

2018 IL App (1st) 151566-U
No. 1-15-1566
Order filed January 22, 2018

First Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	No. 12 C6 61422
v.)	
)	Honorable Michele McDowell Pitman,
NIKITA JACKSON-JONES,)	Judge presiding.
)	
Defendant-Appellant.)	

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for aggravated unlawful use of a weapon is affirmed over her contention that her trial counsel was ineffective for failing to file a motion to suppress evidence obtained during an allegedly unlawful traffic stop and subsequent pat down search.

¶ 2 Following a bench trial, defendant was convicted of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1)(3)(C) (West 2012)) and sentenced to one year imprisonment. On appeal, defendant contends that her counsel was ineffective for failing to file a motion to suppress a gun that was recovered during an unlawful search. We affirm.

¶ 3 Officer Jarosz arrested defendant on the evening of November 9, 2012, at the 146th block of Honore Avenue, after discovering a gun on her person during a traffic stop. The State charged defendant with six counts of aggravated unlawful use of a weapon. After nol-prossing three counts, the State proceeded on three counts of aggravated unlawful use of a weapon.

¶ 4 The record shows that, prior to trial, defense counsel filed, and subsequently withdrew, a motion to quash arrest and suppress evidence.

¶ 5 At trial, Officer Jarosz testified that on the evening of November 9, 2012, he was driving east on 147th Street in a marked police vehicle. At 7:57 p.m., he stopped at a traffic light at 147th and Wood Street. At that intersection, on the north side of 147th, there is a restaurant. While stopped at the light, Jarosz saw a silver Mercury back into the parking lot of the restaurant and strike a semi truck that had one occupant inside it. As Jarosz was maneuvering his vehicle to enter the parking lot and do a crash report, the driver of the Mercury “put their vehicle in drive and continued out onto westbound 147th.” Jarosz followed the Mercury, and, after it turned northbound onto Honore Avenue, he activated his emergency lights to perform a traffic stop. The Mercury stopped about 200 feet north of 147th. Jarosz identified defendant as the driver of the Mercury, and asked her to exit the vehicle. There were three other occupants in the vehicle.

¶ 6 Jarosz eventually performed a protective pat down of defendant, who was “very cooperative.” Jarosz explained that he performed the pat down because he was going to place defendant in the back of his squad car to transport her to the scene of the collision. While performing the pat down, Jarosz asked defendant if “she had anything” on her person. Defendant disclosed that she had a gun in her right coat pocket. Outside of defendant’s right coat pocket, Jarosz felt a hard metal object similar to a handgun. He reached inside defendant’s coat pocket and recovered a .25 caliber handgun, which was loaded with one round. After recovering the

handgun, Jarosz completed a crash investigation and inventoried the gun. At the station, after being advised of her *Miranda* rights, defendant signed a written statement, admitting that the gun was in her coat pocket, that she told the officer the gun was in her coat pocket, and that she “answered questions voluntarily.”

¶ 7 The parties stipulated that defendant did not have a valid Firearm Owner’s Identification Card. The trial court denied defendant’s motion for a directed finding.

¶ 8 Defendant testified that on the date in question, she began drinking about 5:00 p.m. She had four or five “mixed drinks” by the time Jarosz pulled her over. When Jarosz pulled her over, he ordered her out of the car and handcuffed her. He then patted her down without asking about a gun. Defendant denied that she was wearing a coat at the time or that Jarosz found a gun on her person. After placing defendant into the squad car, Jarosz went to the Mercury. When he returned to the squad car, he informed defendant that he found a gun inside the Mercury. Defendant testified that she did not understand the forms she signed that evening, and that she was not informed of her *Miranda* rights.

¶ 9 The trial court found defendant guilty of aggravated unlawful use of a weapon. The court denied defendant’s motion for a new trial. The court sentenced defendant to one year imprisonment and denied her motion to reconsider sentence.

¶ 10 On appeal, defendant contends her trial counsel was ineffective for failing to move to suppress the gun recovered from her during what she alleges to be an unlawful search.

¶ 11 The Sixth Amendment guarantees a criminal defendant the right to the effective assistance of counsel, and a conviction resulting from ineffective assistance of counsel requires reversal. See *Strickland v. Washington*, 466 U.S. 668, 684-87 (1984) (noting that the constitutional requirement of effective assistance of counsel promotes the fundamental right to a

fair trial, and recognizing that a lawyer's assistance can be "so defective as to require reversal of a conviction"). However, to succeed on a claim of ineffective assistance, a defendant must demonstrate that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Henderson*, 2013 IL 114040, ¶11; *Strickland*, 466 U.S. at 687-94. Defendant must satisfy both prongs of *Strickland* to establish a claim of ineffective assistance of counsel. *People v. Clendenin*, 238 Ill. 2d 302, 327 (2010). A reviewing court need not examine counsel's performance where it may dispose of defendant's claim based on lack of prejudice. *People v. Haynes*, 192 Ill. 2d 437, 473 (2000).

¶ 12 In order to establish prejudice based on counsel's failure to file a motion to suppress, defendant must show that: (1) the unargued suppression motion is meritorious; and (2) a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed. *Henderson*, 2013 IL 114040, ¶15. Here, defendant cannot show that the unargued suppression motion is meritorious where the traffic stop and, the subsequent pat down, were legally justified.

¶ 13 The fourth amendment to the United States Constitution, which applies to the states under the fourteenth amendment, protects people against unreasonable searches and seizures. *People v. Timmsen*, 2016 IL 118181, ¶ 9. Generally, reasonableness under the fourth amendment requires a warrant supported by probable cause. *Id.* If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the fourth amendment, arrest the offender. *People v. Taylor*, 388 Ill. App. 3d 169, 175 (2009) (quoting *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001)). When probable cause is lacking, a police officer may still briefly stop an individual for temporary questioning if the

officer reasonably infers from the circumstances that the individual is involved in criminal activity. *People v. Simpson*, 2015 IL App (1st) 130303, ¶23 (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)).

¶ 14 In this case, defendant’s “seizure,” within the meaning of the fourth amendment, occurred when Officer Jarosz stopped her vehicle. *Brendlin v. California*, 551 U.S. 249, 255 (2007) (“The law is settled that in Fourth Amendment terms a traffic stop entails a seizure of the driver”); *People v. Close*, 238 Ill. 2d 497, 504 (2010) (citing *Brendlin*). Such a seizure is analyzed pursuant to the principles set forth in *Terry*. *Timmsen*, 2016 IL 118181, ¶ 9. Under *Terry*, a police officer may conduct a brief, investigatory stop of a person where the officer reasonably believes that the person has committed, or is about to, commit a crime. *Id.* The “police officer must be able to point to specific and articulable facts which, taken together with rational inference from those facts, reasonably warrant that intrusion.” *Close*, 238 Ill. 2d at 505 (quoting *Terry*, 392 U.S at 21) (internal markings omitted). The officer’s suspicion must amount to more than an inarticulate hunch. *Id.* During the stop, if an officer reasonably believes the person he has stopped is armed and dangerous, he may subject that person to a pat-down search for weapons. *People v. Sorenson*, 196 Ill. 2d 425, 432-33 (2001). However, the need to transport a citizen in a police vehicle presents an exigent circumstance justifying a minimally intrusive pat down of the citizen’s outer clothing for weapons. *People v. Smith*, 346 Ill. App. 3d 146, 164 (2004).

¶ 15 The record at bar that Jarosz reasonably believed that defendant committed a crime and was thus justified in stopping her vehicle. Jarosz testified that he stopped defendant’s vehicle after seeing her back into an occupied truck and then leave the scene of the collision. See 625 ILCS 5/11-402(a) (West 2012) (“The driver of any vehicle involved in a motor vehicle accident

resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such motor vehicle accident”). These facts and the rational inferences therefrom, reasonably warranted the traffic stop.

¶ 16 Jarosz testified that, after stopping defendant’s vehicle, he asked her if “she had anything” on her person and defendant disclosed that she had a gun in her right coat pocket. Jarosz then felt a hard metal object outside of defendant’s coat pocket. He reached inside the pocket and recovered a loaded .25 caliber handgun. Jarosz explained that he performed the pat down because he was going to place defendant in the back of his squad car to transport her to the scene of the collision. See *Smith*, 346 Ill. App. 3d at 164 (the need to transport a citizen in a police vehicle presents an exigent circumstance justifying a minimally intrusive pat down of the citizen’s outer clothing for weapons). Under these circumstances, Jarosz was justified in performing the minimally intrusive pat down of defendant’s outer clothing for weapons.

¶ 17 Given that the traffic stop and subsequent pat down were legally justified, defendant cannot show that the unargued suppression motion is meritorious such that she was prejudiced by counsel’s failure to file the motion. Accordingly, because defendant has failed to satisfy the prejudice prong of the *Strickland* analysis, her claim of ineffective assistance of counsel must fail.

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

¶ 19 Affirmed.