

No. 1-10-3837

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| <i>In re</i> KENDRICK S., A MINOR |) | Appeal from the |
| (THE PEOPLE OF THE STATE OF ILLINOIS, |) | Circuit Court of |
| |) | Cook County. |
| Petitioner-Appellee, |) | |
| |) | |
| v. |) | No. 10 JD 3280 |
| |) | |
| KENDRICK S., a minor, |) | Honorable |
| |) | Carl Anthony Walker, |
| Respondent-Appellant). |) | Judge Presiding. |

JUSTICE QUINN delivered the judgment of the court.
Justices Connors and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly denied respondent's motion to quash arrest and suppress evidence where police officers possessed reasonable suspicion to conduct a stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). Respondent's adjudication of delinquency is therefore affirmed.
- ¶ 2 Minor respondent, Kendrick S., was adjudicated delinquent of three counts of aggravated unlawful use of a weapon and one count of unlawful use of a weapon. Prior to trial, he filed a motion to quash arrest and suppress evidence in which he argued that police officers did not have probable cause or a reasonable, articulable suspicion that he had committed, was committing, or

was about to commit a criminal offense. Respondent appeals his adjudication of delinquency, contending the trial court erred in denying his motion to quash arrest and suppress evidence obtained from his illegal detention, and that his adjudication should be reversed because the evidence admitted against him was the result of an illegal search and seizure.

¶ 3 It is undisputed that on July 24, 2010 at approximately 4:15 p.m., respondent first encountered Officer Wozniak and his partner, Officer Walczak, on Clark and Estes at the Clark Street Festival. The officers conducted a brief field interview of respondent and then told him to leave the festival. Respondent left when told and was not arrested.

¶ 4 Wozniak and Walczak then reentered the festival and were located at Clark and Greenleaf. Walczak told Wozniak that she received a telephone call from the Area 3 Gang Enforcement Unit informing her that the Area 3 gang officers placed Marco Estrada, a La Raza gang member, in custody. Estrada told the Area 3 officers that other La Raza members in the area of Clark and Estes were carrying a .38 caliber or a 9 millimeter gun. After receiving that information, the officers exited the festival and continued to Estes.

¶ 5 Respondent was leaving an alley on Clark approximately a block and a half from the festival the second time that he encountered the officers. At this time, respondent and Wozniak were walking towards each other. Wozniak said, "Hey, come here, guy." Respondent approached the officers and did not try to run away. Prior to the stop, respondent was not observed violating any laws. He did not attempt to flee, hide his hands, and did not make any sudden movements. He cooperated with Wozniak's commands. Wozniak did not present a warrant for respondent's arrest and did not ask permission to look into respondent's bag or to pat him down.

¶ 6 Several facts, however, are in dispute. While the parties agree that the La Raza street gang colors are red, white, and green, Wozniak testified that respondent wore a red shirt and blue jeans, while respondent testified he wore a blue, black and white shirt with his red school shorts.

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According to respondent, the backpack was a dark color, non-transparent, drawstring bag and was closed when Wozniak told him to remove the bag. Respondent also testified that during his first encounter with Wozniak, he was passing out church flyers with a friend, but on cross-examination it was revealed that respondent was not a member of the church and could not remember the name of the church because he visited it only occasionally with his friend.

Respondent also testified that when he encountered Wozniak the second time, Wozniak immediately told respondent to place his hands on the police car and to remove his backpack.

¶ 7 Wozniak, however, testified that at the time of the first encounter, the officers were responding to a call of a disturbance at the festival. Also during this first encounter, respondent and his friends freely admitted to being members of the La Raza street gang. Additionally, Wozniak testified that after telling respondent to leave the festival the first time and prior to receiving the call from Area 3, he then observed respondent and two other individuals "ducking in and out" of the east alley of Clark and Greenleaf three times. Whenever he made eye contact with respondent and the others, they would duck back into the alley. As the individuals exited the alley, they began walking westbound on Estes, toward the officers.

¶ 8 Wozniak testified that when he said, "Hey, come here, guy," the officers approached respondent and the other boys for the purpose of officer and community safety, to determine whether they were carrying a gun. He further testified that the officers conducted a field interview and a protective pat-down search of respondent. Wozniak stood behind respondent to conduct the pat-down. He testified that his height is six feet and three inches, while respondent's is five feet and seven or eight inches. While conducting the pat-down, Wozniak looked down into the partially opened backpack and observed the grips of a handgun. Wozniak testified that he was able to see the grips of the handgun through an approximately five-inch opening in the backpack. Before seeing the grips of the gun, he did not touch, open, nudge, or tighten the strings of the bag in any way. After observing the gun, Wozniak immediately removed the bag

from respondent, gave it to Walczak, and placed respondent in handcuffs. He observed Walczak remove a blue steel 9 millimeter handgun with nine live bullets in it. Wozniak also testified that the officers did not see anyone else at the festival wearing La Raza gang colors or who represented himself or herself to be a La Raza gang member.

¶ 9 In denying the motion to quash arrest and suppress evidence, the trial court found that after encountering respondent and two others at the festival in response to the disturbance call, and releasing him, Wozniak saw respondent with the same two individuals ducking in and out of the alley. Walczak received a phone call stating there were other La Raza gang members with a gun at the festival on Clark Street. Wozniak then found respondent again with the same two individuals and Wozniak stopped respondent to talk to him and during that time, Wozniak conducted a protective pat-down search. The trial court found that based on the totality of the circumstances, Wozniak had reasonable suspicion to conduct the *Terry* stop. The trial court found that Wozniak testified credibly that the gun was in plain view inside of the partially open backpack. Based upon this testimony, the trial court found that Wozniak had a right to arrest respondent. After the parties proceeded to trial by way of stipulation, the trial court found respondent delinquent and sentenced him to 18 months of probation, with conditions.

¶ 10 On appeal, respondent contends that the trial court erred in denying his motion to suppress evidence obtained from his illegal detention because Wozniak's stop and pat-down of him was not supported by reasonable suspicion, arguing that the *Terry v. Ohio*, 392 U.S. 1 (1968), stop was based solely on an uncorroborated tip. He contends that the trial court should have granted his motion to quash arrest and suppress evidence. The State responds that the trial court correctly denied the motion where Wozniak's partner received a tip from other police officers that they had a La Raza gang member in custody who informed them that there were other La Raza gang members in Wozniak's area carrying a gun, and respondent's suspicious actions in ducking in and out of the alley created reasonable suspicion to justify the stop.

¶ 11 In reviewing a trial court's ruling on a motion to suppress, we review the trial court's "findings of fact for clear error, giving due weight to any inferences drawn from those facts by the fact finder." *People v. Harris*, 228 Ill.2d 222, 230 (2008); citing *Ornelas v. United States*, 517 U.S. 690, 699 (1996). Thus, we may reject the trial court's findings of fact "only if they are against the manifest weight of the evidence." *Id.* A reviewing court reviews *de novo* the ultimate question of whether the evidence should have been suppressed. *People v. Miller*, 355 Ill. App. 3d 898, 900 (2005).

¶ 12 The United States and Illinois Constitutions protect individuals from unreasonable searches and seizures. U.S. Const., amends IV, XIV; Ill. Const. 1970, art. I, § 6. Under *Terry*, a police officer may briefly stop an individual for investigative purposes if that officer can point to specific and articulable facts which, taken together with rational inferences derived from those facts, indicate that the person seized is committing, has committed, or is about to commit an offense. *Village of Mundelein v. Thompson*, 341 Ill. App. 3d 842, 848 (2003); *Terry*, 392 U.S. at 22. We must first decide whether the stop of respondent was justified at its inception, then, we determine whether the scope of the stop was proportional to the circumstances that justified the inference in the first place. *People v. Sparks*, 315 Ill. App. 3d 786, 792 (2000); see also 725 ILCS 5/107-14 (2008) (codifying the *Terry* standard).

¶ 13 In considering whether the stop was justified at its inception, we first address respondent's contention that Wozniak's stop and frisk of him was not supported by reasonable suspicion because it was based solely on an uncorroborated tip from Estrada. Whether an officer has reasonable suspicion to warrant a *Terry* stop depends on the totality of circumstances. *Alabama v. White*, 496 U.S. 325, 330 (1990); *People v. Jackson*, 348 Ill. App. 3d 719, 729 (2004). In considering the totality of the circumstances, we consider whether the information known to the officer at the time of the stop "would warrant a person of reasonable caution to believe a stop was necessary to investigate the possibility of criminal activity." *People v. Delaware*, 314 Ill. App.

3d 363, 368 (2000). An informant's tip may provide the basis for a *Terry* stop if the information provided bears some indicia of reliability and allows an officer to reasonably infer that a person was involved in criminal activity. *Miller*, 355 Ill. App. 3d at 901; *People v. Lockhart*, 311 Ill. App. 3d 358, 362 (2000). We consider the informant's veracity, reliability, and basis of knowledge in determining whether the information provided a sufficient basis for the *Terry* stop. *Sparks*, 315 Ill. App. 3d at 792 (2000).

¶ 14 "[T]he determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior." *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000). Further, the "underlying facts are viewed from the perspective of a reasonable officer at the time that the situation confronted him or her." *People v. Harris*, 2011 IL App (1st) 103382, ¶11 (2011) (internal quotes omitted); quoting *People v. Thomas*, 198 Ill. 2d 103, 110 (2001).

¶ 15 Reviewing courts pay specific attention to the basis of knowledge and the veracity of the informant in considering the totality of the circumstances. *Jackson*, 348 Ill. App. 3d at 731. To determine whether an informant's tip provides reasonable suspicion, "it is important to consider the informant's reliability as well as the quality and content of the information that he or she provided." *People v. Salinas*, 383 Ill. App. 3d 481, 492 (2008). A stop may be warranted where the information includes sufficient detail, the informant claims to have witnessed criminal activity, or the information has been corroborated. See *Lockhart*, 311 Ill. App. 3d at 362; *Sparks*, 315 Ill. App. 3d at 794-95.

¶ 16 We will examine Estrada's veracity, reliability, and basis of knowledge to determine whether his tip provided the basis for a *Terry* stop. We first note that, contrary to respondent's assertion, the informant was not anonymous because Wozniak testified that Estrada provided the tip to the Area 3 officers in person, while he was in custody at the police station. See *People v. Miller*, 355 Ill. App. 3d 898, 903 (2005) (stating that informants who provide tips in person are considered identifiable, and are thus distinct from anonymous informants).

¶ 17 In the case at bar, Walczak told Wozniak that she received a phone call from the Area 3 gang enforcement unit, and was told that those officers placed a La Raza gang member, Marco Estrada, in custody. Estrada told the officers that other La Raza members in the area of Clark and Estes were carrying a .38 caliber or a 9 millimeter gun. While the record did not indicate that Estrada based his knowledge on first-hand observation, the tip was nevertheless reliable because it was sufficiently detailed. The tip was sufficiently detailed because Estrada, a La Raza gang member, said that other La Raza gang members were at a specific location, Clark and Estes, and possessed had a specific type of weapon, either a .38 caliber or a 9 millimeter gun.

¶ 18 Significantly, Estrada provided the tip in person while in police custody, which also lends to the tip's reliability. If the tip proved false, the police would have been able to confront Estrada with his provision of false information. See e.g., *In re A.V.*, 336 Ill. App. 3d 140, 144 (2002); and *Miller*, 355 Ill. App. 3d at 903-04. Respondent cites *People v. Nitz*, 371 Ill. App. 3d 747, 753 (2007), for the proposition that a tip provided by a recent arrestee may be considered less reliable where that arrestee-informant "had reason to believe that supplying information to the police might redound to his benefit in any criminal proceedings against him." In *Nitz*, detectives arrested the confidential informant and then told the informant that if he helped the police investigate drug activity, the informant might receive favorable treatment in his own prosecution. *Id.* at 748. The record does not indicate that Estrada had reason to believe he would benefit from providing the tip to the Area 3 police, and as a result, we decline to determine that the tip was unreliable based upon this factor.

¶ 19 The tip was also corroborated because the officers spotted respondent and the others where Estrada said they would be, in the area of Clark and Estes, and because they were the only La Raza members in the area. Wozniak testified that respondent and the others freely admitted to being La Raza gang members, which respondent did not rebut. Additionally, immediately prior to Wozniak and Walczak receiving the tip, Wozniak observed respondent suspiciously ducking

in and out of a nearby alley. *Wardlow*, 528 U.S. at 124-25 ("[N]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion."). Based on the totality of the circumstances, we find that Estrada's tip provided the basis for a valid *Terry* stop because the tip supplied reasonable suspicion.

¶ 20 We find additional support for our conclusion in *Miller*, in which this court concluded that the tip provided by an identifiable informant who approached police on the street and told them that the informant observed a black man wearing dark clothes displaying a gun at a specific intersection included the requisite indicia of reliability. *Miller*, 355 Ill. App. 3d at 904. The police immediately drove approximately one-eighth of a mile to the intersection and observed the defendant matching the description, but did not see the gun. The police began to conduct a field interview and protective pat-down search when they felt an object inside the defendant's waistband. *Id.* at 899. The defendant broke away from the police and ran away. *Id.* Similar to the instant case, we concluded in *Miller* that based on the totality of the circumstances, the officers had specific and articulable suspicion to justify a *Terry* stop since the defendant matched the description and was standing on the corner identified by the informant. *Id.* at 905.

¶ 21 In addition to finding support in *Miller*, we also find the cases respondent cites inapposite. *People v. Rhinehart*, 2011 IL App (1st) 100683 (2011), is distinguishable because the informant in *Rhinehart* was unidentified. *Id.* at ¶3. We specifically noted that the officer could have relied on the tip if the officer had obtained the informant's name and address so that the informant could have been held accountable if the information had been fabricated. *Id.* at ¶14. Further, we explained that the officer could have relied on observations of the defendant's behavior if the defendant had attempted to conceal some object or acted suspiciously, or if the informant accurately predicted the defendant's behavior or explained how the informant knew of the defendant's criminal behavior. *Id.* Here, the officers had Marco Estrada's contact information, and even had him in custody at the time that Estrada supplied the tip. Officer

Wozniak also testified that respondent acted suspiciously ducking in and out of the alley. Thus, the circumstances that this court considered in *Rhinehart* are distinguishable from the present case.

¶ 22 Respondent also cites *People v. Chestnut*, 398 Ill. App. 3d 1043, 1052 (2010), for the proposition that “[t]he facts used to support an investigatory detention are insufficient when they describe a very large category of presumably innocent [individuals].” (Internal citations omitted). Respondent argues that Estrada's tip failed to give any description of a particular individual. Here, Estrada's tip did not describe a large group of presumably innocent individuals. Rather, the tip described respondent and the other two individuals respondent was with, as was shown by Wozniak's testimony that no one else in the area represented himself or herself to be La Raza members and no one else was wearing La Raza gang colors, and because respondent did not rebut Wozniak's testimony that he freely admitted to being La Raza during his first encounter with the officers. Based on the foregoing, we find that the *Terry* stop of respondent was supported by reasonable suspicion at its inception.

¶ 23 Having found that the stop was justified at its inception, we move on to determine whether the *Terry* frisk was proportional to the circumstances that justified the stop. Respondent argues there were no grounds for Wozniak to frisk him because Wozniak did not subjectively believe respondent was armed and dangerous and because the circumstances did not support an objective belief that respondent was armed and dangerous. Respondent argues that his case is like *People v. Linley*, 388 Ill. App. 3d 747, 753 (2009), which respondent contends the appellate court found the *Terry* pat-down of that defendant was not justified even where the tip concerned a gun and the officer observed suspicious body language after encountering the defendant in a high-crime area late at night. However, respondent fails to account for the fact that the court also considered when making its ruling that there was no reliable information that shots had been fired in the vicinity, thus “there certainly were no particular facts that would have led [the officer]

to reasonably believe that defendant was armed and dangerous." *Id.* Here, the specific facts justifying the pat-down were that Estrada told police that his fellow gang members possessed a gun in the area of the street festival and in the area of respondent and his two friends' location. As Wozniak testified, this information led him to be concerned for officer and community safety. Therefore, we find that Wozniak was justified in frisking respondent and that the frisk did not exceed the scope of the tip that justified the *Terry* stop at its inception. See *Miller*, 355 Ill. App. 3d at 905 (concluding that because the informant said he had seen a gun, the officer reasonably suspected the defendant was armed and was justified in conducting a frisk); and *In re A.V.*, 336 Ill. App. 3d at 144.

¶ 24 In addition to finding the frisk was proper, we also find that while conducting a valid *Terry* stop, Wozniak properly seized the gun pursuant to the plain view doctrine. Wozniak observed the grips of a gun in respondent's backpack. While the parties dispute whether respondent's bag was completely closed or partially open, we must accept the trial court's findings of fact unless they are against the manifest weight of the evidence. *Harris*, 228 Ill.2d at 230. It is not against the manifest weight of the evidence that Wozniak stood over respondent and observed the grips of a handgun. During a *Terry* investigative stop, police may seize an object pursuant to the plain view doctrine if "(1) the officers are lawfully in a position from which they view the object; (2) the incriminating character of the object is immediately apparent; and (3) the officers have a lawful right of access to the object." *People v. Jones*, 215 Ill. 2d 261, 272 (2005). We already concluded that Wozniak conducted a valid *Terry* stop and lawfully conducted a protective pat-down of respondent, thus he was lawfully in a position to view the gun. Wozniak testified that he did not manipulate the respondent's bag prior to observing that it was a gun, thus the incriminating character of the gun was immediately apparent. Finally, Wozniak had a lawful right of access to the object because he was conducting a lawful *Terry* stop and pat-down, and for officer safety, he removed respondent's bag containing the gun.

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¶ 25 Based on the totality of the circumstances, we conclude that the *Terry* stop of respondent was supported by reasonable suspicion at its inception and the scope of the stop was proportional to the circumstances that justified the inference of reasonable suspicion.

¶ 26 For the foregoing reasons, we conclude that the trial court properly denied respondent's motion to suppress evidence and quash arrest.

¶ 27 Affirmed.