

No. 1-10-2111

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 C6 60079
)	
HERBERT WILLIS,)	Honorable
)	Frank G. Zelezinski,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Salone and Justice Steele concurred in the judgment.

ORDER

- ¶ 1 *Held:* There was probable cause to arrest defendant, so that trial court did not err in denying his motion to quash, where (1) named eyewitnesses to a shooting told police they could identify the shooter and later proved that assertion with post-arrest lineup identifications, (2) unnamed witnesses provided police defendant's first name, and (3) absent witnesses told other witnesses defendant's full name and town of residence, which police confirmed with a computer search.
- ¶ 2 Following a bench trial, the defendant, Herbert Willis, was convicted of aggravated battery with a firearm and sentenced to nine years' imprisonment. On appeal, defendant contends that the trial court erred in denying his motion to quash his arrest for lack of probable cause.

¶ 3 Defendant was charged with attempted first degree murder and aggravated battery with a firearm for allegedly personally shooting Angelique Mitchell with a firearm on or about December 19, 2008.

¶ 4 In his motion to quash, defendant argued that his warrantless arrest on December 26, 2008, was made without probable cause.

¶ 5 At the motion hearing, defendant testified that he was arrested outside his Sauk Village home at about 8 a.m. on December 26, as he was taking his garbage to the front curb. He was handcuffed and brought to the police station where he later gave a statement.

¶ 6 Police officer Kevin Walsh testified that, at about 11 p.m. on December 19, he and another officer responded to reports of a shooting in a residential neighborhood. When the officers arrived, he saw a large group of people standing around a young woman holding her leg. People in the crowd were yelling pieces of information, including "Herb" or "Herbert." The officers spoke with the woman – Mitchell – who told them that a gray car had stopped near two people she did not know, followed by an argument and two gunshots; she immediately felt a pain in her lower leg. When Officer Walsh asked Mitchell if she saw the driver, she said she had seen him briefly, describing him as a medium-complected black man between 15 and 20 years' old, 150 pounds and 5 feet, 7 inches tall. She also provided a name – Herb – that she had been provided by her friends. (On cross-examination, Officer Walsh admitted that his report of the incident did not attribute to Mitchell a description of the shooter beyond that he was a black man.) Officer Walsh also spoke at the scene with Shauntia Keys, one of Mitchell's friends, who described the incident similarly to Mitchell. Keys identified the shooter as a man "she had known as Herbert," who she believed resided in Sauk Village, but she did not explain how she knew this. When Officer Walsh spoke with other bystanders, he was given vague descriptions that "basically collaborated [*sic*] bits and pieces."

¶ 7 Police detective Darryl Manning testified that he investigated the Mitchell shooting. Upon arriving at the scene, he met with Officer Walsh and other officers and was apprised that the shooter was a black man named Herbert. Detective Manning then interviewed Tandria Wade, a friend of Mitchell, who said that the shooter was Herbert Willis of Sauk Village. When asked how she knew this, Wade explained that several men in the crowd knew Willis from school. These men had left the scene before Detective Manning could interview them, but he learned their nicknames and, through further investigation, learned the names of two of the men; however, efforts to locate and interview them were unsuccessful. Wade also told Detective Manning that she saw the shooter's face and could identify him. Another friend of Mitchell, Kenya Anderson, also told Detective Manning that she saw and could identify the shooter. A computer search for Herbert Willis found that he resided in Sauk Village. Detective Manning went to defendant's home that night, but he was not there. Detective Manning interviewed Mitchell in the hospital the morning after the shooting and she also said she could identify the shooter by his face. After this interview, Detective Manning issued a bulletin that defendant was wanted for questioning. On cross-examination, Detective Manning admitted that he did not show a photograph of defendant to Mitchell or the named witnesses before defendant's arrest.

¶ 8 Following arguments, the court denied the motion to quash, noting that Mitchell told Officer Walsh that she saw the shooter and knew him as Herb, that other witnesses at the scene provided the same name and added the suspect's residence as Sauk Village, and that this information led the police to defendant.

¶ 9 At trial, Mitchell, Wade, and Anderson each testified that they saw or heard the driver shooting, saw his face, and identified defendant both in a lineup (which each viewed separately) and at trial as the shooter. None of the witnesses testified to knowing the name "Herbert Willis" before the day of the shooting. Mitchell was treated at the hospital for a bullet in her leg, which was still

in her leg as the physician told her it could not be removed without doing greater damage. Detective Manning testified consistently with his motion to quash hearing testimony, adding that defendant at first claimed to be home at the time of the shooting but then, after being informed of the lineup identifications, confessed to the shooting. No blood or firearm evidence was found at the scene. The court found defendant guilty of aggravated battery with a firearm.

¶ 10 Defendant filed a posttrial motion challenging the sufficiency of the evidence and the denial of his motion to quash, which the court denied. Defendant was then sentenced to nine years' imprisonment, and this appeal timely followed.

¶ 11 On appeal, defendant contends that the court erred in denying his motion to quash his arrest for lack of probable cause.

¶ 12 Police may arrest a person without a warrant only where they have probable cause; that is, where the facts known to police at the time of arrest would lead a reasonably cautious person to believe that the person was committing or had committed an offense. *People v. Hopkins*, 235 Ill. 2d 453, 472 (2009). Probable cause is not proof beyond a reasonable doubt but a probability of criminal activity; indeed, it is not necessary for the State to show that it was more likely true than false that defendant was involved in criminal activity. *Hopkins*, 235 Ill. 2d at 472. "Thus, the existence of possible innocent explanations for the individual circumstances or even for the totality of the circumstances does not necessarily negate probable cause." *People v. Geier*, 407 Ill. App. 3d 553, 557 (2011). The focus is upon the practical common-sense considerations that govern the actions of reasonable and prudent people rather than legal technicians. *Hopkins*, at 472.

¶ 13 The difficulty of establishing probable cause is reduced when the police know that a crime has been committed; that is, the police need less of a factual basis to establish probable cause when acting in response to a recent serious crime than when they do not know whether a crime has been committed. *Hopkins*, at 476. In general, the reliability of an ordinary citizen, in contrast to an

informant, need not be established; that is, information provided by an ordinary citizen is presumed to be reliable absent indications to the contrary. *People v. Jones*, 374 Ill. App. 3d 566, 574 (2007). Moreover, probable cause may be based on an informant's tip if it is shown to be reliable, including by past reliability of the informant or by independent verification of a substantial part of the tip. *People v. Serio*, 357 Ill. App. 3d 806, 814 (2005).

¶ 14 In reviewing a trial court's ruling on a motion to quash, we give due weight to the court's inferences and uphold its findings of historical fact unless they are against the manifest weight of the evidence. *People v. Hackett*, 2012 IL 111781, ¶ 18. However, we may undertake our own assessment of those facts and may draw our own conclusions when deciding on appropriate relief, so that we review *de novo* the ultimate question of whether the evidence should be suppressed. *Hackett*, 2012 IL 111781, ¶ 18. We are not limited in our review to the evidence from the motion hearing, but may also consider the trial evidence. *People v. Richardson*, 234 Ill. 2d 233, 252 (2009).

¶ 15 Here, the police had three named witnesses, including the victim, Mitchell, who told them they could identify the shooter. After defendant's arrest, these witnesses demonstrated that ability through lineup identifications, and it was only after being confronted with the identifications that defendant gave an inculpatory statement. The record reveals that the three witnesses did not know defendant's name except from what they heard from other witnesses at the scene, who either did not speak with the police or were not identified by name. Police efforts to find the witnesses who said they knew defendant from school were unsuccessful. However, the police were told defendant's first name directly by witnesses at the scene, albeit unnamed ones. Moreover, the information from the absent men – defendant's full name and his town of residence – was corroborated by computer search. In other words, the witnesses who told Officer Walsh the shooter's first name almost immediately after the shooting corroborated the full name and town provided to Detective Manning second-hand through Wade, which in turn was corroborated by the fact that there was a person by

1-10-2111

that name residing in that town: defendant. Defendant's characterization of the evidence at the time of his arrest – "unsubstantiated tips yelled out by unknown individuals who fled the scene before they could be identified" – is incorrect in (at the least) the key point that the tips *were* substantiated. Under the circumstances, we conclude that there was probable cause to arrest defendant so that the motion to quash was properly denied.

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

¶ 17 Affirmed.