2012 IL App (4th) 100969-U

Filed 4/11/12

NO. 4-10-0969

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MARIO D. TURNER, Defendant-Appellant.	))))))))	Appeal from Circuit Court of Champaign County No. 09CF48 Honorable Harry E. Clem, Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Cook concurred in the judgment.

ORDER

¶ 1 *Held*: Because we hold the police had probable cause to arrest defendant, we reverse the trial court's judgment granting defendant's motion to quash illegal seizure and suppress evidence and remand for further proceedings.

¶ 2 In January 2009, the State charged defendant, Mario D. Turner, with unlawful possession of heroin with intent to deliver. 720 ILCS 570/401(c)(1) (West 2008). In June 2009, defendant filed a motion to quash illegal seizure and suppress evidence, followed by amended motions in June, August, and October 2009. Hearings were held on these motions in January, May, July, and August 2010. In November 2010, the trial court granted defendant's motion to quash illegal seizure and suppress evidence, finding the police lacked probable cause to arrest defendant.

¶ 3 In this interlocutory appeal, the State argues the trial court erred in determining

the police lacked probable cause to arrest defendant. We agree and reverse.

¶ 4 I. BACKGROUND

¶ 5 On January 9, 2009, police made a warrantless arrest of defendant as he was walking up the stairs to an apartment in Champaign, Illinois, based on information received from two confidential sources regarding defendant's involvement in the sale of heroin. After defendant's arrest, a search warrant was issued for defendant's person for the purpose of seizing any instruments used in the commission of, or constituting evidence of, the offense of unlawful possession of a controlled substance. Following a strip search conducted a few hours after his arrest, defendant was found to be in possession of 14.2 grams of heroin.

¶ 6 On January 12, 2009, defendant was charged with unlawful possession of heroin with intent to deliver. Defendant filed a motion to quash illegal seizure and suppress evidence in June 2009, followed by amended motions to quash illegal seizure and suppress evidence in June, August, and October 2009. In these motions, defendant argued any evidence recovered from his person after his arrest, including any statements made by defendant after he requested to speak to his attorney, must be suppressed because such evidence was the result of an illegal seizure and body-cavity search of defendant. Hearings on these motions were held in January, May, July and August 2010.

¶ 7 The following testimony was taken at those hearings. On the morning of January 9, 2009, two individuals, a male and a female, were arrested for possession of heroin. The male was arrested earlier in the morning at a separate location; the female was arrested later at the residence shared by both individuals. They were questioned separately by Champaign police officers Jaceson Yandell, Matthew Henson, and Sergeant Dennis Baltzell, and Urbana police

officers Michael Cervantes and Jay Loschen.

¶ 8 Officer Yandell testified both individuals agreed to work as confidential sources for the Champaign police department and were given the names "John Paul" and "Jennifer Clark." Officer Yandell believed this was the first time either individual had been used as a confidential source; however, Officer Henson later testified John Paul had been used by his unit in another investigation the previous year. According to Officer Yandell, defendant's name came up "numerous times" while talking to informants and officers about drugs, and confidential sources told him and other officers defendant "concealed drugs inside his buttocks." Officer Yandell was unable to recall how many informants told him of defendant's habit of concealing drugs in his buttocks. Officer Yandell stated he never personally recovered drugs from defendant's buttocks, nor had he talked to any officer who had. However, Officer Yandell testified on many occasions following defendant's past arrests, he and other officers had been told by informants defendant had drugs "up his butt" the entire time he was in jail. Officer Yandell testified he personally arrested defendant on a prior occasion for a drug offense and drugs had been recovered from the bathroom of the residence where defendant was arrested.

¶ 9 Officer Henson testified he was also involved in the arrest of John Paul and Jennifer Clark. John Paul and Jennifer Clark were questioned separately and gave corroborating statements. According to Officer Henson, John Paul and Jennifer Clark informed him they had been buying heroin from defendant since 2007 and had been purchasing five grams of heroin, $1,000 worth, per day from defendant. The confidential sources told Officer Henson they would either call defendant or receive a call to arrange the delivery of five grams of heroin from defendant. Officer Henson stated John Paul told him approximately 15 to 30 minutes after the

telephone conversation, defendant would arrive at their address, remove heroin from his buttocks area, cut off and weigh 5 grams of heroin, and reinsert any extra heroin into the buttocks area of his pants. They would then pay defendant for the heroin and defendant would leave. John Paul identified a photograph of defendant while at the police station.

¶ 10 After speaking to John Paul and Jennifer Clark at the police station, the police accompanied them to their apartment at 205 West Columbia, Champaign, Illinois. While at the residence, Officer Henson testified John Paul received a series of calls. John Paul informed Officer Henson the calls were from defendant. This information was not verified prior to defendant's arrest. John Paul was advised not to answer the first two calls because officers were not ready for the "deal" to take place. John Paul was instructed to answer the third call and a less-than-30-second conversation ensued. After this call, John Paul informed Officer Henson defendant said he "was ready." In accordance with the prior arrangement, John Paul stated defendant would arrive in 15 to 30 minutes with the heroin. John Paul identified a photograph of the defendant as his source who would be bringing the heroin.

¶ 11 Officer Henson further testified the police had previous information defendant was selling drugs and controlled buys had been made from defendant in the past. Police surveillance units saw defendant arrive at the apartment, exit the vehicle, and begin approaching the stairs to the apartment. John Paul then received a fourth call. John Paul informed Officer Henson it was defendant calling and John Paul was advised not to answer this call. At approximately the same time the fourth call was coming in, Officer Henson was alerted of defendant's arrival by the surveillance officers.

¶ 12 Defendant was arrested on the landing at the top of the stairs leading to 205 West

Columbia, Champaign, Illinois, by Officers Henson and Cervantes. Defendant was carrying only a cellular phone and no drugs were found during a pat-down search for weapons conducted immediately after his arrest, or during a more thorough search of defendant's person several minutes later after defendant was escorted down the stairs to the front yard. The three individuals occupying the vehicle in which defendant arrived were questioned and gave permission to search the vehicle. No contraband was found in the vehicle, and the occupants did not make any statements implicating defendant in any illegal activity. Approximately one hour after defendant's arrest, he was transported to the police station.

¶ 13 Sergeant Baltzwell testified he was present when defendant was arrested and stated the arrest occurred before defendant completed delivery. Sergeant Baltzwell stated defendant arrived at the apartment in a vehicle described by the confidential sources. While Sergeant Baltzell could not recall how much time passed between the call and defendant's arrival, the interval was stipulated at 43 minutes.

¶ 14 Defendant testified he was arrested by several officers on January 9, 2009, at 205 West Columbia. He stated the police threw him to the ground at the top of the stairs, searched his pockets, and Officer Henson pulled his boxers down below his buttocks area. Defendant testified his pants were loose fitting and had fallen down below his buttocks on their own as he was taken to the ground. This is how he knew his boxers had been pulled down, coupled with the fact he also felt them snap against his skin as they were released. Defendant testified he was walked down the stairs and made to sit on the curb for approximately 15 minutes. Defendant stated the "strip search" then continued, and he was made to take off his shoes, socks, and "things like that." Defendant was later taken to the police station.

¶ 15 Several hours later, defendant was escorted to Carle Foundation Hospital. There, a strip search was performed by Dr. Benjamin Davis and the police, pursuant to a warrant issued after defendant's arrest for defendant's person with the purpose of seizing any instruments used in the commission of, or constituting evidence of, the offense of unlawful possession of a controlled substance. 14 grams of heroin in a clear plastic bag were found in between the cheeks of defendant's buttocks area. According to Dr. Davis, no portion of the recovered item was located within the anus or rectum of defendant, and no instrument or finger was inserted into defendant's anus or rectum to remove the item. Dr. Davis clarified, however, "I can't tell you that not one little centimeter was up in the anus, but the object was not, you know, the anus is only about a centimeter long or so, so there was not—certainly nothing in the rectum, and this was firmly between the buttocks." Dr. Davis also testified no blood or fecal matter was on the recovered item, and defendant gave no indication he was in any pain during the recovery of the item.

¶ 16 On November 2, 2010, the trial court issued a written decision on defendant's motion to quash illegal seizure and suppress evidence. The court found "[t]he information available to the [police] officers as [d]efendant approached the apartment building *** did not possess sufficient indicia of reliability to establish probable cause for the officers to arrest and search the [d]efendant." Accordingly, the court granted defendant's motion to quash illegal seizure and suppress evidence.

¶ 17 On December 2, 2010, the State filed a certificate of impairment and notice of appeal pursuant to Illinois Supreme Court Rule 604(a) (eff. July 1, 2006).

¶ 18 II. ANALYSIS

¶ 19 The State contends the trial court erred in finding the police lacked probable cause

to arrest defendant on suspicion of drug dealing. Defendant asserts probable cause was not shown because the confidential sources' reliability was untested, the details were not corroborated, and the information given by them actually contradicted some of the facts as they played out during the investigation—all factors defendant contends weaken the credibility of the confidential sources and the reliability of their tip. We agree with the State and reverse.

¶ 20 A. "Motion To Quash Illegal Seizure" Is A Misnomer

¶ 21 Defendant entitled his motion a motion to "quash illegal seizure and to suppress evidence obtained therefrom." The proper title for such a motion is "motion to suppress evidence" as suppression of the evidence obtained following an improper search and seizure is the entirety of the relief to which a defendant is entitled to under section 114-12 of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-12 (West 2010)). See *People v. Hansen*, 202 IL App. (4th) 110603, ¶¶ 62-63, 2012 WL 1098.414.

¶ 22 B. Motion To Suppress and Standard of Review

¶ 23 When reviewing a trial court's ruling on a motion to suppress evidence, this court is presented with mixed questions of law and fact. *People v. McQuown*, 407 Ill. App. 3d 1138, 1143, 943 N.E.2d 1242, 1246 (2011). "[W]e will accord great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence; but we will review *de novo* the court's ultimate decision to grant or deny the motion." *People v. Close*, 238 Ill. 2d 497, 504, 939 N.E.2d 463, 467 (2010).

¶ 24 In determining whether probable cause exists, the test is whether a reasonable and prudent person in possession of the knowledge that has come to the arresting officer would believe the person to be arrested is guilty of a crime. *People v. Redman*, 386 Ill. App. 3d 409,

420, 900 N.E.2d 1146, 1157 (2008); *People v. Brannon*, 308 Ill. App. 3d 501, 504, 720 N.E.2d 348, 351 (1999); *People v. Gant*, 14 Ill. App. 3d 282, 283-84, 302 N.E.2d 376, 378 (1973). This determination is governed by the totality of the facts and circumstances of each case. *People v. Beck*, 167 Ill. App. 3d 412, 416-19, 521 N.E.2d 269, 272-74 (1988); *Brannon*, 308 Ill. App. 3d at 504, 720 N.E.2d at 351; *Gant*, 14 Ill. App. 3d at 283-84, 302 N.E.2d at 378.

¶ 25 C. Application

¶ 26 The State argues the evidence was more than sufficient to permit a reasonable person to conclude defendant was committing the offense of delivery of drugs at the time of his arrest. The State points out the police had been told by two separate individuals they purchased heroin from defendant on a daily basis. Both individuals also informed police they would contact defendant by phone, and 15 to 30 minutes later, defendant would deliver the heroin to them. John Paul told officers defendant would remove heroin from his buttocks area, cut off and weigh it, and reinsert any extra into his buttocks area.

¶ 27 After the police accompanied the two confidential sources home, John Paul received four phone calls which he reported were from defendant. After answering the third call, John Paul informed the officers defendant would arrive in 15 to 30 minutes to deliver the heroin. Defendant arrived 43 minutes later in one of the three vehicles described by both John Paul and Jennifer Clark during separate interviews. As defendant reached the apartment, John Paul received the fourth call, which he was instructed not to answer. The officers who had the apartment under surveillance observed defendant exiting his car and approaching the stairs at the time of the fourth call and notified Officer Henson of defendant's arrival almost simultaneously with the fourth call.

¶ 28 The State maintains this information provided by the confidential sources was enough, on its own, to allow a reasonable officer to believe defendant was in possession of drugs. Further, the State asserts the police had corroborating information supporting the confidential sources' reports and the reasonable belief defendant would be carrying drugs in his buttocks area to deliver to the confidential sources, including (1) previous controlled buys from defendant, (2) receiving information from a number of different sources regarding defendant's tendency to keep drugs in his buttocks area, and (3) a prior arrest of defendant in which drugs were recovered. We agree probable cause was shown to support defendant's arrest.

¶ 29 The States cites *Brannon*, *Beck*, and *Gant* to bolster its assertion the information received from the two confidential sources was reliable and could reasonably be used by the officers in determining they had probable cause to arrest defendant. Defendant argues the instant case is distinguishable from the cases cited by the State, and asserts *Adams* is more akin to his case. We agree with the State.

¶ 30 In *Brannon*, 308 Ill. App. 3d at 503, 720 N.E.2d at 350, a Crime Stoppers' tip reported the defendant, a convicted felon, had a gun and cannabis in the trunk of his car. This tip included a description of the defendant, the defendant's car, his place of employment, and the block of defendant's home address. *Id*. The police corroborated this information prior to arresting the defendant by (1) reviewing the defendant's criminal history, which revealed the defendant had " 'three dangerous drug offenses arrests, three weapon offenses arrests, with one conviction for dangerous drugs' "; (2) verification from a fellow officer he executed a search warrant of defendant's residence 10 months earlier and had recovered 40 grams of cannabis; (3) a Secretary of State Soundex report verifying defendant lived in the block described in the tip,

owned the described vehicle, and worked at the described place of employment; and (4) surveillance of the defendant as he pulled out of his driveway, driving the described vehicle in the direction of defendant's place of business. *Id*. at 503, 720 N.E.2d at 350-51. Upon conducting a traffic stop and searching the trunk of the defendant's car, a semiautomatic handgun and cannabis were discovered and the defendant was arrested. *Id*. At 504, 720 N.E.2d at 351. This court held there was probable cause for the arrest, basing our decision on "(1) [t]he tip was left on the Crimestoppers' line, (2) all of the innocent details of the tip were corroborated, (3) the tip alleged criminal conduct in detail, and (4) further investigation revealed that defendant had a history involving the same conduct as alleged by the tipster." *Id*. at 508, 720 N.E.2d at 354.

¶ 31 Defendant attempts to distinguish his case from *Brannon*, asserting the tip in *Brannon* included greater detail than that given by the confidential sources here. Additionally, defendant contends the allegations of illegal behavior in *Brannon* were corroborated by the defendant's prior contacts with the police, whereas here, defendant argues his prior police contacts did not corroborate the tip because drugs had never been recovered from his buttocks following previous arrests. We are not convinced.

¶ 32 In *Brannon*, the informant gave a detailed physical description of the defendant. Here, John Paul identified a photograph of defendant during his interview with the police and named defendant as his dealer. The confidential sources in this case informed police of their daily dealings with defendant in great detail, *i.e.*, they would call defendant, or defendant would call them, and shortly after the telephone call, defendant would arrive at their apartment in one of three vehicles which they also described. John Paul told the police defendant would remove the heroin from his buttocks area, cut off five grams of heroin ($1,000 worth), and replace any

remaining heroin back into his buttocks area. This information is consistent with information from other sources regarding defendant's habit of keeping his drugs in his buttocks area. Further, as in *Brannon*, the police had additional corroborating information supporting the details provided by the confidential sources, including previous controlled buys from defendant, information from a number of different sources regarding defendant's practice of keeping drugs in his buttocks area, and a prior arrest of defendant in which drugs were recovered.

¶ 33 In *Beck*, 167 Ill. App. 3d at 415, 521 N.E.2d at 271, the informant had provided reliable information on at least four prior occasions which led to arrests and/or convictions. Further, the informant gave the police very detailed information on the make, model, and color of the defendant's car, the license plate number, and the route and time frame in which defendant would be traveling. *Id.* These details were corroborated by the police prior to arresting the defendant. *Id.* A search of defendant's trunk revealed a large quantity of cannabis as reported by the informant. *Id.* In finding probable cause, the Fifth District Appellate Court noted "Although the corroborative facts available were few and pertained to innocent activities, *** the suspect's actions g[a]ve rise to an inference that the information [was] credible and that [the informant] obtained his information in a reliable manner." *Id.* at 416, 521 N.E.2d at 272. Additionally, the court noted the informant had given reliable information in the past and the defendant passed the police in the described vehicle in a time frame consistent with the informant's tip. *Id.* at 418, 521 N.E.2d at 273.

¶ 34 Defendant argues his case is distinguishable from *Beck*, because the informant in *Beck* gave reliable tips to the police on a regular basis, and the tip was very detailed. We disagree. In this case, although the confidential sources did not give tips to the police on a

regular basis, they did independently give the police detailed information regarding defendant's drug activity, including the fact they had been buying five grams of heroin from defendant every day for the past two years. The informants knew defendant would arrive at their apartment shortly after speaking to him by phone and gave the police details on the three vehicles defendant was known to drive. Defendant arrived in one of those vehicles. The police conducting surveillance on the apartment verified defendant arrived in the described vehicle prior to defendant's arrest. As in *Beck*, defendant's actions in this case, *i.e.*, calling John Paul and then arriving shortly afterward, as the confidential sources said was typical in their drug dealings with defendant, gave rise to the inference defendant was there to deliver drugs.

¶ 35 In *Gant*, 14 Ill. App. 3d at 283, 302 N.E.2d at 377, an informant who had previously given the police information told police the defendant was sitting nearby in his red convertible and was in possession of barbiturate capsules. The informant told the officers he knew this information because he had just consumed two of the capsules. *Id.* Relying on this information, and the officer's observation the informant was under the influence of narcotics, the officer approached defendant and ordered him out of the car. *Id.* The First District Appellate Court found informant's information was fully corroborated, and the " 'totality of the facts and circumstances' known to the officer as he approached the defendant, sitting in his red convertible at 12:30 A.M. in the morning" was enough to constitute probable cause. *Id.* at 286, 302 N.E.2d at 379-80.

¶ 36 Defendant asserts the unproved reliability of the tip in *Gant* was bolstered by full corroboration of the tip, which defendant argues is not the case here. We disagree. In this case, similar to the informant in *Gant* who learned his information by consuming two of the barbitu-

rates he purchased from the defendant, the confidential sources knew of defendant's drug dealing habits because they personally purchased five grams of heroin from him every day for the past two years. Also similar to *Gant*, the totality of the circumstances, *i.e.*, defendant calling John Paul and then arriving at John Paul's apartment approximately 40 minutes later—as was the typical procedure for John Paul to obtain drugs from defendant—coupled with the knowledge defendant sold drugs in the past and had a habit of storing the drugs in his buttocks area, gave police probable cause to arrest defendant.

¶ 37 In *People v. Tisler*, 103 Ill. 2d 226, 469 N.E.2d 147 (1984), cited by defendant, an informant who had given reliable and accurate information to the police on a number of occasions in the past informed the police the defendant was going to buy lysergic acid diethylamide (LSD). *Id.* at 231-32, 469 N.E.2d at 150-51. The informant's tip included the exact route defendant would be traveling with approximate times, the place of delivery, and a description of the small bag the LSD would be contained in. *Id.* After verifying defendant's route and observing defendant arrive at the place of delivery and exit his vehicle with the described bag in hand, the defendant was placed under arrest. *Id.*

¶ 38 Defendant argues *Tisler* is clearly distinguishable because no evidence shows the confidential sources' past reliability and some of the details given in this case were refuted and proved to be inaccurate. We are not convinced. The only discrepancies defendant points to in this case are the response time of defendant and the manner in which the telephone call between defendant and John Paul was initiated, details defendant himself classifies as "scant." First, defendant argues the fact he arrived at the apartment 43 minutes after speaking with John Paul is significant because the confidential sources had stated defendant "always arrived within 15 to 30

minutes." However, our review of the record indicates the sources used the terms "average" or "generally speaking" when telling Officer Henson defendant arrived within 15 to 30 minutes after the telephone call. Moreover, defendant simply could have been running late on this occasion, which would explain the fourth call to John Paul as defendant arrived at the apartment building, or defendant may have been calling to let John Paul know he had arrived with the heroin. Next, defendant argues it is also significant the confidential sources stated "they called [defendant] every day, for a couple of years, and then he delivered the drugs to them. But on this occasion, [defendant] purportedly called them three times in a row to set up a delivery." Again, our review of the record reveals the confidential sources told Officer Henson "the call is made or a call is received," not "the sources always initiated the call." Any discrepancies in the response time or the initiation of the telephone call are *de minimus* and do not support defendant's claim the information provided by the confidential sources was not reliable.

¶ 39 In *People v. Adams*, 131 Ill. 2d 387, 401, 546 N.E.2d 561, 567 (1989), which is also cited by defendant and was relied on by the trial court, our supreme court found no probable cause was shown for the traffic stop, because no evidence of wrongdoing was corroborated prior to the stop. Specifically, the confidential informant had not provided previous information to the police about anyone else, actually provided incorrect information to the police about the defendant's activities days before the defendant's arrest, expected payment for his tip, did not reveal the basis for his knowledge, and did not know where in Kentucky the defendant was to obtain the cocaine or by which route he would return. *Id.*

¶ 40 Defendant argues this case is similar to *Adams* because the confidential sources did not provide previous tips to the police and expected consideration for their cooperation on

their pending possession charges. Both of these arguments may be true, with the exception John Paul had provided information to the police on at least one past occasion (although the reliability of his past tip is unknown). However, unlike the informant in *Adams*, the confidential sources in this case did reveal the basis of their knowledge, *i.e.,* they bought five grams of heroin from defendant every day for the past two years. Additionally, while the informant in *Adams* did not know the exact location where the defendant would obtain the drugs or the exact route he would travel, the confidential sources in this case knew defendant would come to their apartment following the telephone call, in one of three vehicles, and would be carrying the heroin in his buttocks area.

¶ 41 The details provided by each confidential source during separate interviews corroborated each other and, coupled with the knowledge defendant sold drugs based on prior contacts with the police and the defendant's habit of concealing drugs in his buttocks area as told by numerous other sources, provided a strong indicia of reliability. The police had probable cause to arrest defendant.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 44 Reversed and remanded.