2017 IL App (1st) 142614-U

No. 1-14-2614

August 10, 2017

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 133
	)	
SHAWN SMITH,	)	Honorable
	)	Thomas Joseph Hennelly,
Defendant-Appellant.	)	Judge presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for possession of a controlled substance is affirmed over his contention that the trial court erred in denying his motion to quash arrest and suppress evidence because the court misapprehended the evidence presented and the police officer's testimony that he dropped narcotics on the ground in full-view of the officer was inherently unbelievable.

¶ 2 Following a bench trial, defendant Shawn Smith was convicted of possession of a controlled substance (heroin) (720 ILCS 570/402(c) (West 2012)) and sentenced to four years and six months' imprisonment. On appeal, defendant contends that trial court erred in denying

his motion to quash arrest and suppress evidence because the court "misapprehended the evidence" presented and the police officer's "dropsy" testimony was unbelievable. We affirm.

¶ 3 Defendant was charged with one count of possession of a controlled substance, alleging that he knowingly and unlawfully possessed less than 15 grams of heroin. Prior to trial, defendant filed a motion to quash arrest and suppress evidence, claiming that his arrest was unlawful because it was not supported by a warrant, probable cause, or exigent circumstances.

¶ 4 The court heard evidence on defendant's motion to quash arrest and suppress evidence simultaneously with defendant's bench trial. Officer Eric Jehl testified that, at approximately 12:45 a.m., on November 19, 2013, he and his partner, Officer Kevin Deeren, were on patrol in the vicinity of 3758 West 16th Street. Officer Jehl was in uniform driving westbound on a well lit street when Officer Deeren asked him to turn around because he "wanted to check somebody out." Officer Jehl testified that there had been a string of robberies in the area and Officer Deeren wanted to investigate a person who matched the description of one of the robbers. Officer Jehl, in court, identified defendant as the man he saw that evening. The officers exited their car and approached defendant. Officer Jehl stated that he was approximately ten feet from defendant when defendant dropped a white object to the ground. Officer Jehl summoned defendant to his car. As defendant approached the car, Officer Deeren recovered the white object and showed it to Officer Jehl. Officer Jehl described the object as a white tissue with nine Ziploc bags inside containing white powder, suspect heroin. Officer Jehl then arrested defendant and the white object was inventoried.

¶ 5 During cross examination, Officer Jehl acknowledged that, when he initially saw defendant, he did not have a warrant and defendant was not committing a crime.

¶ 6 The parties stipulated that, if called, Officer Deeren would testify that he inventoried the white tissue containing nine smaller Ziploc bags that he recovered. The parties also stipulated that, if called, an Illinois State Police crime lab technician would testify that the items recovered tested positive for 3.5 grams of heroin. The State rested.

¶ 7 Defendant argued in favor of his motion to quash arrest and suppress evidence that Officer Jehl's testimony demonstrated that the officers did not have probable cause or reasonable suspicion to stop him.

¶ 8 In denying defendant's motion, the court initially noted that defendant failed to establish he had standing to challenge the evidence because the white item was abandoned. The court then found that there was no seizure for purposes of the fourth amendment. In announcing its ruling, the court stated "the officers just flipped their car around to take a look at someone they believed matched the description of robbery suspects. It wasn't [until] after [defendant] discarded something that gave them cause to exit their vehicles and investigate further, and clearly under *Terry* they are allowed to do that." The court then denied defendant's motion for a directed verdict.

¶ 9 Defendant testified that, sometime after midnight, on November 19, 2013, he was walking to his grandfather's house when a marked police car approached him. The police "jumped out" of the car and placed defendant in handcuffs. Defendant denied carrying a white tissue containing narcotics and dropping anything. After being handcuffed, defendant was taken to the police station.

¶ 10 The parties stipulated to defendant's multiple prior felony convictions for delivery of a controlled substance (Case No. 10 CR 8707), escape violation of electronic monitoring (Case

No. 10 CR 9114), possession of a controlled substance (Case No. 10 CR 19655), and possession of a stolen motor vehicle (Case No. 12 CR 1234).

¶ 11 Based on this evidence, the court found defendant guilty of possession of a controlled substance. In announcing its decision, the court stated this case "comes down to a matter of believability," and that it heard the testimony of the witnesses and judged their credibility. The court noted that defendant was a four-time convicted felon and that Officer Jehl was credible where he was not impeached or contradicted "in any way, shape, or form." The court then stated "therefore I believe Officer Jehl, I believe – he testified I believe when [defendant] made eye contact with the officers on that November evening, he realized he had narcotics and discarded those. The officers approached when they saw that and they retrieved [the narcotics]." The court then denied defendant's motion for a new trial and the case proceeded to sentencing.

¶ 12 The court sentenced defendant to four years and six months' imprisonment and denied his motion to reconsider sentence.

¶ 13 On appeal, defendant contends that the trial court's ruling on his motion to quash arrest and suppress evidence should be reversed because the court misapprehended the evidence presented and because Officer Jehl's "dropsy" testimony was incredible. Defendant maintains that his conviction should be reversed because it was based on evidence that should have been suppressed.

¶ 14 We review the trial court's ruling on a motion to quash arrest and suppress evidence as a mixed question of fact and law. *People v. Colquitt*, 2013 IL App (1st) 121138, ¶ 21. The trial court's findings of fact and credibility determinations are entitled to great deference, and we will only reverse such findings if they are against the manifest weight of the evidence. *People v. Close*, 238 Ill. 2d 497, 504 (2010). Moreover, when the disposition of the suppression motion

turns on factual determinations and credibility assessments, the trial court's ruling on a motion to suppress will not be disturbed unless it is manifestly erroneous. *People v. Bunch*, 207 Ill. 2d 7, 13 (2003). A court's factual findings are against the manifest weight of the evidence "only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *People v. Harris*, 2015 IL App (1st) 133892, ¶ 20. However, the trial court's ultimate conclusion regarding the suppression of evidence is a legal determination that is reviewed *de novo*. *Colquitt*, 2013 IL App (1st) 121138 at ¶ 22. We may affirm a ruling on a motion to suppress on any basis supported by the record, including any evidence presented at trial. *People v. Hopkins*, 235 Ill. 2d 453, 458, 473 (2009).

¶ 15 The fourth amendment to the United States Constitution and the Illinois constitution guarantee the right of the people to be free from unreasonable searches and seizures. U.S. Const., amend. IV, XIV; Ill. Const. 1970, art. I, § 6. A seizure occurs when " 'the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.' " *People v. Bartelt*, 241 Ill. 2d 217, 226 (2011) (quoting *Florida v. Bostick*, 501 U.S. 429, 439 (1991)). Not every encounter between the police and a citizen amounts to a seizure. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006). Indeed, encounters between citizens and police that do not involve coercion or detention are not a seizure under the fourth amendment. *People v. Ggherna*, 203 Ill. 2d 165, 177 (2003).

¶ 16 Here, we agree with the trial court's legal conclusion that, prior to the officers recovering the heroin, a seizure had not occurred. Accordingly, the court did not err in denying defendant's motion to quash arrest and suppress evidence.

¶ 17 The record shows that, after Officer Deeren saw defendant and informed Officer Jehl that defendant matched the description of a robbery suspect, the officers approached defendant. As

the officers did so, defendant, prior to any dialogue with the officers, dropped a white object to the ground. Officer Jehl then asked defendant to "come over," and when defendant did so, Officer Deeren recovered the item discarded by defendant. Officer Deeren showed the item to Officer Jehl, who believed it to contain suspect heroin. Defendant was then arrested and the item inventoried. Given this sequence of events, it is clear that no seizure occurred prior to the recovery of the heroin.

¶ 18 Defendant argues that the court's factual findings were against the manifest weight of the evidence because, in denying his motion, the court inaccurately recited the sequence of events that led to his arrest. Specifically, defendant points out that the court inaccurately stated that "it wasn't [until] after [defendant] discarded something" that the officers exited their vehicle to investigate. Defendant asserts that this discrepancy is important because it shows that the court based its ruling on the more reasonable assumption that he was attempting to discard the narcotics out of the plain view of the officers. Defendant maintains that by misapprehending the evidence in such a manner, the court was able to circumvent Officer Jehl's incredible dropsy testimony.

¶ 19 Contrary to defendant's argument, the record shows that, in finding defendant guilty of the charged offense, the trial court explicitly announced that it found Officer Jehl's testimony credible and that defendant dropped the drugs after he "made eye contact with the officers." As such, we are not persuaded by defendant's argument that the court was attempting to circumvent Officer Jehl's testimony. More importantly, although the court misstated the sequence of events in ruling on defendant's motion, we note that, under either version, the court's legal conclusion that a seizure had not occurred was correct. That is to say that, prior to any meaningful

interaction with the officers, defendant discarded what proved to be heroin. After defendant did so, Officer Dereen recovered the heroin and defendant was subsequently arrested.

¶ 20 Defendant, nevertheless, argues that the trial court should not have credited Officer Jehl's testimony because police officers allegedly frequently fabricate stories of criminal suspects dropping evidence in plain view of police in order to circumvent the search and seizure restrictions of the fourth amendment. See *People v. Ash*, 346 Ill. App. 3d 809, 816 (2004) ("A 'dropsy case' is one in which a police officer, to avoid the exclusion of evidence on fourth-amendment grounds, falsely testifies that the defendant dropped the [evidence] in plain view * * *."). Defendant argues that Officer Jehl's testimony that defendant dropped the suspect heroin when the officer was less than ten feet away was implausible and indicative of a "pattern that police officers have employed in court for decades in order to avoid the suppression of illegally obtained evidence." Defendant thus concludes that the heroin was discovered during an illegal search.

¶ 21 In support of his argument, defendant relies on a law review article, a New York criminal case, and a 1968 article detailing the happenings of a New York Criminal Courtroom. Defendant presents this evidence for the first time on appeal. When reviewing a trial court's decision on a motion to suppress, a court of review may consider evidence presented both at the suppression hearing and at trial. *People v. Brooks*, 187 Ill. 2d 91, 126-28 (1999). However, for evidence to be considered on review, that evidence must have been presented to the fact finder below. *Id.* at 128. The evidence cited by defendant was not presented to the trial court, and we therefore do not consider it on appeal.

¶ 22 The record shows that, in finding defendant guilty, the court noted that Officer Jehl's testimony was not impeached or contradicted in "any way, shape, or form" and it found him

"credible." As mentioned, a trial court's credibility assessment is entitled to great deference. *People v. Hunley*, 313 Ill. App. 3d 16, 28 (2000). Here, we cannot say that Officer Jehl's account was implausible and that the trial court's credibility determination was manifestly erroneous. As such, we affirm the trial court's denial of defendant's motion to quash arrest and suppress evidence and reject his argument that his conviction should be reversed outright.

¶ 23 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.