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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 11-CF-649
)	
LIONEL L. RUSSELL,)	Honorable
)	George J. Bakalis,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted defendant's motion to quash and suppress: the traffic stop was not supported by reasonable suspicion of a drug offense, as the facts that the police knew were only vaguely suspicious; and the traffic stop was not supported by a traffic violation, as the trial court was entitled to reject the officer's testimony that he saw such a violation.

¶ 2 Defendant, Lionel L. Russell, was charged with unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(a)(1)(A) (West 2010)). Prior to trial, he moved to quash his arrest and suppress statements. His primary contention was that the officers who arrested him lacked reasonable grounds to stop the vehicle in which defendant was a passenger. The

trial court granted the motion and the State appeals. The State contends that the officers had reasonable grounds to believe that (1) defendant and Keith Moran, the driver, had recently made a drug purchase; or (2) Moran had committed a traffic violation. We disagree and affirm.

¶ 3 By stipulation, the parties adopted the evidence and arguments from the suppression hearing in Moran's case. There, Naperville police detective Michael Rimdzius testified that on March 22, 2011, he and his partner, Michael Courterier, were conducting surveillance of a parking lot at 1550 North Route 59 between 5:30 and 6:00 p.m., due to recent drug activity in that area. Rimdzius clarified that there had been three drug arrests in that parking lot in the past year.

¶ 4 They noticed a Chevrolet Cavalier pull into a parking space. The driver and passenger—later identified as Moran and defendant—got out and appeared to be checking the car's headlights, brake lights, and turn signals. Rimdzius discovered that the Cavalier was registered to Moran, who had a history of drug arrests. Thus, he and Courterier decided to follow the Cavalier when it left the parking lot.

¶ 5 The detectives followed the Cavalier onto Interstate 290, where it eventually exited at Austin Boulevard, turned onto Chicago Avenue, and pulled to the side of the street. There, a white Dodge Challenger pulled alongside the Cavalier. Both vehicles turned south and entered an alley. The detectives circled the block. By the time they returned to where the vehicles entered the alley, the Cavalier was leaving. Rimdzius estimated that the Cavalier was in the alley for about a minute.

¶ 6 The detectives followed the Cavalier as it returned to Naperville. Rimdzius contacted his department's canine unit to say that he might need help with a vehicle stop. According to Rimdzius, as the Cavalier turned right onto northbound Route 59, the driver did not use his turn signal. The officers initiated a traffic stop. As he activated the lights and siren of the unmarked squad car,

Rimdzius observed the Cavalier's occupants making "movements towards the center console." Rimidzius opined that the Cavalier did not pull over at the earliest opportunity, instead continuing to a gas station on the right side of Route 59.

¶ 7 Moran testified that he and defendant had tested the lights and turn signals on his car. On cross-examination, he testified that he did this because he did not want to be stopped by the police while driving in Chicago. He denied that he failed to use his turn signal while turning onto Route 59.

¶ 8 The trial court, believing that the central issue was whether a traffic violation occurred, found that it did not. The court stated that, because there was no other direction for Moran's car to travel while exiting from Interstate 88 onto Route 59, Moran had not violated the turn-signal statute (625 ILCS 5/11-804 (West 2010)).

¶ 9 In granting Moran's motion to quash his arrest, the trial court was somewhat ambiguous in stating whether it found Rimdzius's testimony about the turn-signal violation credible. See *People v. Moran*, 2012 IL App (2d) 110793-U, at ¶ 14. In ruling on this case, the trial court "elaborated" that it had not found credible Rimdzius' testimony about a turn-signal violation. The court found that, in light of Moran's testimony that he was being careful to avoid violations, it did not believe that he failed to signal while turning right onto Route 59. The court further noted that Rimdzius did not decide to stop the vehicle until after calling the canine unit and that the State had not called Courterier, raising the inference that he would not have corroborated Rimdzius's account. Thus, the court granted defendant's motion to quash and suppress. After the court denied its motion to reconsider, the State timely appealed.

¶ 10 The State contends that the trial court erred by granting defendant's motion, because Rimdzius had reasonable grounds for the traffic stop. The State first argues that the detectives had a reasonable suspicion that defendant and Moran were engaged in drug activity. Alternatively, the State contends that the trial court erred in concluding that Rimdzius did not witness a traffic violation.

¶ 11 In reviewing a ruling on a motion to suppress evidence, we employ a two-part standard. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). First, we review for clear error the trial court's findings of historical fact and reverse those findings only if they are against the manifest weight of the evidence. *People v. Geier*, 407 Ill. App. 3d 553, 556 (2011). Second, we review *de novo* the court's ultimate ruling whether suppression is warranted. *Id.*

¶ 12 The fourth amendment protects against unreasonable searches and seizures. U.S. Const., amend. IV. Consistent with the fourth amendment, a police officer may briefly detain a person for questioning if he or she reasonably believes, based on specific and articulable facts, that the individual has committed, or is about to commit, a crime. *Terry v. Ohio*, 392 U.S. 1, 22 (1968); *People v. Miller*, 355 Ill. App. 3d 898, 900-01 (2005).

¶ 13 The State maintains that all the facts known to Rimdzius and Courterier, taken together, led to a reasonable suspicion that defendant and Moran had purchased drugs in Chicago. According to the State, these facts include that: defendant and Moran were first seen in a parking lot that had been the site of "increased drug activity," the pair were seen meticulously checking the lights and turn signals on Moran's car, they drove to an area of Chicago also known for drug activity, and they had an apparent rendezvous with another car in an alley for approximately one minute and then returned

to Naperville. The State contends that these facts led to a reasonable suspicion that defendant and Moran drove to Chicago to make a drug purchase. We disagree.

¶ 14 Rather than specific facts, the State relies on, at most, vague inferences. That defendant and Moran drove to Chicago, apparently met the occupants of another car for less than a minute, then returned to Naperville, was admittedly unusual, but did not support a reasonable suspicion that the pair were engaged in drug activity. Notably, Rimdzius did not see what happened while the two cars were in the alley. Thus, he could not testify, for example, whether the cars' occupants exchanged anything, and he did not hear any conversations between them. The mere fact that defendant and Moran apparently followed another car into an alley does not, without more, create a reasonable suspicion that a drug deal took place.

¶ 15 The remaining "facts" the State cites do not add much to the reasonable-suspicion equation. That the parking lot where Rimdzius first saw defendant and Moran had recently seen an increase in drug activity is not particularly significant, given that the activity apparently consisted of three arrests in approximately three months. Moreover, there is no information in the record about the types of drug offenses allegedly committed, or even whether the arrests resulted in convictions. Further, any inference is even more attenuated given that defendant did not engage in any type of transaction in the parking lot. Moreover, as defendant points out, Rimdzius did not testify that the Chicago neighborhood where defendant and Moran went was known for drug activity and, again, any such inference was vague and unsupported by specific circumstances. Finally, that Moran was checking his lights and turn signals in order to avoid a violation was perhaps unusual but cannot be considered inherently suspicious.

¶ 16 The State cites *United States v. Sharpe*, 470 U.S. 675 (1985), as being similar to this case. There, a Drug Enforcement Agency (DEA) agent was patrolling an area of the North Carolina coast known for drug trafficking. The agent had observed two vehicles traveling in tandem for 20 miles. One was a pickup truck with a camper shell that had “quilted bed-sheet material” rather than curtains covering the windows and appeared to be heavily loaded. *Id.* at 692.n 3. The agent testified that pickup trucks with camper shells were often used to transport large quantities of marijuana. Both vehicles began speeding as soon as a state officer began following them in a marked car. The court held that “[p]erhaps none of these facts, standing alone, would give rise to a reasonable suspicion; but taken together as appraised by an experienced law enforcement officer, they provided clear justification to stop the vehicles and pursue a limited investigation.” *Id.* at 682 n.3.

¶ 17 Quite simply, more facts supported the stop in *Sharpe* than in this case, including the agent’s testimony that pickup trucks with camper tops were frequently used to transport large quantities of marijuana and that the pickup truck in question appeared to be heavily loaded. Perhaps most importantly, the officers actually observed a traffic violation, a fact that, as we discuss more fully below, is absent here.

¶ 18 This case is more akin to *People v. Kipfer*, 356 Ill. App. 3d 132, 138-40 (2005), where we held that an officer lacked reasonable suspicion for a *Terry* stop where the defendant emerged from behind a dumpster at 3:40 a.m. in an apartment complex that had had three car burglaries in the past month and the defendant walked in the opposite direction at the officer’s approach. Also instructive is *People v. Croft*, 346 Ill. App. 3d 669, 671-76 (2004), where we found reasonable suspicion lacking where the defendant was walking a bicycle up a hill at 11:15 p.m. in an area where four thefts and two incidents of vandalism had been reported in the prior week. See also *People v. Thomas*, 198 Ill.

2d 103 (2001) (officer lacked reasonable suspicion where defendant was riding a bicycle and carrying a police scanner at 11:30 p.m., officer had previously arrested defendant and knew he had just been released from prison, and officer had received an anonymous tip that defendant was using a bicycle to make drug deliveries; however, defendant's flight provided sufficient grounds to detain him); *People v. Linley*, 388 Ill. App. 3d 747, 752 (2009) (no reasonable suspicion where defendant was standing outside a residence in a high-crime area and his body language suggested he might flee).

¶ 19 These cases stand for the proposition that unusual behavior, even in an area with recent reports of criminal activity, will not, in and of itself, provide reasonable suspicion for an investigatory stop. We have little more than that here.

¶ 20 The State alternatively contends that the traffic stop was proper because Rimdzius observed a traffic violation. Vehicle stops are subject to the fourth amendment's reasonableness requirement. *Whren v. United States*, 517 U.S. 806, 810 (1996); *People v. Hackett*, 2012 IL 111781, ¶ 20. “ ‘As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.’ ” *People v. McDonough*, 239 Ill. 2d 260, 267 (2010) (quoting *Whren*, 517 U.S. at 810). However, though traffic stops are frequently supported by “probable cause” to believe that a traffic violation has occurred, as differentiated from the “less exacting” standard of “reasonable, articulable suspicion” that justifies an “investigative stop,” the latter will suffice for purposes of the fourth amendment irrespective of whether the stop is supported by probable cause. *People v. Close*, 238 Ill. 2d 497, 505 (2010). A police officer may conduct a brief, investigatory stop of a person where the officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.

Id., 238 Ill. 2d at 505. The officer’s belief “need not rise to the level of suspicion required for probable cause.” *Id.* (citing *United States v. Sokolow*, 490 U.S. 1, 7 (1989)).

¶ 21 In codefendant Moran’s appeal, we held that the trial court’s remarks did not clearly show whether the court believed Rimdzius’s testimony that Moran failed to signal. However, in the context of defendant’s motion to quash and suppress, the court clarified that it did not find Rimdzius credible. On appeal, a trial court’s credibility determinations are accorded great deference and will be reversed only if they are against the manifest weight of the evidence. *People v. Slater*, 228 Ill. 2d 137, 149 (2008).

¶ 22 The State cites *People v. Miller*, 242 Ill. App. 3d 423, 437 (1993), where the Fourth District affirmed the trial court’s suppression order based on “factual discrepancies” in the officers’ testimony. Although the State’s position is not entirely clear, it appears to contend that we must reverse the suppression order here because Rimdzius’s testimony was internally consistent. The State cites no cases in support of this position and we are not aware of any. Rather, as *Slater* holds, the trial court’s factual findings are entitled to great deference. Here, although not required to do so, the court gave cogent reasons for rejecting Rimdzius’s testimony about the alleged traffic violation. We see no reason not to defer to those findings here. Because the court did not credit Rimdzius’s testimony that Moran failed to activate his turn signal, and the State suggests no other basis to believe that Moran committed a traffic violation, we may not reverse the suppression order on that basis.

¶ 23 The judgment of the circuit court of Du Page County is affirmed.

¶ 24 Affirmed.