by the neighbor Brown. Booker knew defendant might be armed, was in an ongoing domestic dispute with a man whose house defendant just fled, that defendant had previously threatened that man and that there was significant unexplained property damage to that residence. Booker also knew that the property damage was significant enough to cause a neighbor to call the police.

¶ 29 I find that these facts would warrant a reasonably prudent officer to investigate further. There was evidence that would lead a reasonable officer to believe that matters between Gibbons and defendant were escalating. Would we have the officer wait until after a shooting to

investigate? There was more than ample evidence to support an investigatory stop of defendant's vehicle. A reasonable officer might very well think that by stopping defendant, talking with him and letting him know that he is "Suspect Number 1" in the event any misfortune befall Gibbons, the likelihood of a more serious event would be greatly reduced. It is in the public interest to have the police investigate this type of situation before a shooting. The cornerstone of the fourth amendment is reasonableness. *Scott v. U.S.*, 436 U.S. 128, 138 (1978). Based upon the information available to this officer, the stop was more than reasonable. As such, the trial court erred when finding officer Booker possessed "no information" justifying the stop and subsequently suppressing the evidence which resulted from the stop.