

No. 1-10-3445

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	APPEAL FROM THE
	)	CIRCUIT COURT
Plaintiff-Appellee,	)	OF COOK COUNTY
	)	
v.	)	No. 09 C6 60884 (02)
	)	
JOHNNY JERNIGAN,	)	HONORABLE
	)	FRANK ZELEZINSKI,
Defendant-Appellant.	)	JUDGE PRESIDING.

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JUSTICE STEELE delivered the judgment of the court.  
Presiding Justice Neville and Justice Sterba concurred in the judgment.

### ORDER

¶ 1 *Held:* The trial court properly denied defendant's motion to quash his arrest where the police had probable cause to pull over the car defendant was driving. The State proved Defendant guilty of residential burglary beyond a reasonable doubt. The trial court did not err in allowing contents of police radio dispatches to show the course of police investigation.

¶ 2 Defendant, Johnny Jernigan, was charged with residential burglary (720 ILCS 5/19-3(a) (West 2006)), along with his codefendant, Patrick Beaulieu. Prior to trial, defendant filed a

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motion to quash arrest and suppress evidence alleging that a witness was allowed to view an improperly conducted show-up. He asserted that the composition and construction of the show-up was such as to improperly suggest the identification of the defendant as the perpetrator of the offense, *i.e.*, the disparity in height, weight, complexion and other distinguishing characteristics, as well as the inadequate number of subjects presented for comparison, was improperly conducive to the misidentification of the defendant. He also alleged that the actions of the police were unnecessary under the circumstances and conducive to mistaken identity. Defendant requested any reference to his pretrial identification by a witness be suppressed as improper pretrial identification, and that the court suppress an in-court identification of him by this witness unless the state showed by clear and convincing evidence that the in-court identification was not tainted and was fully independent of improper pretrial identification procedures.

¶ 3 Following a jury trial, defendant was found guilty of one count of residential burglary and sentenced to 10 years in prison. On appeal, defendant contends that: (1) the circuit court erred in denying his motion to quash arrest and suppress evidence where the police officer who stopped him lacked a reasonable articulable suspicion that he was engaged in unlawful activity; (2) the State failed to prove beyond a reasonable doubt that he committed or was accountable for residential burglary; and (3) the circuit court erred in admitting hearsay testimony regarding the contents of a radio dispatch that unfairly bolstered the testimony of the State's eyewitness and was highly prejudicial to him. Alternatively, defendant contends that defense counsel was ineffective in failing to object and preserve the hearsay issue in defendant's posttrial motion. We find that the trial court's denial of the motion to quash arrest and suppress evidence was proper,

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that the State proved beyond a reasonable doubt that defendant committed or was accountable for residential burglary and that the circuit court did not err in admitting testimony about the contents of the police radio dispatch.

¶ 4

#### BACKGROUND

¶ 5 On May 4, 2009, Ricky Haynes observed a white Nissan Maxima with Indiana license plates drive slowly past his home in South Holland, Illinois. He made eye contact with the occupants, an African-American male and a Hispanic male. Haynes was afraid to leave his house. He watched the car drive slowly down the block and then turn the corner. After waiting a few minutes, he got into his car and followed the Nissan. He followed the vehicle a few blocks before returning home, parking his car in his garage and going inside his house. From his window, he saw the Nissan drive past his home again. Haynes called 9-1-1 to report a suspicious vehicle casing homes around 169th and Paxton. He left his home again, looking for the Nissan when South Holland police officer Pedric arrived at his house. Officer Pedric testified that he received a dispatch of a suspicious vehicle around 168th and Paxton. Officer Pedric testified that Haynes repeated the information Officer Pedric received over the radio dispatch reporting that a white Nissan Maxima with Indiana license plates occupied by an African-American male and a Hispanic male driving in the area and the males appeared to be casing homes. Haynes pointed Officer Pedric in the direction of the vehicle and Officer Pedric left. Haynes returned to his home and watched the street from his window. He then noticed the Nissan Maxima parked, blocking the driveway of his neighbor's (Perraizer Orr) home, located at 2020 East 169th Place in South Holland. Haynes called 9-1-1 again and updated the operator, reporting that he saw two

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men walking out of his neighbor's house and down the driveway carrying a gaming system. He stated that they were the same men he saw driving the car past his house. The men got into the car, made a U-turn, and drove back past Haynes's home.

¶ 6 Haynes walked to Orr's house and found it was forcibly entered, and discovered the door jam broken. No one was present in the home. Orr testified the only item missing was a Nintendo Wii gaming system.

¶ 7 Detective DeYoung, who responded to a call, stopped the Nissan Maxima on the corner of 170th Street. Officer Paxton arrived to back him up. Police officer Coleman brought Haynes to the site of the detained Nissan for a show-up. Haynes identified the car, and the defendant and codefendant as the same males who were in the car blocking his neighbor's driveway.

Additionally, an inventory search of the Nissan Maxima revealed a Nintendo Wii gaming system under the front passenger side seat.

¶ 8 On November 10, 2010, defendant was sentenced to 10 years' imprisonment. This timely appeal followed.

¶ 9 DISCUSSION

¶ 10 First, defendant argues that the circuit court erred in denying his pretrial motion to quash arrest and suppress evidence where the police officer who stopped defendant's vehicle lacked reasonable suspicion to believe that he was engaged in unlawful activity.

¶ 11 Review of a trial court's ruling on a motion to quash arrest and suppress evidence presents mixed questions of fact and law. *People v. Bennett*, 376 Ill. App. 3d 554, 562 (2007). “ ‘The trial court's factual and credibility determinations are accorded great deference, and we reverse

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only if the findings are against the manifest weight of the evidence.’ ” *Bennett*, 376 Ill. App. 3d at 563 (quoting *People v. Novakowski*, 368 Ill. App. 3d 637, 640 (2006)). “ ‘Legal conclusions, however, are reviewed *de novo*.’ ” *Bennett*, 376 Ill. App. 3d at 563 (quoting *Novakowski*, 368 Ill. App. 3d at 640). “ ‘Therefore, we review the ultimate determination of whether the evidence should have been suppressed *de novo*.’ ” *Id.*

¶ 12 Defendant argues that the police officer lacked reasonable suspicion to justify an initial stop of defendant's vehicle pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), because he was pulled over while driving after a witness called 9-1-1 to report a suspicious vehicle, and not because there was evidence Defendant committed any crimes.

¶ 13 The fourth amendment to the United States Constitution generally protects citizens against unreasonable seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, §6. "A seizure occurs when the police, by means of physical force or show of authority have in some way restrained the person's liberty." *People v. Perkins*, 338 Ill. App. 3d 662, 666 (2003). Vehicle stops implicate the fourth amendment, because stopping a vehicle and detaining its occupants constitute a "seizure" within the meaning of the fourth amendment. *People v. Jones*, 215 Ill.2d 261, 270 (2005).

¶ 14 Generally, a seizure must be supported by probable cause. U.S. Const, amend. IV; Ill. Const. 1970, art. I, § 6; *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001). However, the United States Supreme Court recognized a limited exception to the probable cause requirement. See *Terry*, 392 U.S. at 22. Under *Terry*, where a police officer observes unusual conduct, he may stop and detain a person without probable cause to investigate possible criminal activity. *Terry*,

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392 U.S. at 30. To justify a *Terry* stop, an officer “must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.” *Id.* Under a "reasonable suspicion" standard, the evidence necessary to justify a *Terry* stop need not rise to the level of probable cause and can even arise when no violation of the law is witnessed; however, a mere hunch is insufficient. *Terry*, 392 U.S. at 21; *People v. Edward*, 402 Ill. App. 3d 555, 562 (2010). Illinois has codified the holding of *Terry* in section 107–14 of the Code of Criminal Procedure of 1963:

“A peace officer \* \* \* may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense \* \* \* and may demand the name and address of the person and an explanation of his actions.” 725 ILCS 5/107–14 (West 2006).

¶ 15 We apply a *de novo* standard of review to determine the existence of ‘reasonable suspicion’ supporting a *Terry* stop. *Bennett*, 376 Ill. App. 3d at 564.

¶ 17 In this case, defendant asserts the stop was unjustified. We find *People v. Ross*, 317 Ill. App. 3d 26, 30 (2000), instructive in determining whether certain facts provided the officer with reasonable, articulable suspicion to stop and detain individuals such as defendant. We find the facts Haynes testified to provided the minimal, articulable suspicion required to stop defendant's vehicle. Defendant asserts that the stop was unjustified, contending that Officer Pedric admitted during the hearing on the motion to quash that when defendant was pulled over in his vehicle, he was not violating any laws, and no information existed suggesting defendant had been involved

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in a crime at the time he was pulled over.

¶ 16 Defendant argues that *People v. Jackson*, 348 Ill. App. 3d 719, 731 (2004), provides that third-party information must be reliable "in its assertion of illegality, not just in its tendency to identify a determinate person." "Where the informant does not claim to have witnessed any criminal activity, the information is not reliable without corroboration and a stop may not be warranted." *Id.* However, the court views the totality of the circumstances about whether the information provided is actionable by a police officer. The informant's reliability is one of the factors considered in the totality of the circumstances. *People v. Adams*, 131 Ill. 2d 387, 397 (1989). In *Jackson*, the third-party witness observed the defendant days after a burglary had been committed and relied on yet another witness to identify him. *Jackson*, 348 Ill. App. 3d at 721. The facts in *Jackson* are clearly distinguishable from the case at hand where Haynes twice called 9-1-1, both times requesting immediate police assistance. In *In re J.J.*, 183 Ill. App. 3d 381 (1989), as discussed in *Jackson*, this court held that informants' tips originating from a call seeking immediate police aid would justify the police making an appropriate response, and does not mention the need for the officer to have personal knowledge of defendant's criminal activity:

“[T]ips may vary greatly in their value and reliability and \* \* \* one simple rule will not cover every situation. Where some tips, completely lacking in indicia of reliability, would warrant either no police response or require further investigation before a stop would be justified, other situations, such as when a victim of a crime seeks immediate police aid and describes his assailant or when a credible informant warns of a specific impending crime, would justify the police making an appropriate response.” *In re J.J.*, 183 Ill. App.

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3d at 385–86 (discussing *Adams v. Williams*, 407 U.S. 143, 147 (1972)).

¶ 17 In this case, we find the calls placed by Haynes to 9-1-1 provided the minimal, articulable suspicion required under *Terry* for police to stop Defendant's vehicle. Haynes testified that after watching what he believed was the defendant casing homes, he informed the 9-1-1 operator the second time he called about what he was concurrently witnessing while on the phone, including observing defendant walk out of his neighbor's home and walk down the driveway:

"Q. How far is your neighbor's— or where that car was parked in front of your neighbor's home, from where you were standing when you called 9-1-1- again?

A. 'Bout maybe 30 to 40 feet, maybe.

Q. When you called 9-1-1 that second time, did you now observe anything else occur?

A. Once I called them, I told them that I saw the vehicle in front of my neighbor's house, I then saw two males coming out of the house.

Q. Okay. And the two males that were coming out of that home, would you describe them to the ladies and gentlemen of the jury?

A. It was two – two males again, one was Hispanic and [*sic*] other one was African American.

Q. Okay. And, again, were those the same individuals that you saw driving the Nissan Maxima earlier that you had followed?

A. Yeah.

Q. And was that the same individuals that earlier drove pass [*sic*] your house and you made eye contact with them?

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A. Yes.

Q. And, again, was one of those individuals this defendant sitting here in court?

A. Yes.

Q. Then, at that point, when you saw those individuals, where were they coming from?

A. They were coming from the house, walking down from the driveway.

Q. Okay. And where was that Nissan Maxima in relation to the driveway?

A. It was right in front of the driveway.

Q. Was it blocking the driveway?

A. Yes.

Q. Okay. Did you then – where did you then see these individuals then go to?

A. They are walking towards their car.

Q. Did you observe those individuals carrying anything?

A. One had a play station or some sort of game; the other one was carrying some controls or something.

Q. Okay. And did those individuals then get in the Nissan Maxima?

A. Uh-huh, yes.

Q. Did this Defendant get in the Nissan Maxima?

A. Yes.

Q. Did they then drive off?

A. Yes. They made a U-turn and they drove to Luella, the corner, and made a right turn.

Q. Were you informing 9-1-1 of this?

A. Yeah."

¶ 18 Therefore, we agree with the trial court's finding that the police had a reasonable, articulable suspicion of criminal activity to stop defendant's car in order to further investigate Haynes's report. Additionally, we conclude that defendant's fourth amendment rights were not violated, and as such, the trial court did not err in denying defendant's motion to quash his arrest.

¶ 19 Second, defendant contends that the State failed to prove him guilty of residential burglary beyond a reasonable doubt. Where a defendant challenges the sufficiency of the evidence, the standard of review is whether, after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. McGee*, 398 Ill. App. 3d 789, 793 (2010). In reviewing the record, we give great deference to the trial court's factual and credibility determinations. *Bennett*, 376 Ill. App. 3d at 563.

¶ 20 Intent may be inferred (1) from the defendant's conduct surrounding the act and (2) from the act itself. *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 44. Here, defendant was found guilty of residential burglary. To sustain this conviction, the evidence must show that defendant, knowingly and without authority, entered or remained within a dwelling place, or any part of it, with the intent to commit a felony or theft in it. 720 ILCS 5/19-3(a) (West 2009). A person is legally accountable for the conduct of another when,

"[e]ither before or during the commission of the offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense." 720 ILCS 5/5-2(c)

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(West 2009).

¶ 21 Defendant claims that the State failed to prove its case under an accountability theory because Haynes testified he saw codefendant carrying the gaming system while walking down the driveway, and the evidence is insufficient to establish defendant formed the requisite criminal intent.

¶ 22 A review of the record reveals Haynes testified he saw defendant driving slowly through the area, seemingly casing houses. Shortly thereafter, Haynes observed Defendant leaving his neighbor's house with the codefendant. Haynes testified he observed one male carrying a gaming system and the other male carrying gaming controllers. The home was forcibly entered into and the only item discovered missing was a gaming system. He observed the males get into the white Nissan Maxima with Indiana plates that he saw them riding in earlier. The police recovered a gaming system from the same white Nissan Maxima with Indiana plates after pulling defendant over. The gaming system was identified by the owner of the home that was forcibly entered, and verified by serial number. Defendant argues Haynes's testimony was inconsistent, as he could not have seen defendant from a certain distance, making his testimony improbable. We find that minor inconsistencies in testimony go only to the weight of the evidence and not to its sufficiency. *People v. Craig*, 192 Ill. App. 3d 232, 238 (1989). In a criminal case, the trier of fact remains responsible for determining the credibility of the witnesses, the weight given to their testimony, and the reasonable inferences drawn from the evidence. *People v. Malone*, 2012 IL App (1st) 110517, ¶ 26. Therefore, we find the State proved beyond a reasonable doubt through direct and circumstantial evidence that defendant committed residential burglary.

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¶ 23 Third, defendant argues the trial court erred in permitting South Holland police officers to offer hearsay testimony regarding the contents of a radio dispatch that unfairly bolstered the testimony of the State's sole eyewitness and was highly prejudicial to his defense. Defendant asserts that over defense counsel's objection, Detective DeYoung was allowed to testify that he received a dispatch indicating that a witness saw persons leaving the home at 2020 East 169th Place carrying a gaming system, and entering a white Nissan Maxima before leaving the area. Defendant asserts that although the trial court allowed the testimony to explain the course of the officers's conduct, it was inadmissible because it exceeded what was necessary to explain the officers's actions. Hearsay is an out-of-court statement offered to establish the truth of the matter asserted. *People v. Rogers*, 81 Ill. 2d 571, 577 (1980).

¶ 24 Defendant failed to raise this issue on appeal in his posttrial motion. Defendant acknowledges that he failed to preserve the issue for appeal but he asks this court to consider the issue under the plain-error doctrine or, alternatively, to find that trial counsel provided ineffective assistance of counsel where she failed to object to similar evidence during Officer Pedric's testimony. Under the plain-error doctrine, a reviewing court is permitted to consider unpreserved error under the following two scenarios:

“(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” *People v. Sargent*, 239

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Ill. 2d 166, 189 (2010).

¶ 25 The defendant bears the burden of persuasion under both prongs of the plain-error analysis. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). The first step in the plain-error analysis is to determine whether error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). We find no error occurred to conduct the plain-error analysis. The court allowed Detective DeYoung to testify that he received a dispatch as a part of the course of the police conduct. He also stated the reason why defendant was pulled over while driving a white Nissan Maxima was because of the dispatch. Therefore, it was a necessary link in the chain of events that led to defendant's stop. Statements offered for their effect on the listener or to explain the subsequent course of conduct of another are not hearsay. *People v. Sundling*, 2012 IL App (2d) 070455-B, ¶ 70. Thus, Detective DeYoung's testimony was not inadmissible hearsay.

¶ 26 In the alternative, defendant argues his trial counsel was ineffective for failing to object to the admission of Officer Pedric's testimony and failing to preserve the error for review in defendant's posttrial motion, as well as failing to preserve the objection to Detective DeYoung's testimony in the posttrial motion. Generally, in order to show ineffective assistance of counsel, a defendant must establish: (1) "counsel's representation fell below an objective standard of reasonableness"; and (2) counsel's alleged deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We must show great deference to the attorney's decisions as there is a strong presumption that an attorney has acted adequately. *Strickland*, 466 U.S. at 689. A defendant must overcome the strong presumption the challenged action or inaction "might have been the product of sound trial strategy." *E.g., People v. Evans*,

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186 Ill. 2d 83, 93 (1999) (and cases cited therein). Every effort must "be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689. Because effective assistance refers to competent and not perfect representation, mistakes in trial strategy or judgment will not, by themselves, render the representation incompetent. *People v. Calhoun*, 404 Ill. App. 3d 362, 383 (2010) (and cases cited therein). To satisfy the prejudice prong of the *Strickland* test, a defendant must demonstrate a reasonable probability that the outcome of the trial would have been different or that the result of the proceeding was unreliable or fundamentally unfair. *Strickland*, 466 U.S. at 687; *People v. Evans*, 209 Ill. 2d 194, 220 (2004). Such a reasonable probability "is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. If a reviewing court finds that the defendant did not suffer prejudice, it need not decide whether counsel's performance was constitutionally deficient. *People v. Buss*, 187 Ill. 2d 144, 213 (1999).

¶ 27 As we have found no error occurred in admitting Detective DeYoung's testimony, defense counsel's failure to preserve the issue in defendant's posttrial motion cannot be found unreasonable or prejudicial. Similarly, Officer Pedric's testimony regarding the contents of the police dispatches was necessary to prove the officers had probable cause to pull defendant over. As the testimony of both Detective DeYoung and Office Pedric were admissible to show probable cause, they are not prejudicial and therefore it was not unreasonable for defense counsel to either object or not object to the testimony. *People v. Louisville*, 241 Ill. App. 3d 772, 781 (1992). Further, because the admission was necessary to show probable cause we do not find

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that a failure to request a limiting instruction rises to the level of prejudice. *People v. Jackson*, 391 Ill. App. 3d 11, 34 (2009). Therefore, we find defendant's counsel acted properly and was not ineffective. Since there was no error in admitting the testimony of Detective DeYoung and Officer Pedric, defendant cannot show that he suffered the prejudice required to warrant a new trial. See, e.g., *Buss*, 187 Ill. 2d at 213.

¶ 28

#### CONCLUSION

¶ 29 In sum, we find that the trial court properly denied defendant's motion to quash arrest and suppress evidence as the police had probable cause to pull defendant over after an eyewitness called 9-1-1 and police responded appropriately. Also, we conclude that the State proved defendant's guilt for residential burglary beyond a reasonable doubt. Lastly, we find no error in the trial court's admission of Detective DeYoung's testimony referring to the police dispatch received as such testimony was not inadmissible hearsay. Defense counsel did not provide ineffective assistance as Detective DeYoung's testimony and Officer Pedric's testimony were admissible to show probable cause and therefore not prejudicial. We also do not find the failure to request a limiting instruction to rise to the level of prejudice necessary to constitute ineffective assistance of counsel.

¶ 30 For the reasons stated herein, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.