

No. 1-16-0183

**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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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 14 CR 13065
	)	
CHRISTIAN MACKLIN,	)	Honorable
	)	Frank Zelezinski,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE PIERCE delivered the judgment of the court.  
Justices Mikva and Griffin concurred in the judgment.

### ORDER

- ¶ 1 *Held:* The trial court did not err in denying defendant's motion to quash his arrest and suppress evidence.
- ¶ 2 Defendant appeals from the trial court's denial of his motion to suppress evidence. Defendant argues that the trial court improperly denied his motion to quash his arrest and suppress evidence where the officer lacked a reasonable suspicion to conduct a stop pursuant to *Terry v. Ohio*, 392 U.S. 1, 21 (1968)), because defendant did not match the description of either robbery suspect. He further argues that the items seized by the officer were fruits of the illegal

stop and search and must be suppressed. For the following reasons, we find that the court did not err in denying defendant's motion suppress.

¶ 3 BACKGROUND

¶ 4 Defendant was charged by indictment with armed robbery for his involvement in the armed robbery of Martine Vargas. Defendant filed a motion quash arrest and suppress evidence and a motion to suppress physical evidence which were denied following a hearing. After a bench trial, defendant was found guilty and sentenced to four years' imprisonment.

¶ 5 Prior to trial, defendant filed a motion to suppress requesting that the court suppress all of the evidence seized from defendant and any identification that occurred pursuant to an illegal search and seizure.

¶ 6 Chicago Heights police officer Kevin Malone testified that while on duty on June 25, 2014, at approximately 11:11 a.m., he received a radio call of an armed robbery that occurred at 276 West 14th Street in Chicago Heights. The call described the offenders as two male blacks, one wearing an orange shirt and dark pants who displayed a handgun, and the other male wearing a white t-shirt and dark pants. The call further indicated that the offenders were fleeing northbound towards 14th Street and Ashland Avenue.

¶ 7 Officer Malone responded to the scene within four minutes of the call and spoke with the victim, Martine Vargas, with the help of Ricardo Hurtado, who was assisting with the language translation. Vargas described the offenders as "one short wearing an orange shirt and dark pants" and "the second taller wearing a white shirt and dark pants." Vargas stated that both men were between 21 and 25 years of age and both had short hair.

¶ 8 Several minutes later, Officer Malone was contacted by Officer Fara who told him that he had a suspect who fit the description of one of the offenders. Officer Malone went to Country Club Road and Campbell Avenue, about a quarter mile from the scene of the crime, and saw defendant. Defendant was a male black, about six feet, three inches, wearing either a white or gray t-shirt and dark pants. Defendant had short hair. Officer Malone took defendant into custody and brought him to a nearby restaurant where the victim was located. Vargas then identified defendant as the offender who pushed him on the ground and took property from his pockets.

¶ 9 Chicago Heights police officer Ali Fara testified that while on duty on June 25, 2014, at approximately 11:11 a.m., he heard a radio dispatch of an armed robbery that occurred at 276 West 14th Street in Chicago Heights. The dispatch contained the description of the offenders as two male blacks, the shorter offender wearing an orange shirt and dark pants who displayed a handgun, and the taller offender wearing a white t-shirt and dark pants. Both of the offenders were between the ages of 21 and 25, and were fleeing northbound towards 14th Street and Ashland Avenue.

¶ 10 About five minutes later, Officer Fara observed defendant in the area of Country Club Road and Campbell Avenue. Defendant was the only person in the area, which was no more than a quarter mile from where the incident occurred, and matched the description of one of the offenders. Defendant was wearing black sweat pants, gym shoes and a light gray colored t-shirt. Defendant was “sweating profusely and breathing heavy.” Officer Fara later learned that defendant was approximately six feet, three inches tall and was 23 years old.

¶ 11 Officer Fara conducted a protective pat-down search of defendant for his safety and did not feel anything that felt like a weapon. He felt an identification card in defendant's pants' pocket and removed it. The name on the identification card was Martin Vargas Balmaceda. Officer Fara also recovered a cell phone, a bank card, another identification card and \$20. Officer Fara radioed the other officers and indicated that he had a person of interest. Within 10 minutes, Officer Fara turned defendant over to Officer Malone.

¶ 12 Officer Phillippo testified that he was an intake officer at the Cook County Department of Corrections. He was shown a package of clothing inventory for defendant from June 28, 2014. Officer Phillippo described the clothing in the package as a pair of shoes, black pants and a gray shirt. Officer Phillippo testified that he could not say that the inventoried clothing was the same clothing that defendant was wearing at the time he was arrested. Defendant then rested on his motion and the State made a motion for a directed finding.

¶ 13 The trial court denied defendant's motion to quash arrest and suppress evidence and his motion to suppress physical evidence finding that the stop and subsequent search were proper. There was an articulable suspicion to stop defendant and talk with him "based upon the fact that he was a quarter mile away from the scene" within minutes after the armed robbery took place and "did have the general description given by the victim." Furthermore, Officer Fara "observed him, particularly adding to the fact that he had been out of breath and sweating indicating he had been running, there was enough for the officers to detain him at that juncture and conduct what is known as an investigatory identification." Because the victim identified defendant at a show-up as one of the people who robbed him, "probable cause in fact was established. The officers had the ability at that juncture to in fact take defendant into custody and arrest him." The court

further noted that the recovery of the items in defendant's pocket was proper as the items would have been discovered through a custodial search.

¶ 14 At trial, Martine Vargas testified through an interpreter. On June 25, 2014, at about 11 a.m., he went to get a haircut. After he got his haircut, he walked to the end of 14th Street around an alley and saw two men walking towards him. He could see the two men clearly. When the men approached Vargas, one of the men took out a black 9 millimeter gun, pointed it at Vargas, and told him not to move. The man put the gun on Vargas' back and then on his head. The second man did not have a gun. Vargas identified defendant as the second man. Vargas stated that defendant and his co-offender put their hands in Vargas' pockets, told him not to move and took items from his pockets. Defendant and his co-offender threw him to the ground and pointed the gun at him as they fled. They had taken Vargas' phone, wallet, identification cards and cash.

¶ 15 The police were called. When they arrived, Vargas provided them with a description of the men who robbed him. Vargas told police that the man with the gun was wearing an orange sweatshirt and dark pants, and the other offender was wearing "between a white and gray" t-shirt and dark pants. A short time later, the police arrived with defendant and Vargas identified him as one of the persons who robbed him. About 20 minutes had elapsed between the time he was robbed and the time the police brought defendant to the scene.

¶ 16 The next day, Vargas went to the police station and recognized the items that defendant and his co-offender had taken from him. Vargas identified photos of his money, his identification car, his credit card, his Mexican consulate identification and his phone. He was

able to identify the phone that was recovered as his phone because when he put his password into the phone, the phone unlocked.

¶ 17 Officers Malone and Fara testified consistent with their testimony at the hearing on defendant's motions to quash and suppress. At trial, Officer Fara testified that he stopped the defendant because he matched the description of one of the suspects. Defendant was wearing black pants and a light-colored shirt that was "like a white or gray shirt" when Officer Fara stopped him. Officer Fara acknowledged that he described the shirt as grey, not white, at the motion to suppress but explained that he still was not sure if defendant's shirt was white or grey.

¶ 18 Defendant testified that on June 25, 2014, he went to Bloom High School to work out because he was supposed to work out with his cousin and his cousin wasn't home. As he was walking there, he saw a few items scattered near a garbage can. He picked up the items, looked at them and put them in his pocket. Defendant planned to further inspect the items when he got to Bloom High School. A few minutes later, defendant was stopped by the police. The officer stopped him, and put defendant on the front of his car. The officer searched defendant and recovered the items that defendant had found near the garbage can. In addition to the items defendant picked up, defendant had his black iPhone, his charger, his house keys, his head phones and a \$20 bill. The officer took the items defendant found in addition to defendant's personal property. Defendant testified that he was wearing a gray t-shirt with green writing and black sweatpants.

¶ 19 On cross-examination, defendant testified that when walking through the alley, he saw a phone, an identification card, and a bank card by a garbage can and picked them up. When shown photographs of the items, defendant recognized Vargas' identification card and the bank

card. Defendant stated that he was going to throw the items away once he got to Bloom and didn't want to look at them until he got there because he "didn't want to seem suspicious in the back of somebody [sic] house." Defendant testified that he never made it to Bloom High School. He did state that he spoke to Detective Fenimore but denied telling him that while he was walking towards Bloom High School, he found a Mexico identification card, another identification card, a debit card, twenty dollars and an iPhone in the alley. On re-direct, defendant denied robbing Martine Vargas.

¶ 20 In rebuttal, the State called Detective Fenimore of the Chicago Heights police department who was assigned to the armed robbery that occurred on June 25, 2014. He spoke with defendant in an interview room at the police station. Defendant told him that "while he was walking towards Bloom High School he found a Mexico identification card, another identification card, a debit card, twenty dollars, and an iPhone in the alley." Detective Fenimore testified that he included defendant's statement in his report but that defendant had declined the opportunity to reduce his statement to writing.

¶ 21 The court found defendant guilty of robbery because it had "some reasonable doubts" about the weapon. Defendant was sentenced to four years' imprisonment.

¶ 22 ANALYSIS

¶ 23 Defendant argues that the trial court erred in denying his motion to suppress because the police lacked a reasonable suspicion to conduct a stop where defendant did not match the description of either robbery suspect.

¶ 24 Defendant did not raise this issue in his motion for a new trial and therefore the issue should be forfeited. *People v. Enoch*, 122 Ill. 2d 176, 186 (1983). However, because defendant

raises a constitutional issue that was raised during trial and could be raised in a postconviction petition, in the interests of judicial economy, we will address the issue. *People v. Almond*, 2015 IL 113817, ¶ 54.

¶ 25 The standard of review applicable to a ruling on a motion to quash an arrest and suppress evidence is twofold. The trial court's factual findings and credibility determinations are upheld unless they are against the manifest weight of the evidence. *People v. Jones*, 215 Ill. 2d 261, 267-68 (2005). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *People v. Rockey*, 322 Ill. App. 832, 836 (2001). After the trial court's factual findings are reviewed, the court's ultimate legal rulings are reviewed *de novo*. *Jones*, 215 Ill. 2d at 268. We may consider the testimony presented at trial as well as the testimony at the suppression hearing when reviewing the trial court's ruling on a motion to suppress. *People v. Slater*, 228 Ill. 2d 137, 149 (2008).

¶ 26 The fourth amendment to the United States Constitution provides the “right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const., amend. IV. Reasonableness under the fourth amendment generally requires a warrant that is supported by probable cause. *Jones*, 215 Ill. 2d at 269. One exception to the warrant requirement arises when officers perform an investigative stop based on reasonable suspicion that a crime has been, or is about to be, committed. *People v. Sims*, 2014 IL App (1st) 121306, ¶ 8.

¶ 27 Courts analyze the reasonableness of a temporary investigative stop pursuant to the principles set forth in the United States Supreme Court case of *Terry v. Ohio*, 392 U.S. 1 (1968). See *People v. Gherna*, 203 Ill. 2d 165, 177 (2003). A *Terry* stop is a type of police-citizen



encounter, which allows for a brief investigative detention, but must be supported by a reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21 (1968); 725 ILCS 5/107-4 (West 2014). An officer may make an investigatory stop of any person if he or she “reasonably infers from the circumstances that the person is committing, is about to commit or has committed” a criminal offense. 725 ILCS 5/107-14 (West 2014). The question is whether the facts available to the officer warrant a person of reasonable caution to believe that the action which the officer took was appropriate. *People v. Houlihan*, 167 Ill. App. 3d 638, 642 (1988). An evaluation of a *Terry* stop necessarily entails balancing the need for the seizure against the invasion that the seizure entails. *Terry*, 392 U.S. at 21.

¶ 28 Additionally, “when officers are working in concert, reasonable suspicion or probable cause can be established from all the information collectively received by the officers even if that information is not specifically known to the officer who makes the arrest.” *People v. Maxey*, 2011 IL App (1st) 100011, ¶ 54. Moreover, “arresting officers may rely upon radio transmissions to make a *Terry* stop or an arrest even if they are unaware of the specific facts that established reasonable suspicion to initiate a *Terry* stop or probable cause to make that arrest.” *Id.*

¶ 29 Given the totality of the circumstances, Officer Fara’s decision to stop defendant was proper under *Terry*. Officer Fara heard a dispatch that an armed robbery occurred at 276 West 14th Street, and received a description of the two men involved. The offenders were described as two male blacks, the taller one wearing black pants and a white shirt. The other man was described as wearing an orange shirt. The dispatch reported that the offenders fled northbound in the direction of 14th and Ashland. Although the testimony was conflicting as to whether

defendant's shirt was described as white or light-colored and whether defendant's shirt was actually white or light-colored, or "between white and grey," defendant fit the general description sufficiently to make Officer Fara's stop reasonable under *Terry*.

¶ 30 Officer Fara encountered defendant a quarter mile (two to four blocks) from where the armed robbery occurred, less than five minutes from the time of the robbery, in the direction of where the offenders fled. There was no one else on the street. Defendant was wearing black pants and a light colored shirt. When Officer Fara approached defendant, he noticed that defendant was sweating profusely and was breathing heavy. Officer Fara testified that he stopped defendant because he fit the description of one of the offenders. The totality of the circumstances indicated defendant may have been involved in criminal activity and the radio dispatch provided Officer Fara reasonable articulable suspicion to stop defendant. See *Maxey*, 2011 IL App (1st) 100011, ¶ 58 (where radio dispatches regarding a crime indicated a slender African-American male, driving a red or burgundy car with distinctive license plates was involved, the officer's stop of the defendant matching this description within one mile from the crime scene was justified under *Terry*).

¶ 31 Defendant's reliance on *People v. Gabbard*, 78 Ill. 2d 88 (1979), and *People v. Barnes*, 70 Ill. App. 3d 566 (1979), is misplaced. In *Gabbard*, a state trooper stopped the defendant, who was walking along a highway near Lincoln, Illinois, ostensibly because the defendant matched the description of an escaped federal prisoner who was then believed to have been thirty miles away. Nothing in the given description of the escapee particularly fit the arrestee. Referring to the police report, our supreme court stated "(t)he description contained in the police report was so general and lacking in distinctiveness as to furnish no more basis for the arrest of the

defendant than of many other persons who might be walking along the highway.” *Id.* at 93. Further, the state trooper admitted during the motion to suppress evidence seized from the defendant at the time of his arrest that in fact the defendant did not fit the description of the escapee. *Id.*

¶ 32 The description given to Officer Fara was far more detailed than that found in *Gabbard*. Officer Fara was provided with the sex, race, approximate height, clothing description and possible age range of the offenders, as well as the direction in which the offenders fled. Officer Fara encountered defendant near the scene of the crime, just 5 minutes later. Whether defendant’s t-shirt was white or light gray, defendant matched the description of one of the offenders. *Gabbard* is inapposite.

¶ 33 In *Barnes*, 70 Ill. App. 3d 566, a police officer received a radio dispatch regarding two suspects who had committed an armed robbery at a local tavern. The first suspect was described as a man about 60 years old, 5 feet 10 inches tall, not clean shaven, wearing a brown overcoat and gray dress hat, possibly carrying a .22 caliber revolver. Suspect number two was described as a male about 25 years of age, 5 feet 8 inches tall, weighing about 160 pounds, with a full beard. The suspect vehicle was described as an older model white Chrysler. *Id.* at 568. Shortly thereafter, the officer received another radio dispatch concerning an armed robbery of a different tavern. The suspect was described as a white male about 65 years of age, wearing a plaid hat and plaid jacket. The automobile involved was described as a maroon 1973 Oldsmobile. No information was given as to the number of passengers in the automobile. *Id.*

¶ 34 Minutes later, the officer saw a dirty ginger-colored two-door Mercury with three men inside drive by. The officer saw an older white male with grayish hair, wearing what he thought

was a plaid shirt or sweater and a plaid stocking cap sitting in the front passenger seat of the automobile. He appeared to be between 5 feet 9 inches tall and 6 feet tall, and had a few days' growth of facial hair. The officer then looked in the back seat and saw what he took to be a white male in his twenties with what appeared to be a beard. The officer decided to stop the vehicle, and pulled out behind it and followed it for about three miles. During that time he observed no violations of the law and nothing suspicious in the operation of the vehicle or the behavior of its occupants. The officer ordered the three men outside of the Mercury. The older man, whom the officer had thought was wearing a plaid shirt and plaid hat and had therefore decided to stop him, was in fact wearing neither a brown overcoat and gray dress hat, nor a plaid jacket and plaid hat, as indicated in the radio broadcasts. Before searching the man, the officer conducted a search of the car which produced a gun from the rear seat and the men were subsequently arrested. *Id.*

¶ 35 On appeal, the defendant did not challenge the officer's ability to stop the vehicle for a *Terry* stop. Rather, the defendant argued that the court erred in denying his motion to suppress the evidence obtained in a warrantless search of the vehicle following his arrest without probable cause. This court found that the descriptions of the suspects were far too general to constitute probable cause. *Id.* The court found that the car the officer stopped did not match either of the cars described in the two radio dispatches. *Id.*

¶ 36 Unlike in this case, the defendant in *Barnes* did not match the description of the suspects. Here, defendant matched the description given to Officer Fara, and was observed close to the scene of the crime within five minutes of the commission of the crime and was sweating and breathing heavy.

¶ 37 Here, the description of the robber, coupled with the observations of Officer Fara, provided a reasonable suspicion to justify a *Terry* stop. Defendant was a few blocks from the scene of the crime, in the direction the suspects had fled. He was tall, wearing dark pants and a light colored shirt and had short hair. In addition, he was sweating profusely and breathing heavy. Because there was reasonable, articulable suspicion to stop defendant under *Terry*, it was reasonable for the assisting officer to transport defendant to the scene. *People v. Ross*, 317 Ill. App. 3d 26, 31-32 (2000) (following a *Terry* stop, the transportation of a suspect to the scene for the purpose of an identification was reasonable where the crime scene was a short distance away and the trauma endured by the victim). After Vargas identified defendant as one of the offenders, the officers had probable cause to arrest defendant and to then conduct a search incident to the lawful arrest. *People v. Perry*, 204 Ill. App. 3d 782, 787, (1990). Under the inevitable discovery exception (*People v. Harris*, 297 Ill. App. 3d 1073, 1085 (1998)), it was inevitable that the victim's property, recovered by Officer Fara when he searched defendant at the time of the original stop, would have been recovered minutes later after Vargas' identification. The trial court did not err in denying the motion to suppress physical evidence.

¶ 38 Defendant also claims that the show-up identification should have been suppressed because "it was not the mere continuation of a valid *Terry* stop" but a result of the illegal *Terry* stop and search. We disagree.

¶ 39 We have found that the *Terry* stop in this case was proper - there was no illegal seizure of defendant's person. Officer Fara received an accurate description of the offenders, and defendant was stopped just a few blocks away within minutes of the crime after Officer Fara determined that defendant matched the description of one of the offenders. Therefore, bringing

defendant to where the victim was located to determine whether they had one of the offenders minutes after the robbery took place was permissible. “The transportation of a suspect for purposes of a show-up when the officer is conducting a field investigation immediately after the commission of the crime and when the victim is a short distance away, could confirm or deny the identification of the suspect may not be an unreasonable seizure under the fourth amendment.”

*People v. Follins*, 196 Ill. App. 3d 680, 693 (1990); See also *Ross*, 317 Ill. App. 3d 31-32.

Therefore, the show-up procedure and subsequent identification was proper.

¶ 40

#### CONCLUSION

¶ 41 In light of the foregoing, we affirm the trial court's denial of defendant's motion to suppress.

¶ 42 Affirmed.