2016 IL App (1st) 1153562-U

SIXTH DIVISION
NOVEMBER 10, 2016

No. 1-15-3562

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re TITUS J., a Minor	)	Appeal from the
(The People of the State of Illinois,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	No. 15 JD 2005
v.	)	
	)	
Titus J.,	)	Honorable
	)	William Gamboney,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err when it denied minor's motion to quash arrest and suppress evidence.

¶ 2 Following his conviction for aggravated unlawful use of a weapon, minor-appellant, Titus J. (Titus), appeals the order of the circuit court of Cook County denying his pre-trial motion to quash arrest and suppress evidence. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 On July 17, 2015, Titus was arrested and charged with aggravated unlawful use of a weapon. Titus filed a motion to quash arrest and suppress evidence, arguing that the police lacked reasonable, articulable suspicion to initially stop and detain him. His motion further argued that even if the detention was permissible, the police lacked probable cause to arrest him. Thus, he claimed any evidence seized was inadmissible as resulting from an illegal arrest.

¶ 5 On September 17, 2015, a hearing was held on the motion. At the hearing, Chicago police officer Warren (Officer Warren) testified that on June 17, 2015, at around 11:32 a.m., he was working with Officers Contreras and Bieniasz in a marked squad car. They were patrolling an area well known for gang and narcotics activity. Officer Warren spotted Titus riding his bike in the direction of the squad car. He saw Titus make a U-turn, make eye contact with Officer Warren, and then ride his bike on the sidewalk in the same direction as the squad car. The squad car continued driving farther down the street and made a U-turn. At that time, Officer Warren saw Titus again, standing in the street talking to a group of people. He then saw Titus look in the direction of the squad car, mount his bike, and ride rapidly away from the squad car. Officer Warren testified that the police did not pursue Titus at that time, but did continue driving in the same direction and eventually pulled up next to him. As the squad car pulled up next to Titus, he looked at them, froze, dismounted from his bike, and ran down an alley with his right hand in the waistband of his pants as if he was grasping something. Officer Warren exited the squad car, identified himself as a police officer, and ordered Titus to stop. Titus did not stop running, and Officers Warren and Bieniasz pursued him on foot. Officer Bieniasz tackled Titus and performed an emergency takedown. While on the ground Titus was ordered to show his hands. Titus' right hand was still inside the waistband of his pants as if he was holding something and he refused to

put his arm up. Officer Bieniasz pulled his right arm from underneath his body and then handcuffed him. Officer Bieniasz and two other officers stood Titus up, and as they did, a .22 caliber revolver (the gun) fell from Titus' pant leg.

¶ 6 No other evidence was presented apart from Officer Warren's testimony. At the conclusion of the suppression hearing, the court requested more case law from the parties regarding reasonable, articulable suspicion. Titus submitted a supplement to his motion, which argued that because his flight was provoked by the police, it could not have provided reasonable suspicion in order for the police to stop him.

¶ 7 On October 16, 2015, the court heard further argument on the motion. Titus argued the totality of the circumstances did not exist to supply reasonable, articulable suspicion required to stop him. The police slowly tailed him while he rode his bike, and the only reason they chased him was because he had his hand inside his waistband. His hand inside his waistband gave the police only a hunch of criminal activity, which is not enough to create reasonable suspicion. Titus argued the police found the gun only after the illegal arrest, and therefore the evidence should be suppressed.

¶ 8 The State argued Officer Warren testified to additional facts creating reasonable suspicion under the totality of the circumstances. Officer Warren testified that based on his experience, Titus was holding something inside his pants. Officer Warren testified he also saw Titus look at the marked squad car, freeze, dismount his bike, and run down an alley. All of these facts taken together gave Officer Warren a reasonable suspicion that a crime was being committed. The police did not pursue Titus until he fled. Titus refused to stop running when ordered to do so by the police even after they announced themselves. The emergency takedown was within the parameters of police procedure. The police did not conduct a search of Titus'

person. Rather, they handcuffed him and stood him up because he would not let go of whatever he was holding inside his pants. Titus was arrested only after the gun fell out of his pant leg.

¶ 9 The court found Officer Warren to be a credible witness. The trial court found that Titus' flight from the police in a high crime area with his hand inside his waistband was enough to create a reasonable, articuable suspicion of criminal activity and therefore, enough for the police to stop him. The trial court found the facts of this case to be analogous to *Illinois v. Wardlow*, 528 U.S. 119 (2000), a United States Supreme Court case in which reasonable, articuable suspicion was found when the defendant fled upon seeing a caravan of police vehicles in a high crime area. Thus, the trial court denied Titus' motion to quash arrest and suppress evidence.

¶ 10 Following the denial of the motion to suppress, the parties agreed to a stipulated bench trial, incorporating Officer Warren's testimony from the September 17 hearing. No other evidence was presented at trial. Titus was found guilty of aggravated unlawful use of a weapon and was sentenced to two years of probation. Titus now appeals, challenging the circuit court's denial of his motion to quash arrest and suppress evidence.

¶ 11 ANALYSIS

¶ 12 We have jurisdiction as Titus perfected a timely notice of appeal. See Ill. S. Ct. R. 606(a), (b) (eff. Feb. 6, 2013). In reviewing a trial court's ruling on a motion to quash arrest and suppress evidence, we apply a two-part standard wherein factual findings are reversed only if they are against the manifest weight of the evidence, but the ultimate legal conclusions are reviewed *de novo*. *People v. Timmsen*, 2016 IL 118181, ¶ 11.

¶ 13 Titus first argues that the police did not have a reasonable, articulable suspicion to detain him. The fourth amendment to the United States Constitution, which applies to the states under the fourteenth amendment; and article I, section 6, of the Illinois Constitution protect against

unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. However, a police officer may conduct a brief, investigatory stop of a person, known as a *Terry* stop, where the officer reasonably believes that the person has committed, or is about to, commit a crime. *Timmsen*, 2016 IL 118181, ¶ 9 (citing *Terry v. Ohio*, 392 U.S. 1, 22 (1968)). The officer must have "reasonable, articulable suspicion that criminal activity is afoot." *Wardlow*, 528 U.S. 119, 123 (2000). The officer must have more than a hunch of criminal activity. *Id*. (citing *Terry*, 392 U.S. at 27). When reviewing courts are determining the validity of a *Terry* stop, they look at the whole picture and consider the totality of the circumstances. *Timmsen,* 2016 IL 118181, ¶ 9 (citing *United States v. Sokolow*, 490 U.S. 1, 8 (1989)).

¶ 14 When reviewing all of the facts in this case under the totality of the circumstances, we find the police officers did have a reasonable, articulable suspicion to justify stopping Titus. The trial court correctly recognized this case as analogous to *Illinois v. Wardlow*, 528 U.S. 119 (2000). In that case, the United States Supreme Court said unprovoked flight "is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Id*. at 124. In addition to fleeing from the police in a high crime area, Titus made eye contact with the police officer before changing directions several times. Further, he appeared to be holding something inside his waistband as he ran. These facts together provided the police with a reasonable, articulable suspicion to stop Titus under the totality of the circumstances standard.

¶ 15 Titus incorrectly relies on *People v. Sims*, 2014 IL App (1st) 121306, in which this court found that the police officer lacked a reasonable suspicion to perform a *Terry* stop of the defendant. The police officer in *Sims* saw the defendant put an object inside the front of his pants and walk away. *Id*. at ¶ 12. The officer knew the defendant had previously been arrested for a weapons violation, but did not see any contraband or weapons on the defendant's person, and the

police officer provided no other facts to justify stopping the defendant. *Id.* at ¶ 13. This court stated:

> "[Defendant's] action in placing an object in the front of his pants and [the police officer's] recognition of [defendant] and knowledge of a prior arrest might create in the mind of a reasonable officer a 'gut feeling' that something might be afoot. But, reasonable suspicion requires more than a hunch or assumption that the suspect is up to no good; it requires articulable facts which support the inference that a crime has been, or is about to be, committed." *Id.* at ¶ 15.

¶ 16 The facts of this case are readily distinguishable from those found in *Sims*. Officer Warren testified to several, specific facts, including that Titus was in a high crime area; he looked at the marked squad car and froze; abandoned his bike for no apparent reason; and fled unprovoked while holding onto an object in his waistband. All of this together created more than a mere hunch that a crime had just been, or was about to be, committed and reasonably justified stopping Titus under the totality of the circumstances standard.

¶ 17 In reaching this conclusion, we reject Titus' argument that his flight cannot contribute to the totality of the circumstances because it was provoked by the police tailing him. In his brief, Titus relies on *People v. Thomas*, 198 Ill. 2d 103 (2001), in which a police officer attempted to conduct an unwarranted investigatory stop by blocking the defendant's bicycle path with his squad car, and then the defendant fled. Our supreme court held that while the police officer initially did not have enough reasonable suspicion to stop the defendant, the defendant's flight credited the police officer's other information to create reasonable suspicion in order to stop him.

Our supreme court stated "defendant's flight to prevent the impending illegal stop and detention cured the constitutionally impermissible conduct that provoked the flight." *Id*. at ¶ 14 (citing *California v. Hodari D.*, 499 U.S. 621 (1991)).

¶ 18 Titus' reliance on *Thomas* is misplaced. *Thomas* is factually different because the police in that case tried to obstruct the defendant's path before he fled, whereas the police in Titus' case did not attempt to stop him in any way until he dismounted his bicycle and fled on foot. In any event, the *Thomas* decision weighs against Titus' argument because it held that even if the flight was provoked, the flight cured the unconstitutional stop by the police. *Id*. at ¶ 14.

¶ 19 Titus further argues that even if the police had a reasonable, articulable suspicion to justify a *Terry* stop, there was not probable cause to justify an arrest. He contends the police performed an illegal arrest when they put handcuffs on him, and thus, the gun which fell from his pants was inadmissible evidence.

¶ 20 Generally, the use of handcuffs to restrain a person indicates an arrest instead of an investigatory *Terry* stop. *People v. Simpson*, 2015 IL App (1st) 130303, ¶ 30. The fourth amendment precludes courts from admitting evidence obtained through an illegal search and seizure. *People v. Lampitok*, 207 Ill. 2d 231, 241 (2003) (citing *Mapp v. Ohio*, 367 U.S. 643, 649 (1961)). However, when necessary for officer or public safety, a detainee may be handcuffed during an investigatory *Terry* stop. *Id*. "Ultimately, the propriety of handcuffing during a *Terry* stop depends on the circumstances of each case." *People v. Colyar*, 2013 IL 111835, ¶ 46.

¶ 21 The police officers in this case saw Titus running with his hand inside the waistband of his pants as if he was grasping something. This is an unusual posture for one to assume when running. After the officers tackled Titus, he kept his right hand inside the waistband of his pants. Further, he refused to remove his hand from his pants and raise it when ordered. These facts are

distinguishable from *People v. Johnson*, 408 Ill. App. 3d 407 (1st Dist. 2011), relied upon by Titus. In *Johnson*, this court found the handcuffing to be unwarranted where there was "no indication that the officer had any visual cues to lead him to suspect defendant's possession of a weapon, nor any resistance by defendant after his apprehension, as to necessitate the use of external restraint." *Id*. at ¶ 5. In this case, Officer Warren testified that he saw Titus' right hand inside his waistband as if he was grasping something and Titus failed to remove his hand from his pants when ordered to do so by the police officer. It was reasonable for the police officers to suspect that he was holding onto a weapon and therefore to handcuff him for their own safety. Thus, the handcuffing was performed for safety and cannot be said that the officers acted unreasonably. Accordingly, the *Terry* stop was conducted with the recognized parameters and did not constitute an illegal stop.

¶ 22 Likewise, the facts of this case are different from *People v. Delaware*, 314 Ill. App. 3d 636 (1st Dist. 2000), also relied upon by Titus. In *Delaware*, this court found that the defendant had been unlawfully arrested when handcuffs had been placed on him *after* the police searched him and found no contraband or indication that defendant was armed (emphasis added). *Id*. at ¶ 19. In the instant case, the gun fell out of Titus' pant leg when the police officers stood him up after they placed handcuffs on him for their safety, but before any search occurred. The gun was in the police officers' plain view. See *People v. Jones*, 215 Ill. 2d 261, 271 (2005) ("During a *Terry* investigative stop, police may seize an object without a warrant if the encounter meets the requirements of the plain view doctrine: (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."). We have already concluded that the police officers in this case were lawfully in a position to detain and handcuff Titus, and there is

uncontradicted testimony that the gun fell into plain view, while the police officers were acting within the parameters of an allowed *Terry* stop. Thus, it cannot be said that the gun is evidence resulting from an illegal arrest.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.