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2015 IL App (3d) 130088-U

Order filed January 12, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

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| THE PEOPLE OF THE STATE OF |) | Appeal from the Circuit Court |
| ILLINOIS, |) | of the 10th Judicial Circuit, |
| |) | Peoria County, Illinois, |
| Plaintiff-Appellee, |) | |
| |) | Appeal No. 3-13-0088 |
| v. |) | Circuit No. 12-CF-232 |
| |) | |
| JAMES ROGERS, |) | Honorable |
| |) | Stephen A. Kouri, |
| Defendant-Appellant. |) | Judge, Presiding. |

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court properly denied defendant's motion to quash arrest and suppress evidence; and (2) the matter is remanded to the trial court with directions to recalculate the monetary charges incorporated into defendant's sentence.

¶ 2 Defendant, James Rogers, was charged with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)). The trial court denied defendant's pretrial motion to quash arrest and suppress evidence. Following a stipulated bench trial, the court found defendant guilty of unlawful possession of a weapon by a felon and was sentenced to two years' imprisonment in

the Department of Corrections (DOC). Defendant appeals, arguing that the trial court improperly denied defendant's motion to quash, and challenging certain fines, fees, and financial penalties incorporated into his sentence as void. We affirm the judgment and remand with directions.

¶ 3

FACTS

¶ 4

Shirley King reported a possible ongoing criminal trespass to the police at the Lynn Terrace Apartments (Apartments) in Peoria, Illinois, at approximately 5 p.m. on February 29, 2012. King, a resident at the Apartments, did not have management authority. When the police responded to King's report, Peoria police officer Brian Sylvester spoke with both King and Elizabeth McCoy at the scene. McCoy told Sylvester she was the apartment manager. McCoy and King described the trespasser as an African American man named James who was over 30 years of age and wearing a black coat. McCoy informed Sylvester that James had been evicted from the apartment complex and had been previously notified of his eviction. Sylvester shared the relevant information by police radio with other responding officers, including Officer Derek Harwood. Harwood observed a man walking out the back door of the apartment complex. Harwood noticed the man, later identified as defendant, matched the description of the trespassing suspect and approached the suspect. After stopping to speak to the officer, defendant stated he was not the person Harwood was looking for and when asked, defendant told Harwood his name was James.

¶ 5

After this brief conversation, Harwood handcuffed defendant and searched his person. Harwood discovered a bag of marijuana and seven nine-millimeter bullets. Harwood asked defendant if he had a gun to go along with the bullets, and defendant replied that he had a gun in his backpack. Harwood placed defendant under arrest for criminal trespass to property,

aggravated unlawful use of a weapon, unlawful possession of a weapon by a felon, possession of a controlled substance, possession of a weapon without a valid firearm owner identification (FOID) card, and possession of cannabis. On March 1, 2012, the State filed a criminal information charging defendant with the offense of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)). On March 13, 2012, an indictment was filed charging defendant with unlawful possession of a weapon by a felon.

¶ 6 Prior to his trial on the merits, defendant filed a motion to quash his arrest and suppress the evidence. During the hearing on defendant's motion, defendant testified that he resided at the Apartments on February 29, 2012. Someone named John was the apartment manager, rather than McCoy. According to defendant, McCoy's only duty with respect to the apartment complex was to clean out the apartments when they became vacant. Defendant explained that he did not have John's phone number and contacted McCoy when he wanted to get in contact with John. Defendant informed John that defendant was a month behind on his rent. John told defendant not to worry about it. Defendant explained he did not receive notice or go to court with respect to an eviction. Consequently, on February 29, 2012, defendant believed he was allowed on the premises at the Apartments, and he had a valid lease on his person.

¶ 7 Defendant advised the court that when he walked out of the apartment complex on February 29, 2012, he saw a police officer. The officer asked defendant his name, and defendant told the officer he was James Rogers. The officer told defendant they received a complaint that defendant was trespassing. The officer immediately put defendant in handcuffs and began searching him. During the search, the officer found marijuana, ammunition, and a gun. Sylvester and Harwood also testified regarding the events of February 29, 2012, which resulted in defendant's arrest for multiple offenses, including criminal trespass.

¶ 8 The trial court denied defendant's motion to quash arrest and suppress evidence, finding that, under the totality of the circumstances, the officer reasonably relied on the information provided by McCoy and placed defendant under arrest for trespassing. The trial court later denied defendant's motion to reconsider that ruling.

¶ 9 Defendant chose to have a stipulated bench trial to preserve his right to appeal the trial court's decision with regard to the motion to suppress. During the bench trial, defense counsel stipulated to the evidence presented at the hearing on the motion to suppress. Based on the stipulated evidence, the court found the defendant guilty of unlawful possession of a weapon by a felon and sentenced him to serve two years' imprisonment in the DOC.

¶ 10 When announcing the sentence to be imposed, the court did not verbally announce the imposition of either costs, fines, or other monetary fees. A preprinted sentencing order bearing the court's signature indicates "costs" would be assessed against defendant. The record contains a "case payments" sheet stating various fines, fees, and costs that were assessed against the defendant, but this form is not signed by the court. The "case payments" sheet did not include a monetary presentence custody credit against fines. Defendant appeals.

¶ 11 ANALYSIS

¶ 12 On appeal, defendant raises two issues. The first issue pertains to the lawfulness of his arrest. The second issue involves the propriety of the financial consequences included in defendant's punishment.

¶ 13 First, defendant argues the police lacked a valid basis for conducting a *Terry* frisk of defendant. Consequently, he contends the objects discovered during the search of his person should have been suppressed by the trial court. For purposes of this appeal, the State concedes that there was no basis for conducting a *Terry* frisk of defendant.

¶ 14 Defendant also contends on appeal that the police did not have probable cause to arrest defendant at the time he was handcuffed and searched. Consequently, the trial court should have granted the motion to quash arrest and suppress evidence due to the lack of probable cause to arrest defendant for trespassing. The State contends that this case involves a proper search incident to arrest because the police had probable cause to arrest defendant for criminal trespass at the time of the search.

¶ 15 A police officer may arrest an individual only if the officer has reasonable grounds, or probable cause, to believe that the individual has committed or is committing a crime. *People v. Lee*, 214 Ill. 2d 476, 484 (2005). Thus, “the existence of probable cause depends upon the totality of the circumstances at the time of the arrest.” *People v. Love*, 199 Ill. 2d 269, 279 (2002). The determination of whether police had probable cause to arrest the defendant is based on facts known to the police at the time of arrest. *Id.* Probable cause is an objective rule, and an officer’s subjective belief that probable cause existed is not determinative. *Lee*, 214 Ill. 2d at 484.

¶ 16 When an informant or complainant is a private citizen, an officer may generally rely on information obtained from the private citizen. *People v. Jebelian*, 204 Ill. App. 3d 11, 14 (1990). (“In determining whether probable cause exists, an officer may rely on a private citizen’s tip without independently verifying the citizen’s reliability.”) “Factors adding to [the reliability of the tip of a citizen informant] include whether the information was independently corroborated and whether the citizen informant gave his name, witnessed the reported offense, or offered to sign a complaint.” *People v. Miller*, 2014 IL App (2d) 120873, ¶ 23. However, even in the case of an identified informant, a minimum of corroboration or other verification is required. *People v. Linley*, 388 Ill. App. 3d 747, 751 (2009).

¶ 17 When reviewing a trial court's ruling on a motion to suppress, we give great deference to the trial court's factual findings and reverse those findings only if they are against the manifest weight of the evidence. *People v. Close*, 238 Ill. 2d 497, 504 (2010). However, we review *de novo* the trial court's ultimate decision to grant or deny the motion. *Id.*

¶ 18 In this case the trial court found that Harwood reasonably relied on information provided by McCoy to the investigating officers before placing defendant under arrest for criminal trespass to property. Consequently, we must examine whether the information provided by McCoy gave rise to probable cause.

¶ 19 In this case, McCoy told the officers she was the apartment manager. She also informed the officers that a man named James was present on the property moments earlier, without permission, and after this man received notice of his eviction. McCoy provided a first name and physical description of the trespasser. Moments after McCoy spoke to the officers at the scene, Harwood observed a person matching the physical description provided by McCoy on the Apartment property. When asked, the man informed Harwood that his name was James. Based on a totality of the circumstances, including the narrow window of time between McCoy's detailed complaint and observation of defendant at the Apartments, we conclude probable cause existed to justify the search incident to arrest for criminal trespass.

¶ 20 Defendant relies on the decision of *Lee*, 214 Ill. 2d 476 to support his view that the arrest in this case was not supported by probable cause. In *Lee*, police officers received a tip from a person who had provided reliable information to the authorities in the past. *Id.* at 478. The complainant told the police that three men were selling drugs at a certain street corner. When the police arrived at the scene, they did not observe drug activity, but observed the defendant and two other men present at the location provided by the complainant. *Id.* at 478-79. The officers

approached the men and performed a protective pat-down search, which did not reveal weapons or contraband. *Id.* at 479. Nonetheless, the officers arrested the defendant in *Lee* for violating a drug loitering ordinance. *Id.* The trial court found the arrest for violating the drug loitering ordinance was unlawful. *Id.* at 486. The court reasoned that the citizen's complaint and the officers' observations gave them reasonable suspicion to conduct a *Terry* stop, but, absent some overt act manifesting that defendant intended to engage in drug-related activity, probable cause did not exist to support the arrest for the ordinance violation. *Id.* at 487-88.

¶ 21 Here, unlike in *Lee*, the police were investigating a criminal trespass complaint rather than reported presence on the property *and* ongoing drug activity. The crime reported to police arose out of defendant's mere presence at the complex without permission. Here, Harwood observed a man matching the physical description of the trespasser as reported by McCoy. In addition, the man advised the officer that his name was James, the same name for the suspected trespasser as provided by McCoy. Under these circumstances, Harwood had probable cause to believe an ongoing criminal trespass was occurring in his presence and placed defendant in custody. When conducting the search incident to arrest allowed by statute, the officer discovered additional evidence of other criminal activities involving a weapon, ammunition, and contraband concealed on defendant's person. See 725 ILCS 5/108-1 (West 2012). These discoveries resulted in additional criminal charges. Accordingly, the trial court properly denied defendant's motion to quash arrest and suppress evidence.

¶ 22 Defendant next argues that the monetary assessments he is required to pay were not imposed by the judge and are void. We review *de novo* the propriety of assessed fines and fees. *People v. Marshall*, 242 Ill. 2d 285, 291 (2011). The State concedes that remand is necessary for the proper imposition of monetary fines and other assessments.

¶ 23 Although a sentencing judge may delegate the task of calculating costs to a circuit clerk, the judge still has an obligation to oversee the clerk's good-faith efforts by correcting any improper monetary assessments in the clerk's tally sheet. *People v. Dillard*, 2014 IL App (3d) 121020, ¶ 14. In this case, the "case payments" sheet was generated by the circuit clerk's office and there is no signed judgment order incorporating these amounts. Under these circumstances, we have held miscalculations with regard to monetary assessments are best addressed in the trial court with both parties present. *People v. Hunter*, 2014 IL App (3d) 120552, ¶ 17.

¶ 24 We therefore accept the State's concession of error and remand this matter to the trial court with directions to review and, if necessary, correct the assessments summarized in the "case payments" sheet, and enter the correct amount of all monetary assessments in a written order. Each charge should be supported with the relevant statutory authority. Defendant's presentence incarceration credit should be applied against any fines subject to the credit pursuant to statute or applicable case law. 725 ILCS 5/110–14 (West 2012).

¶ 25 CONCLUSION

¶ 26 The judgment of the circuit court of Peoria County is affirmed and remanded with directions.

¶ 27 Affirmed and remanded with directions.