

NOTICE

Decision filed 10/18/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 110493-U

NO. 5-11-0493

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

GEOFFREY P. GROOTENBOER,

Defendant-Appellant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Appeal from the  
Circuit Court of  
St. Clair County.

No. 11-CM-2885

Honorable  
Julie K. Katz,  
Judge, presiding.

PRESIDING JUSTICE DONOVAN delivered the judgment of the court.  
Justices Goldenhersh and Wexsten concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in denying the defendant's motion to rescind the statutory summary suspension where the evidence showed that the officer had a reasonable suspicion to conduct a brief investigative stop of the defendant's vehicle. We affirm.

¶ 2 The defendant, Geoffrey P. Grootenboer, was arrested in East St. Louis, Illinois, on suspicion of unlawful use of a weapon and driving under the influence of alcohol, and thereafter he was given a notice of the statutory summary suspension of his driving privileges. The defendant filed a motion to rescind the summary suspension and quash his arrest. The circuit court denied the motion after an evidentiary hearing. The defendant filed a motion to reconsider, which was also denied. On appeal, the defendant contends that the trial court erred in sustaining the statutory summary suspension and in denying the motion to reconsider. We affirm.

¶ 3 On May 31, 2011, officers with the East St. Louis police department stopped the

defendant's vehicle and detained the defendant on suspicion of unlawful use of a weapon and driving under the influence of alcohol. The defendant was transported to the East St. Louis police department. While there, the defendant refused to take a Breathalyzer test. The defendant was given a notice of the statutory summary suspension of his driving privileges. He was charged by criminal information in the circuit court of St. Clair County with aggravated unlawful use of a weapon and driving under the influence of alcohol. The defendant filed a motion to rescind the summary suspension and quash the arrest. He argued that the police officers lacked probable cause or an articulable suspicion to stop him. The trial court conducted an evidentiary hearing. Kendall Perry, an East St. Louis police officer, and the defendant testified at the hearing.

¶ 4 Officer Kendall Perry testified that he was on duty on May 31, 2011, when he was dispatched to investigate a call for shots fired in the 500 block of 22nd Street in East St. Louis, Illinois. Another officer, Sergeant Ike, was on the scene when Officer Perry arrived. Officer Perry testified that he and Sergeant Ike were flagged down by two women, who identified themselves as Sandra DeWalt and Sandra Dansberry. The women reported that they lived in the neighborhood and that they heard gunshots coming from the Blue Sky Energy warehouse. Officer Perry testified that as he interviewed these witnesses he heard several gunshots in the vicinity of the warehouse, approximately 100 feet from his location. Officer Perry looked over to the warehouse. He did not see anyone firing a gun, but he did see a black Dodge Durango leaving from the warehouse. Officer Perry testified that over his radio, he heard Sergeant Ike direct another officer, Officer Long, to stop the vehicle. Sergeant Ike advised that the subject was possibly armed with a handgun. Officer Long activated his lights and siren, began his pursuit, and stopped the vehicle at the intersection of 22nd Street and Market. Sergeant Ike, followed by Officer Perry, arrived within seconds of the stop. Officer Perry testified that he had sight of the defendant's vehicle from the

moment it left the warehouse. He observed the defendant and a passenger, identified as Willie Graves, get out of the vehicle, and he saw the defendant exit from the driver's side. Officer Perry stated that he continued to observe as the defendant placed his hands on the hood of the police cruiser and was searched. Officer Perry testified that no weapon was found on the defendant's person. The defendant's name was run through the computer. The defendant had no active warrants, but his driver's license had expired.

¶ 5 Officer Perry testified that he approached the defendant. He smelled the odor of an alcoholic beverage on the defendant's breath. He noted that the defendant was wearing earplugs which appeared to be the type worn at a firing range. Officer Perry watched the defendant remove earplugs from his ears and place them around his neck. Officer Perry asked the defendant if he had a firearm owner's identification card, and the defendant indicated that he did have one. Officer Perry testified that the defendant was barely able to follow instructions, that he could not stand still, and that his eyes were bloodshot. Officer Perry stated that he attempted to administer the gaze nystagmus test, but he discontinued the test because the defendant was not able to sit straight. Officer Perry said that he did not ask the defendant to attempt field sobriety tests because he was afraid the defendant could be injured performing them. Officer Perry noted that during his training, he was taught that police officers have discretion to forego field testing if it appears that the subject could sustain an injury while attempting to perform the tests. Officer Perry arrested the defendant for unlawful use of a weapon for discharging a firearm within the city's limits, and the defendant was transported to the East St. Louis police station. Officer Perry read the warning to motorists to the defendant and then observed him for 20 minutes. Officer Perry testified that he was present and heard an Illinois State Police officer offer the defendant a Breathalyzer test and he heard the defendant refuse the test. Officer Perry served the defendant with a notice of statutory summary suspension. In that section of the police

officer's sworn report identifying the grounds to believe the arrestee was driving under the influence of an intoxicant, Officer Perry wrote: "Arrestee was observed firing a handgun and attempted to flee the area."

¶ 6 The defendant testified that he runs two business in East St. Louis, Illinois. Blue Sky Energy Savers is a home insulation business. Titan Mid America is a hydraulic nut-torquing business. The defendant stated that he resides in an area of the warehouse out of which his businesses operate. The defendant testified that on May 30, 2011, he spent some time at a barbeque with a friend whom he called "Willie D." The defendant stated that he drank a glass of wine and less than half of a can of Stag at the barbeque. Later that day, the defendant and Willie went to the defendant's warehouse in East St. Louis. The defendant stated that he and Willie decided to go to a store about two blocks away. Willie wanted to get cigarettes, and the defendant wanted to get chewing tobacco. The defendant felt that he was driving in a judicious manner. He did not feel that he was impaired from the alcoholic beverages he had consumed earlier in the day. The defendant testified that as he stopped at a stop sign, he noticed a police cruiser approaching. The cruiser rolled through the stop sign and stopped in the intersection, blocking the defendant's vehicle. The defendant stated that the police officers then shouted at the defendant, directing him to exit the vehicle, and that he complied immediately. The officers then directed him to place his hands on the hood of the police cruiser, and he complied. The defendant testified that he was not asked to perform any field sobriety tests. The defendant stated that the officers searched his vehicle and then asked if he had a valid firearm owner's identification card, and he said he had a valid card.

¶ 7 During cross-examination, the defendant testified that on May 30, 2011, he worked until two or three o'clock and then went to a barbeque at Willie's house to celebrate the holiday. The defendant and Willie left the barbeque and went back to the defendant's warehouse. The defendant acknowledged that he kept two pellet guns and a .40-caliber side

arm at his business. He often carried the .40-caliber handgun when he patrolled the warehouse, and he had done so that morning. Later that day, he showed the gun to Willie. The defendant recalled that he heard noise and commotion around the warehouse that day, but he did not hear any gunshots. The defendant testified that he no longer had possession of the .40-caliber gun. The last time he saw the gun was when Willie was admiring it at the warehouse that day. He did not know what happened to it. The defendant acknowledged that when he was stopped he was wearing earplugs, and that the earplugs were industrial ones that were used at his warehouse. He acknowledged that his driver's licence had expired. The defendant testified that while at the police station, the state trooper who offered the breath test initially indicated that the Breathalyzer machine was not working, and then, after restarting it, said that he thought it was working. The defendant testified that he declined to take the Breathalyzer test because he was not going to blow into a potentially faulty piece of equipment. He said that he had been illegally stopped already that day and he was not going to get "railroaded" twice.

¶ 8 After considering the evidence and the arguments of counsel, the trial court issued a written order sustaining the statutory summary suspension. The defendant filed a motion to reconsider, which was denied.

¶ 9 On appeal, the defendant contends that the trial court erred in sustaining the statutory summary suspension and in denying the motion to reconsider. The defendant asserts that a police officer must have probable cause or an articulable suspicion to conduct a *Terry* stop (see *Terry v. Ohio*, 392 U.S. 1 (1968)), and that the police officers had neither in his case. The defendant argues that the police officers did not see him fire a handgun, that the officers obtained information from two witnesses of unknown and untested reliability, and that field sobriety tests were not offered or performed. The defendant argues that Officer Perry's observations of bloodshot eyes and strong odor of alcohol were not sufficient to give rise to

probable cause. The defendant concludes that the statutory summary suspension should be rescinded because there was no probable cause or articulable suspicion to stop his vehicle initially and no probable cause or articulable suspicion to believe that the defendant was operating his vehicle under the influence of alcohol.

¶ 10 Generally, when reviewing a trial court's decision to grant or deny a petition to rescind a summary suspension or a motion to suppress, the reviewing court 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. *People v. Close*, 238 Ill. 2d 497, 504, 939 N.E.2d 463, 467 (2010); *People v. Hansen*, 2012 IL App (4th) 110603, 968 N.E.2d 164. But the reviewing court is free to undertake its own assessment of the facts as they relate to the legal issues presented by the case, and will conduct a *de novo* review of the trial court's ultimate decision to grant or deny a petition to rescind or a motion to suppress. *Close*, 238 Ill. 2d at 504, 939 N.E.2d at 467; *Hansen*, 2012 IL App (4th) 110603, ¶ 15, 968 N.E.2d 164.

¶ 11 Vehicle stops are subject to the fourth amendment's reasonableness requirement. *People v. Hackett*, 2012 IL 111781, ¶ 20, 971 N.E.2d 1058; *Close*, 238 Ill. 2d at 505, 939 N.E.2d at 467. The decision to stop an automobile is reasonable where a police officer has probable cause to believe that a traffic violation has occurred. *Hackett*, 2012 IL 111781, ¶ 20, 971 N.E.2d 1058. Though traffic stops are frequently supported by probable cause, an investigatory stop may be done in keeping with the fourth amendment where the officer has a reasonable, articulable suspicion that the individual has committed or is about to commit a crime. *Hackett*, 2012 IL 111781, ¶ 20, 971 N.E.2d 1058; *Close*, 238 Ill. 2d at 505, 939 N.E.2d at 467. An officer may conduct a brief, investigatory stop of a person where the officer can point to specific and articulable facts which, when taken with rational inferences from those facts, reasonably warrant the intrusion, irrespective of whether the stop is supported by probable cause. *Hackett*, 2012 IL 111781, ¶ 20, 971 N.E.2d 1058. An officer

may effect a lawful *Terry* stop without first identifying a specific crime or considering whether the circumstances he observed would satisfy each element of a particular offense. *Hackett*, 2012 IL 111781, ¶ 28, 971 N.E.2d 1058; *Close*, 238 Ill. 2d at 510, 939 N.E.2d at 470. But an officer may not ignore facts which would dispel suspicion of criminal wrongdoing. *Close*, 238 Ill. 2d at 510, 939 N.E.2d at 470.

¶ 12 An officer may initiate a *Terry* stop when he is provided with information by a third party which is reliable and allows the officer to reasonably infer that a person was involved in criminal activity. *People v. Hansen*, 2012 IL App (4th) 110603, ¶ 20, 968 N.E.2d 164; *People v. Shafer*, 372 Ill. App. 3d 1044, 1049, 868 N.E.2d 359, 362-63 (2007). Courts may give greater weight to information provided by an eyewitness or a victim of a crime than they would to other tipsters. *Shafer*, 372 Ill. App. 3d at 1049, 868 N.E.2d at 363. One factor that affects the reliability of a tip is whether the person offering it is anonymous or nonanonymous. *Hansen*, 2012 IL App (4th) 110603, ¶ 20, 968 N.E.2d 164. A tip provided by a nonanonymous person bears an initial degree of reliability. Courts have identified four other factors that would assist trial courts in determining when a tip has sufficient indicia of reliability to establish the quantum of suspicion necessary to justify a *Terry* stop. *Hansen*, 2012 IL App (4th) 110603, ¶¶ 21-22, 968 N.E.2d 164; *Shafer*, 372 Ill. App. 3d at 1054, 868 N.E.2d at 367. The factors are: (1) whether there was a sufficient quantity of information to allow the officer to be certain that the vehicle stopped was the one identified by the tipster; (2) the time interval between the police receiving the tip and the police locating the suspect vehicle; (3) whether the tip was based on contemporaneous eyewitness observations; and (4) whether the tip was sufficiently detailed to permit a reasonable inference that the tipster has actually witnessed an ongoing motor vehicle offense. *Hansen*, 2012 IL App (4th) 110603, ¶ 22, 968 N.E.2d 164; *Shafer*, 372 Ill. App. 3d at 1054, 868 N.E.2d at 367.

¶ 13 In this case, Officer Perry testified that the stop of the defendant's vehicle was based

upon information received from the police dispatcher, the information provided by the two witnesses who reported that they heard the gunshots coming from the defendant's warehouse, and his own visual and auditory observations. The witnesses were not anonymous. They identified themselves by their full names, and they lived nearby. They provided sufficiently detailed information regarding the location and duration of the gunshot fire. The information was based on contemporaneous observations by the witnesses, and it was corroborated in some measure by Officer Perry's firsthand observations. This was sufficient to permit a reasonable inference that the witnesses actually witnessed what they had described. The time interval between the witnesses' tips and the stop was very short. In addition, Officer Perry himself heard gunshots as he was taking statements from the witnesses, and he observed the black vehicle leaving the location where the gunfire was heard. The situation posed potential dangers to the officers and to the public and demanded immediate police involvement.

¶ 14 Based on the record, we conclude that the officers had a reasonable, articulable suspicion to justify an investigatory stop of the defendant's vehicle and the detention and frisk of the defendant. Once the defendant was stopped, Officer Perry made additional observations regarding the defendant's appearance and behaviors. He observed the defendant's bloodshot eyes, the smell of alcohol on his breath, his inability to follow instructions, his unsteady balance, and his admission to having consumed alcohol. Based on his observations, Officer Perry had probable cause to believe that the defendant was impaired. The defendant then refused to submit to a Breathalyzer test. Based on this record, we do not find that the trial court erred in denying the defendant's motion to rescind the statutory summary suspension and quash the arrest.

¶ 15 Accordingly, the judgment of the circuit court is affirmed.

¶ 16 Affirmed.