

No. 1-13-0755

**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  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 12 CR 13641
	)	
PHILLIP WASHINGTON,	)	Honorable
	)	Steven J. Goebel,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Hall and Rochford concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Trial court's order granting defendant's motion to quash arrest and suppress evidence reversed where the trial court improperly imposed the burden of establishing defendant's identity upon the State, and where defendant threw a baggie containing a white, powdery substance in plain view of the arresting officer, thereby giving her probable cause to arrest defendant at that time.

¶ 2 In July 2012, the State charged defendant Phillip Washington with one count of possession of a controlled substance with intent to deliver and one count of possession of a controlled substance. The trial court subsequently granted defendant's motion to quash arrest and

suppress evidence, as well as denied the State's motion to reconsider that order. In this challenge to those rulings on appeal (Ill. S. Ct. R. 604(a)(1) (eff. Jul. 1, 2006)), the State contends that the trial court erred in improperly placing the burden of establishing that defendant was arrested and was not doing anything unusual prior to his contact with the police upon the State, rather than on defendant. We reverse.

¶ 3 At the hearing on defendant's motion to quash arrest and suppress evidence, defendant did not testify, but presented the testimony of two of the arresting officers. Chicago police officer Samars testified that on June 26, 2012, she was on patrol with Officers Kaur and Fram, and they were all dressed in plain clothes. At approximately 4 p.m., they received a call on their radio dispatch reporting that two black males and two females were smoking marijuana in a red vehicle with a license plate starting with the letter "L" and located in the vicinity of 50th Street and Drexel Boulevard. Without activating their oscillating lights, Officer Kaur, who was driving their unmarked vehicle, proceeded to that general area. Approximately five minutes later, they encountered a red vehicle with a license plate beginning with the letter "L." That vehicle contained two black male passengers and was parked on 5036 South Drexel Boulevard.

¶ 4 Officer Samars further testified that Officer Kaur parked their car parallel to, and approximately two or three feet in front of, a vehicle that was parked behind the red vehicle. The three officers then exited their car and approached the red vehicle. Officer Kaur approached the front, driver's side of the vehicle, Officer Fram approached the back, and Officer Samars approached the passenger side. As they approached the vehicle, none of the officers drew their weapons or said anything to the vehicle's occupants. Because Officer Samars was walking toward, and focused upon, the passenger side of the red vehicle, she did not see the vehicle's

driver throw anything out of the window. However, upon arriving at the passenger side of the vehicle, she heard Officer Kaur tell the driver to exit the vehicle, so she told the passenger to do the same. The driver then exited the vehicle, at which point he was handcuffed and both he and the passenger were taken to the back of the vehicle. At that time, Officer Kaur nodded to Officer Samars, then proceeded to the side of the red vehicle, and recovered an object, after which she and Officer Kaur searched the red vehicle while Officer Fram guarded the two men. They did not find any contraband or drug paraphernalia in the vehicle or on the driver.

¶ 5 Chicago police officer Kaur testified and corroborated Officer Samars' description of events. Officer Kaur added that as she approached the red vehicle on foot, and before any of the officers said anything to the occupants in the vehicle, she observed defendant, the driver, "toss" a clear, knotted baggie out of his window. The baggie landed by the front tire of the driver's side of the red vehicle, and Officer Kaur saw that it held several Ziplock baggies containing a white powdery substance, which, based upon her experience, she believed to be narcotics. After making this observation, Officer Kaur ordered the driver to exit the vehicle, then handcuffed him and placed him under arrest for possession of a controlled substance. She then returned to the location where the baggie had fallen, and retrieved it. Following this testimony, the defense rested. The State did not present any witnesses, and the parties proceeded to oral argument.

¶ 6 Defense counsel argued that Officer Kaur's testimony that she saw defendant drop an item in plain view was not credible, and that the testimony of Officers Kaur and Samars conflicted. The State argued that no seizure took place until after Officer Kaur observed defendant drop a baggie of suspect narcotics out of his window, at which point Officer Kaur had probable cause to arrest him. The trial court stated that it agreed with the State's theory that

defendant dropped the drugs prior to any seizure, but granted defendant's motion to quash arrest and suppress evidence because no in-court identification of defendant had been made. The court found that due to this lack of identification, it did not know what defendant did in this case. The court denied the State's subsequently-filed motion to reconsider on the basis that "there was no identification of the defendant in this matter at all."

¶ 7 On March 1, 2013, the State filed a certificate of substantial impairment alleging that the court's order denying its motion to reconsider its order granting defendant's motion to quash arrest and suppress evidence substantially impaired its ability to prosecute this case. In this interlocutory appeal, the State contends that the trial court erred in granting defendant's motion to quash arrest and suppress evidence.

¶ 8 In reviewing an order denying a defendant's motion to quash arrest and suppress evidence, mixed questions of law and fact are presented. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). Factual findings made by the trial court will be upheld unless they are against the manifest weight of the evidence, whereas the trial court's application of the facts to the issues presented and the ultimate question of whether the evidence should be suppressed is subject to *de novo* review. *Id.*

¶ 9 The State argues that the trial court erred in that it placed the burden of establishing that defendant was arrested and was not doing anything unusual at that time, upon the State rather than upon defendant. It is well-settled that a defendant bears the burden of establishing the factual and legal bases for a motion to suppress evidence claimed to be illegally seized. 725 ILCS 5/114-12(b) (West 2012); *People v. Taylor*, 56 Ill. App. 3d 491, 493 (1978), citing *People v. Berg*, 67 Ill. 2d 65 (1977). The burden does not shift to the State until a defendant makes a

*prima facie* showing that, *inter alia*, he was doing nothing unusual at the time he was arrested. *People v. Broge*, 159 Ill. App. 3d 127, 140 (1987).

¶ 10 Although the trial court was correct that no in-court identification of defendant was made at the hearing on defendant's motion to quash arrest and suppress evidence, it was incorrect in placing the burden of establishing defendant's identity upon the State. As noted above, the State had no burden to prove defendant's identity at this juncture, given that defendant did not make a *prima facie* showing that he was the person who was arrested and that he was doing nothing unusual at that time. Accordingly, the trial court erred in granting defendant's motion on the basis that no in-court identification of defendant had been made. Notably, defendant does not contest that he bore the burden on establishing his identity at the hearing on his motion. Instead, he maintains that we may affirm the trial court's order based on any reason supported by the record and contends that suppression was proper. Although defendant divides his contentions into seven arguments, those arguments fall into two broad categories.

¶ 11 Defendant first argues that we may affirm the trial court's order because Officers Kaur and Samars lacked credibility. Defendant specifically contends the Officer Kaur's testimony that she saw defendant drop a baggie of narcotics out of his car window was not credible in that it "defies common sense" that defendant would have thrown the drugs in full view of the officer when he could have hidden the drugs in his vehicle or discarded them before the officer walked to his vehicle. Defendant further contends that the testimony of Officers Kaur and Samars was inconsistent and illogical in certain respects, such as whether the dispatch call specified a red "vehicle" or a red "car," whether Officer Samars should have been able to see defendant throw anything out of his window from her vantage point, and whether Officer Kaur would have

immediately gestured or spoken to her partners if she had actually seen defendant drop the baggie of drugs.

¶ 12 Upon reviewing the record, we find no basis upon which to reverse the trial court's credibility findings. Contrary to defendant's contention, there is nothing about the officers' testimony that "defies common sense," nor is it inherently unbelievable that upon seeing police, defendant would attempt to rid himself of incriminating evidence. See *People v. Ash*, 346 Ill. App. 3d 809, 817-18 (2004). The trial court was in the best position to determine the credibility of the witnesses and resolve any conflicts in their testimony (*People v. Evans*, 296 Ill. App. 3d 1, 9 (1997)), and here the trial court found Officers Kaur and Samars to be credible. This is reflected by the court's statement that it agreed with the State's argument that defendant was not seized until after he threw the baggie on the ground. In order to agree with that argument, the trial court implicitly accepted the testimony as presented by Officers Kaur and Samars. That said, in spite of its credibility determinations, the court nevertheless granted defendant's motion on the mistaken belief that the State bore the burden to establish defendant's identity. Although, as discussed above, this legal determination was erroneous, we find that the court's factual findings and credibility determinations were not against the manifest weight of the evidence.

¶ 13 Defendant also argues that we may affirm on the basis that he was seized before Officer Kaur purportedly saw him throw suspect narcotics out of the window. The fourth amendment to the United States constitution guarantees the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; *People v. Gherna*, 203 Ill. 2d 165, 176 (2003). However, not every interaction between police and private citizens results in a seizure. *People v. McDonough*, 239 Ill. 2d 260, 268 (2010). Rather, there are three tiers of police-citizen encounters that have

been recognized by courts: (1) an arrest which must be supported by probable cause, (2) temporary investigative *Terry* stops for which an officer must have a reasonable, articulable suspicion of criminal activity, and (3) consensual encounters, which involve no coercion or detention, and thus do not implicate any fourth amendment concerns. *Id.*

¶ 14 Here, the record shows that when the officers arrived on the scene in their unmarked vehicle, they were all in plain clothes and Officer Kaur parked their car in a way that did not block defendant's ability to drive away if he so chose. Further, the officers had not activated their lights or sirens or drawn weapons when they exited their car and approached defendant's car, which, at all times, was parked. Upon approaching defendant's car, not only did none of the officers use coercive language, but they did not speak at all to any of the car's occupants. It was only after Officer Kaur observed defendant throw a baggie of suspect narcotics out of the driver's side window of his car that she asked him to exit the car and placed him under arrest. All of these factors indicate that defendant was not seized until after he threw a baggie of suspect narcotics out of his window (*People v. Luedemann*, 222 Ill. 2d 530, 565 (2006)), which action gave Officer Kaur probable cause to arrest him at that time (*People v. Jones*, 215 Ill. App. 3d 652, 656 (1991)).

¶ 15 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County denying the State's motion to reconsider its order granting defendant's motion to quash arrest and suppress evidence and remand the cause for further proceedings.

¶ 16 Reversed and remanded.