

2012 IL App (2d) 110307-U  
Nos. 2-11-0307 & 2-11-0330 cons.  
Order filed March 26, 2012

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-CF-2582
	)	
KYLE BAKER,	)	Honorable
	)	Allen M. Anderson,
Defendant-Appellee.	)	Judge, Presiding.

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-CF-2687
	)	
KYLE BAKER,	)	Honorable
	)	Allen M. Anderson,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices Hutchinson and Zenoff concurred in the judgment.

**ORDER**

*Held:* The police had probable cause to arrest defendant for residential burglary, as they knew that he matched the general description of a convicted burglar who was linked to a vehicle that was parked, for no discernable reason, on an otherwise empty street not far from the site of a reported burglary.

¶ 1 In these consolidated appeals, the State seeks review of orders of the circuit court of Kane County granting motions by defendant, Kyle Baker, to quash his arrest and suppress evidence. We reverse and remand for further proceedings.

¶ 2 Case No. 2-11-0307 arises from a prosecution for residential burglary (720 ILCS 5/19-3(a) (West 2010)), burglary (720 ILCS 5/19-1(a) (West 2010)), criminal trespass to a residence (720 ILCS 5/19-4(a)(2) (West 2010)), theft (720 ILCS 5/16-1(a)(1)(A) (West 2010)), and resisting and obstructing a peace officer (720 ILCS 5/31-1 (West 2010)). Case No. 2-11-0330 arises from a prosecution for burglary (720 ILCS 5/19-1(a) (West 2010)), theft (720 ILCS 5/16-1(a)(1)(A) (West 2010)), and criminal trespass to a vehicle (720 ILCS 5/21-2 (West 2010)). At a joint hearing on the motions, Kane County sheriff's deputy Mike Wilgosiewicz testified that on October 14, 2010—which was a Thursday—at about 2 a.m., he was dispatched to respond to a residential burglary in progress at 7N185 Whispering Trail in St. Charles. He was told that the occupants of the residence “heard somebody” in the home. Wilgosiewicz further testified that, when he arrived at the scene, “two or three responding units were present” and “[t]hey had dispatched or advised us that they heard somebody running into the woods behind the house.” Wilgosiewicz checked that area, but did not find anyone. Later, another sheriff's deputy reported seeing a Toyota parked on Whispering Trail. The Toyota was parked about two tenths of a mile south of 7N185 Whispering Trail, on the south or east side of the road. (It is evident that, at the point where the Toyota was parked, Whispering Trail runs southwest to northeast.) The roadway had no curb or shoulder, and the homes in the area had long driveways. The Toyota was not parked in front of any particular

house or at a location that would be especially convenient for a visitor to one of the homes in the area. Wilgosiewicz testified that, while driving on Whispering Trail, he did not see any other vehicles parked at the side of the road. Wilgosiewicz noted that the Toyota's hood was warm.

¶ 3 The Toyota was registered to an address in West Chicago. Defendant did not own the vehicle, although the owner's last name was Baker. Wilgosiewicz looked into the Toyota with his flashlight and observed some items in the passenger compartment. Among other things, he noticed a wallet and either a traffic or a parking ticket on the passenger seat. Defendant's name was written on the ticket. Wilgosiewicz was able to read the ticket through the window; he did not enter the vehicle. Wilgosiewicz acknowledged that a report written by Ken Johnson, a detective with the Kane County sheriff's office, stated that deputies had entered an open vehicle to identify its owner. Johnson later testified that he believed his report was inaccurate. When he heard radio communications regarding items found in the vehicle, he assumed that the deputies on the scene had entered the vehicle.

¶ 4 After Wilgosiewicz relayed defendant's name to a dispatcher, he was advised that defendant was a 26-year-old white male with a burglary conviction. Wilgosiewicz and another sheriff's deputy walked across the street (to the northwest side) to conduct surveillance on the Toyota. Wilgosiewicz stood near a house, and the other deputy stood behind a tree near a pond. At about 3:30 a.m., Wilgosiewicz heard "rustling" from behind where he and the other deputy were stationed. They turned and the other deputy shined his flashlight on defendant, who was standing about 10 feet to the west. Using a map to illustrate his testimony, Wilgosiewicz testified that defendant had come "from back behind these residences \*\*\* in this wooded area." The map is not part of the record on

appeal. Wilgosiewicz was able to see that defendant was a white male who appeared to be in his mid-twenties.

¶ 5 The other deputy identified himself as a law enforcement officer and ordered defendant to get on the ground. Wilgosiewicz thought that defendant might be preparing to flee, because he lowered himself into what Wilgosiewicz described as a “runner’s or sprinter’s stance” with one knee touching or nearly touching the ground. Defendant remained in that position, although Wilgosiewicz and the other deputy continued to order him to get on the ground. Wilgosiewicz tackled defendant. Wilgosiewicz and the other deputy then attempted to place defendant in handcuffs. Defendant was lying face down with his hands beneath him and he did not comply with orders that he place his hands behind his back. Wilgosiewicz testified that he and the other deputy “physically had to force [defendant’s] hands behind his back.”

¶ 6 The State argued that, when defendant was placed in handcuffs, there was probable cause to arrest him for burglary. The State alternatively argued that, even if the arrest was initiated without probable cause, defendant had no right to resist or obstruct the arrest. Thus, according to the State, defendant was properly arrested for resisting or obstructing a peace officer.

¶ 7 The trial court expressly found that Wilgosiewicz obtained information about defendant’s identity without physically entering the Toyota. In granting the motions to quash and suppress, the trial court further stated as follows:

“The Court finds that the officers announced their presence, they ordered the defendant to stop for questioning, essentially stay where he was for questioning, and he did. He was told to get on the ground, and the testimony was that defendant knelt down as indicated in a possible running position in response to that questioning. The officer

interpreted it as a possibility of \*\*\* flight as though the defendant was about to run. The officers continued their commands to get on the ground, and at that point they were on the defendant in the efforts of securing handcuffs on him and seeing that he was apparently prone on the ground. I'm finding at that point that an arrest took place.

I'm granting the motion to suppress and quash arrest because I don't find that the officers had facts known to them to lead them to believe that the defendant was the person involved with the residential burglary. I'm mindful of the arguments that there was a car where no other cars are, and I'm also mindful that the car is warm and the time of day. That certainly supports the reasonable suspicion that authorizes the initial contact with the individual, but I don't believe it rises to probable cause, and I'm not ignoring either the fact that defendant comes from a wooded area where someone was seen to have been. \*\*\* [P]robable cause, no matter how low the threshold it may sometimes appear to be, still needs to connect what a reasonable man under the facts and circumstances would believe that it was this person who committed the offense as opposed to some other person who may have committed the offense. I think it's arguably a close call on circumstances. Again, I find from the actions that the officers took in securing the defendant at that point there was an arrest, and I think rather than acting on probable cause, they were pursuing a hunch and suspicion[.]”

¶ 8 The trial court also indicated that it was not persuaded by the argument that there was probable cause to arrest defendant for resisting arrest.

¶ 9 On appeal from a trial court's ruling on a motion to quash and 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 (2010).

However, the trial court’s ultimate decision to grant or deny the motion is subject to *de novo* review.

*Id.*

¶ 10 A warrantless arrest must be supported by probable cause, which exists “when the totality of the facts and circumstances known to the officer is such that a reasonably prudent person would believe that the suspect is committing or has committed a crime.” *People v. Geier*, 407 Ill. App. 3d 553, 557 (2011). “[P]robable cause does not \*\*\* demand a showing that the belief that the suspect has committed a crime be more likely true than false.” *People v. Wear*, 229 Ill. 2d 545, 564 (2008). The existence of possible innocent explanations for the individual circumstances or even the totality of the circumstances does not necessarily negate probable cause. See *People v. Schmitt*, 346 Ill. App. 3d 1148, 1153 (2004) (quoting *Illinois v. Gates*, 462 U.S. 213, 244 n.13 (1983)) (“ ‘In making a determination of probable cause[,] the relevant inquiry is not whether particular conduct is “innocent” or “guilty,” but the degree of suspicion that attaches to particular types of noncriminal acts.’ ”).

¶ 11 There appears to be no dispute that, when defendant was placed in handcuffs, he was under arrest. In arguing that the trial court properly granted his motions, defendant contends that, at the time of the arrest, there was no probable cause to believe that a burglary had, in fact, occurred, let alone that he committed it. To the contrary, the facts known to the police at the time of defendant’s arrest were more than sufficient to lead a reasonably prudent person to believe that defendant had committed a crime. The police located a Toyota parked within easy walking distance of the home whose occupants reported hearing an intruder who ran into the woods behind their home. There were no other vehicles parked on the street. Noting that the vehicle was registered to an address in

West Chicago, defendant insists that there was no reason to believe that the driver was anything but a visitor to one of the homes in the neighborhood. However, one would expect a visitor leaving his or her vehicle on the street—particularly an empty street with no sidewalks—to park close to a driveway, which would presumably provide the easiest access to the home being visited. Here, the vehicle in question was not parked in front of any particular house or especially close to a driveway. Moreover, the vehicle’s warm hood suggests that the vehicle had been parked fairly recently. It is true, as defendant notes, that the vehicle might have been parked after the burglary. If so, the vehicle arrived in the neighborhood after 2 a.m. on a Thursday, which is an unlikely time for a social call.

¶ 12 Defendant does not dispute the trial court’s finding that Wilgosiewicz was able to read defendant’s name on a parking or traffic ticket. Wilgosiewicz testified that he was able to obtain a general description of defendant and learned that defendant had a burglary conviction. A suspect’s criminal record is relevant to the existence of probable cause. See 2 Wayne R. LaFave, *Search and Seizure* § 3.2(d), at 57-59 (4th ed. 2004). Although the vehicle was not registered to defendant, the registered owner’s last name was the same as defendant’s, suggesting that the owner might have been a relative from whom defendant might have gotten permission to borrow the vehicle. Indeed, it seems likely that defendant would have been driving the vehicle when he received the parking or traffic ticket observed in the passenger compartment.

¶ 13 Defendant argues that the geographic features of the neighborhood in question are inconsistent with the State’s theory that, before the police encountered defendant, he had been hiding in the woods waiting for an opportunity to return, undetected, to his vehicle. First, defendant notes that he would have had to cross Whispering Trail to arrive at the location where he was apprehended. Defendant has appended to his brief, and asks this court to take judicial notice of, satellite

photographs of the area obtained from the Internet. See *People v. Clark*, 406 Ill. App. 3d 622, 633 (2010) (“case law supports the proposition that information acquired from mainstream Internet sites such as MapQuest and Google Maps is reliable enough to support a request for judicial notice” and, when the request is made for the first time on appeal, the information may be considered for purposes of understanding the evidence presented below and the trial court’s findings). The maps show that the area where defendant was apprehended was not densely wooded, but featured a pond surrounded by what appears to be a line of trees. According to defendant, the line of trees was not a suitable place to hide for an extended period. Be that as it may, it certainly appears that the area in question could provide cover in the predawn hours for someone trying to elude police and return to a vehicle to make his escape.

¶ 14 Defendant further argues that the police had no proof he had driven the vehicle on the morning in question and that when he was arrested the police did not know his identity. The argument overlooks the totality of the circumstances known to the police. When the police arrested defendant, they knew that he matched the general description of a convicted burglar who was linked to a vehicle that was parked, for no discernable reason, on an otherwise empty street not far from the site of a reported burglary in the early morning hours of a weekday.

¶ 15 Citing *People v. Lee*, 214 Ill. 2d 476 (2005), defendant contends that, while the circumstances under which the police encountered him may have led them to suspect that he had committed a crime, the police should have questioned him to confirm or dispel those suspicions before placing him under arrest. The defendant in *Lee* was arrested for violating an ordinance that prohibited loitering in a manner that manifested the purpose to engage in drug-related activity. Construing the ordinance to require an overt act manifesting such a purpose, the *Lee* court held:

“ ‘[I]f police officers see a person who is a known drug user \*\*\*, they may become suspicious and conduct further surveillance, but they cannot arrest the person because he has not committed an overt act signaling a current intention to violate drug laws. If during further surveillance the officers see the person engage in overt drug-related acts, then they can arrest him under the ordinance.’ ” *Id.* at 483 (quoting *People v. Lee*, 345 Ill. App. 3d 782, 789 (2004) (Holdridge, P.J., specially concurring)).

The defendant in *Lee* had committed no such overt act and our supreme court concluded that, although the information known to the police justified temporarily detaining the defendant for questioning pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), “the officers should have waited and watched for some overt act manifesting that defendant intended to engage in drug-related activity” (*Lee*, 214 Ill. 2d at 488) before placing him under arrest. The *Lee* court’s reasoning hinged on the peculiar requirements of the ordinance underlying the arrest in that case, and it does not apply here.

¶ 16 Because there was probable cause to arrest defendant for residential burglary, it is unnecessary to consider whether there was probable cause to arrest him for resisting or obstructing a peace officer.

¶ 17 For the foregoing reasons, we reverse the orders of the circuit court of Kane County granting defendant’s motions to quash and suppress, and we remand for further proceedings.

¶ 18 Reversed and remanded.