2018 IL App (1st) 160472-U
No. 1-16-0472
Order filed December 17, 2018

First Division

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. 15 CR 02521
v.	)	
	)	Honorable Vincent M. Gaughan,
MARLON JACKSON,	)	Judge presiding.
	)	
Defendant-Appellant.	)	

JUSTICE GRIFFIN delivered the judgment of the court.
Presiding Justice Mikva and Justice Walker concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying defendant's motion to quash arrest and suppress evidence because police had: reasonable suspicion to justify a *Terry* stop (*Terry v. Ohio*, 392 U.S. 1 (1968)); and a reasonable belief that defendant was armed and dangerous.

¶ 2 Following a bench trial, defendant, Marlon Jackson was convicted of robbery (720 ILCS 5/18-1(a) (West 2014)), and sentenced to five years' imprisonment. On appeal, defendant contends that the trial court erred in denying his motion to quash his arrest and suppress evidence where the police lacked: a reasonable articulable suspicion to justify a *Terry* stop (*Terry v. Ohio*, 392 U.S. 1 (1968)); and probable cause to search him. Defendant asks that his conviction be

reversed and the matter remanded for a new trial barring the evidence illegally obtained. We affirm.

¶ 3 Defendant, along with co-defendant Quinten Tucker,[1] was charged by indictment with two counts of armed robbery (720 ILCS 5/18-2 (a)(1) (West 2014)) and two counts of aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2014)). Defendant waived his right to a jury trial and the case proceeded to a simultaneous but severed bench trial.

¶ 4 Prior to trial, defendant filed a motion to quash his arrest and suppress evidence, arguing that the police did not have a reasonable articulable suspicion that defendant had committed or was about to commit a crime. The motion to suppress was heard contemporaneous to the trial.

¶ 5 Mateo Bautista testified that on January 24, 2015 at approximately 1:15 p.m., he and his cousin Nathan Zuniga were in Sheridan Park playing soccer. The day was unusually warm for January and Bautista and Zuniga removed their jackets and laid them on the ground along with their cell phones and gloves. About 10 minutes later, Bautista noticed a man approaching from the south end of the park walking toward their belongings. The man was wearing a green hat. Bautista could not recall what other clothing the man was wearing. Bautista identified Tucker in court as the man in the green hat.

¶ 6 As Tucker neared their jackets and phones, Bautista and Zuniga began to walk toward their belongings. Another man walked from the north end of the park. He was wearing a black hooded sweatshirt (hoodie) and had shoulder length "dreads" that were dyed at the ends. Bautista identified defendant in court as the man who was wearing the black hoodie and had shoulder length "dreads." When Bautista and Zuniga were about 15 feet away from their jackets,

[1] Quinten Tucker is not a party to this appeal.

defendant displayed, what appeared to be, a handgun from the sleeve of his hoodie. Bautista could only see about three to four inches of the barrel protruding from the sleeve of defendant's hoodie. Defendant told Bautista and Zuniga to turn around. Tucker then began to go through Bautista and Zuniga's belongings. After a few seconds, defendant told Bautista and Zuniga to run, so they ran to the field house in the park.

¶ 7 At the field house, Zuniga borrowed a cell phone from a passerby and called 911. Zuniga spoke to an operator and explained what had happened. He gave a physical description of defendant and Tucker to the 911 operator. As Zuniga was on the phone with 911, Bautista observed defendant and Tucker walking southeast through an alley near Taylor Street. Bautista and Zuniga returned the phone and went into the field house to "avoid detection."

¶ 8 About 10 to 20 minutes later, police arrived on the scene. Bautista gave the officers a description of the two offenders and the officers relayed a radio message. After about 20 minutes, more police arrived. Chicago police detective Robert Smith escorted Bautista and Zuniga individually to the glass door of the field house to see if they could identify the offenders. Bautista identified defendant as the person with the gun and Tucker as the person who took their belongings. Bautista identified his cell phone that was in the possession of the police officers by the "scruffs around the edges and by imputing [his] password into the phone." Later that evening, Bautista went to the 12th Police District and identified the handgun that defendant pointed at him.

¶ 9 On cross-examination, Bautista acknowledged that he did not actually see defendant or Tucker take any of his belongings. Bautista only remembered defendant wearing a black "hoodie" and having "dreads." After initially dialing 911, Zuniga gave a description of defendant

and Tucker. While Zuniga was on the phone, Bautista noticed defendant and Tucker walking down the alley. Bautista and Zuniga went inside the field house and called 911 a second time. The police arrived about five minutes after they placed the second call to 911. Bautista gave the officers a description of defendant and Tucker. The description was the same he gave to the 911 operator. Zuniga told the 911 operator that defendant had a black hoodie and dreads, and Tucker was wearing a green hat, blue jacket and baggie pants. The police officers stayed with Bautista and Zuniga while a second set of officers transported defendant and Tucker back to the park where Bautista and Zuniga identified them as the offenders. Bautista acknowledged that when the officers escorted defendant and Tucker back to the park, they were wearing different clothing.

¶ 10 Nathan Zuniga testified to substantially the same sequence of events as Bautista. He added that, as he was playing soccer with Bautista, he saw Tucker approaching, then stand by Zuniga's jacket. Tucker was wearing a hat and was about five-foot-eight inches tall. After about 30 seconds, defendant approached from behind and stood next to Tucker. Defendant had dreadlocks with blonde tips and was wearing a black hoodie. As defendant stood next to Tucker, he "presented the weapon." Zuniga explained that defendant showed the barrel of a gun. Defendant said that the "stuff was his" and he was going to "take the stuff." Defendant instructed Zuniga and Bautista to turn around and run. Zuniga saw Tucker pick up his jacket which had his cell phone inside.

¶ 11 Zuniga and Bautista ran to the field house and borrowed a phone to call 911. Before going into the field house, Zuniga saw defendant and Tucker walking towards an alley. Zuniga told a park employee what happened and they called the police again. The police arrived about

15 to 20 minutes later. After about a half an hour, the police brought defendant and Tucker back to the park. Defendant and Tucker were not wearing the same clothes, but Zuniga was able to identify defendant by the "blonde tips on his dreadlocks." Zuniga was also able to recognize defendant and Tucker by their faces. The police also showed Zuniga cell phones and he was able to recognize his phone from the picture on his "lock screen." Zuniga also recognized Bautista's iPhone. Later that evening at the 12th District, Zuniga identified the gun that he saw defendant point at him.

¶ 12 On cross-examination, Zuniga acknowledged that he only saw about five or six inches of the barrel of the gun in defendant's hand. Zuniga saw Tucker pick up his "stuff" before he turned around and ran to the field house. Zuniga turned around as he was running and saw defendant and Tucker walking towards the fire lane. Zuniga told the 911 operator that one of the men was wearing a green hat, a blue coat and baggy pants while the other man was wearing a "black hoodie" and "dreads." Zuniga gave the same description to the police officers that arrived at the field house. Zuniga acknowledged that he did not tell police that defendant and Tucker had changed clothes. The police showed Zuniga and Bautista the cell phones before they identified defendant and Tucker.

¶ 13 Chicago police detective Robert Smith testified that on January 24, 2015, he was working in the 12th police district with his partner Sergeant David Weigand. Sometime in the afternoon, he monitored a call of a robbery that occurred at Sheridan Park. Smith received a description of the offenders as two male blacks in their 20's, one with "dreads with blondish tips" wearing a black hooded sweatshirt. He also received a description of the two cell phones that were stolen,

an "iPhone and a Samsung Galaxy." Both Smith and Weigand began touring the immediate area around Sheridan Park.

¶ 14 After about 15 minutes, Smith saw defendant and Tucker standing behind a building located at 1341 West Hastings. Smith estimated that address was approximately "five to six blocks" from Sheridan Park. Defendant had "dreads with blondish tips," but was not wearing a black hoodie. Both defendant and Tucker had cell phones in their hands and were looking at the screens. As the officers approached, defendant placed the phone he was looking at "in the rear of his pants," while Tucker placed the phone he was looking at behind his back. The officers performed a protective pat down of defendant and Tucker. During the pat down, Smith saw Weigand recover a Galaxy phone from defendant that had slid down his pants. Weigand also recovered an iPhone from Tucker along with two additional cell phones. The officers transported defendant and Tucker to Sheridan Park for a "show up" with the victims.

¶ 15 At the field house, Smith went inside while Weigand remained with defendant and Tucker by the patrol car. Smith escorted Bautista and Zuniga, individually, to a glass door leading out to the park. The door was approximately 30 feet from where defendant and Tucker were standing. Both Bautista and Zuniga identified defendant as the person that pointed the gun at them, and Tucker as the person who took their phones and coats. Bautista and Zuniga were also shown the four cell phones recovered from defendant and Tucker and they were able to identify their phones.

¶ 16 On cross-examination, Smith acknowledged that the call he monitored in the 12th District came from the Office of Emergency Management and Communications (OEMC). Smith explained that, after a person calls 911, a call taker relays the information to a dispatcher, who

then announces the information to the zone of the district responsible for investigating the call. The call and description are relayed to the zone monitoring the calls and not to one individual police officer. In this case, the description relayed was for two male blacks in their 20's, five-foot-eight to five-foot-nine and 180 pounds. Smith could not remember the clothing descriptions, but did remember one individual had "dreads with blonde tips" and was wearing a "black hoodie." Smith was not "one hundred percent" certain of the description.

¶ 17 Smith acknowledged that defendant and Tucker were not wearing the same clothing described, but they "generally matched the description of the two armed robbers." When Smith and his partner approached, defendant and Tucker did not run. Smith announced his office and asked to see Tucker's hands. Tucker, who was holding an iPhone, showed Smith his hands. Tucker gave Smith the phone he was holding and, at that point, he was not free to leave but was under investigation for the armed robbery. After Smith did a protective pat down search of Tucker, he found a second cell phone. Sergeant Weigand was with defendant and Smith was not sure if defendant handed Weigand the phone or if the phone fell out of defendant's pant's leg. Weigand then performed a protective pat down of defendant and found a second phone on his person. Both defendant and Tucker were placed in handcuffs, and a patrol car transported them to Sheridan Park for the show up. Smith acknowledged that the description of defendant and Tucker from the OEMC was not included in his police report.

¶ 18 Chicago police officer Ken Rzeszutko testified that on January 24, 2015, he was working the robbery detail in the 12th District. Shortly after 1 p.m., he monitored a call of an armed robbery in Sheridan Park located at 910 South Aberdeen Street. Rzeszutko toured the area and went to the field house in the park. There, he saw Bautista and Zuniga, who were speaking to

uniform police officers. Rzeszutko left the park and continued to tour the area while monitoring his police radio for any additional calls. He learned that two individuals were in custody and went back to the 12th District. After speaking to his fellow officers, Rzeszutko then went to the area around 1300 West Hastings. Rzeszutko described the area as a housing complex with a courtyard. He searched the area in and around the bushes. From inside a barbeque grill, he recovered a black hooded sweatshirt with a handgun in the sleeve. Rzeszutko identified the handgun in court and testified it was not functional.

¶ 19 On cross-examination, Rzeszutko acknowledged that the radio call he monitored gave a description of the two suspects as male blacks in their 20's, one wearing baggy pants and the second with dreadlocks with blonde tips. Rzeszutko could not recall the rest of the description. Rzeszutko did not submit the handgun for fingerprints nor did he submit the sweatshirt for DNA testing.

¶ 20 At the conclusion of Rzeszutko's testimony, the State rested. Defendant's motion for directed finding was denied. Defendant entered the 911 tape and a stipulation to the clothing he was wearing at the time of his arrest.

¶ 21 After closing arguments, the court denied defendant's motion to quash his arrest and suppress the evidence. In doing so, the court noted that based on the general description of the offenders, the detectives had an articulable suspicion to approach defendant and Tucker. The court also noted that when defendant tried to conceal the smart phone, his action justified the *Terry* stop. The court further found that defendant's rights were not violated when he was handcuffed and taken to the park for a show up.

¶ 22 The court then found defendant guilty of the lesser-included offenses of robbery and unlawful restraint. In doing so, the court pointed out that the State failed to prove beyond a reasonable doubt that defendant committed an armed robbery because it did not establish that he was armed with a firearm.

¶ 23 The court denied defendant's motion for new trial. After hearing arguments in aggravation and mitigation, the court sentenced defendant to five years' imprisonment for robbery with the unlawful restraint counts merging therein. The court denied defendant's motion to reconsider his sentence.

¶ 24 On appeal, defendant argues that the trial court erred in denying his motion to quash his arrest and suppress evidence. Specifically, defendant argues that the police officers lacked reasonable suspicion to justify a *Terry* stop of him and Tucker. Defendant also maintains that even if the officers had reasonable suspicion to justify the stop, the officers improperly subjected Tucker and him to a search that was not supported by probable cause.

¶ 25 When reviewing a ruling on a motion to quash arrest and suppress evidence, this court applies a two-part standard of review. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009). We will accord the trial court's factual findings with great deference, and this court will reverse those findings only if they are against the manifest weight of the evidence. *Hopkins*, 235 Ill. 2d at 471. However, the court's ultimate ruling on a motion to suppress is reviewed *de novo*. *Id.* A reviewing court may affirm a ruling on a motion to suppress on any basis supported by the record, and is free to consider trial testimony as well as the evidence presented at the hearing on the motion to suppress. *Id.* at 458, 473.

¶ 26 The United States and Illinois Constitutions guarantee citizens the right against unreasonable searches and seizures. U.S. Const., amends. IV, XIV; Ill. Const. 1970, art I, § 6. "Reasonableness under the fourth amendment generally requires a warrant supported by probable cause." *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 12. However, in *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968), the Supreme Court recognized a limited exception to this requirement that permits a police officer, under appropriate circumstances, to conduct a brief, investigatory stop of a person when the officer reasonably believes that the person has committed or was about to commit a crime. *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 13.

¶ 27 In *Terry*, the United States Supreme Court held that "an officer may, within the parameters of the fourth amendment, conduct a brief, investigatory stop of a citizen when the officer has a reasonable, articulable suspicion of criminal activity, and such suspicion amounts to more than a mere 'hunch.'" *Terry*, 392 U.S. at 27. During a *Terry* stop, an officer may temporarily detain an individual for questioning where the officer reasonably believes the individual has committed, or is about to commit, a crime. *Terry*, 392 U.S. at 21-22; *Sanders*, 2013 IL App (1st) 102696, ¶ 13. Pursuant to *Terry*, a police officer may stop and detain an individual, without having probable cause, in order to investigate possible criminal activity. *People v. Bennett*, 376 Ill. App. 3d 554, 563-64 (2007). The *Terry* standard has been codified in section 107-14 of the Code of Criminal Procedure of 1963. 725 ILCS 5/107-14 (West 2014). "Whether an investigatory stop is valid is a separate question from whether a search for weapons is valid." *People v. Thomas*, 198 Ill. 2d 103, 109 (2001).

¶ 28 To justify a *Terry* stop, officers must be able to point to specific and articulable facts which, considered with the rational inferences from those facts, make the intrusion reasonable.

Terry, 392 U.S. at 21. The Supreme Court has defined "reasonable suspicion" as " 'a particularized and objective basis' for suspecting the person stopped of criminal activity." *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (quoting *United Stated v. Cortez*, 449 U.S. 411, 417-18 (1981)). Although reasonable suspicion is a less stringent standard than probable cause, an officer's hunch or unparticularized suspicion is insufficient. *People v. Lampitok*, 207 Ill. 2d 231, 255 (2003). When determining whether an investigatory stop is reasonable, we rely on an objective standard and view the facts from the perspective of a reasonable officer at the time of the stop. *Sanders*, 2013 IL App (1st) 102696, ¶ 14. The decision to make an investigatory stop is based on the totality of the circumstances. *Id.* "A general description of a suspect coupled with other specific circumstances that would lead a reasonably prudent person to believe the action taken was appropriate can constitute sufficient cause to stop or arrest." *People v. Ross*, 317 Ill. App. 3d 26, 29-30 (2000).

¶ 29 Here, we find that based on the totality of the circumstances, Detective Smith and Sergeant Weigand had reasonable suspicion to justify the *Terry* stop. The record shows that Smith monitored a radio broadcast that gave a general description of two suspects in connection with a robbery that occurred at Sheridan Park. The description included the offenders' race, age, height, weight, and clothing description. One of the offenders was described as having a "dreadlock" hairstyle with light or blonde colored tips. The detectives also knew that two cell phones were taken in the robbery, an iPhone and a Samsung Galaxy phone. Smith and Weigand toured the area and within 15 minutes of the robbery, saw defendant and Tucker, who fit the general description of the suspects. Defendant had dreadlocks with blonde tips, and he and Tucker were standing approximately six blocks from the scene of the robbery. They were also

looking at cell phones. See *People v. Miller*, 355 Ill. App. 3d 898, 905-06 (2005) (officers had reasonable articuable suspicion to conduct a *Terry* stop where an informant gave the officers a description of an individual, and the officers drove one-eighth of a mile and observed defendant who matched the description given).

¶ 30 As the officers approached, defendant and Tucker attempted to conceal the phones they were holding. Defendant placed the phone he was holding in the back of his pants while Tucker attempted to hide the phone he was looking at behind his back. Given that defendant and Tucker generally matched the description of the offenders, combined with their proximity to the crime scene and actions at the time the officers approached them, the officers had reasonable suspicion to justify a *Terry* stop. See *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (nervous evasive behavior is a pertinent factor in determining reasonable suspicion); *People v. Jackson*, 2012 IL App (1st) 103300, ¶ 17.

¶ 31 In reaching this conclusion, we are not persuaded by defendant's argument that because the 911 call failed to mention that one of the two offenders had dreadlocks with blondish tips, the officers were not justified in stopping defendant and Tucker. Detective Smith explained that the 911 call and the message broadcast to his unit were not the same message. In addition, both Smith and Rzeszutko testified to hearing a flash message of an offender with dreadlocks with blonde tips.

¶ 32 We are also not persuaded by defendant's argument that his attempt to conceal the phone he was holding as the detectives approached was an innocuous action that did not support reasonable suspicion. In support of his argument, defendant relies on *People v. F.J*, 315 Ill. App. 3d 1053, 1058 (2001), *People v. Smith*, 331 Ill. App. 3d 1049, 1055 (2002), and *People v.*

Ocampo, 377 Ill. App. 3d 150, 152 (2007). In *F.J.* and *Smith,* the officer did not know what the object was that defendant was trying to conceal. Here, Smith observed defendant trying to conceal a cell phone, which was the reported item taken during the robbery. Unlike in *Ocampo,* the officers in this case did not come upon defendant merely by chance. Rather, the officers monitored a call of a robbery that contained the description of the two offenders. The officers then toured the area near the robbery and approached defendant and Tucker, who matched the reported description of the two offenders. As mentioned, defendant and Tucker were looking at cell phones and attempted to conceal the phones as the officers approached. The totality of these circumstances was sufficient to justify a *Terry* stop.

¶ 33 Defendant also challenges the pat down search that followed his *Terry* stop. In doing so, defendant argues that the officers improperly subjected him to the search because it was not supported by probable cause. However, contrary to defendant's argument, the officers were not required to have probable cause to conduct the pat down. Rather, to justify a protective pat down of a properly detained citizen for possible weapons, the State was required to demonstrate that the investigating officers had a reasonable belief that the defendant was armed and dangerous. *Jackson*, 2012 IL App (1st) 103300, ¶ 51.

¶ 34 Here, because the officers were aware that defendant and Tucker were suspects in an armed robbery, the officers could reasonably believe that they were armed and dangerous, thus justifying the protective pat down for weapons. See *People v. DeLuna,* 334 Ill. App. 3d 1, 10 (2002) (and cases cited therein) (to conduct a pat down search an officer need not be completely certain that the individual is armed, but, rather, the officer may pat down the individual if he reasonably believes the individual is armed or if there is a reasonable fear for safety).

¶ 35 Moreover, the officers were also justified in conducting the pat down where they needed to transport defendant and Tucker in a police car to the park for a showup. See *People v. Delaware*, 314 Ill. App. 3d 363, 371 (2000) (citing *People v. Lippert*, 89 Ill. 2d 171(1982)) (transportation of the defendants for a showup identification is a permissible part of a *Terry* stop); *People v. Walters*, 256 Ill. App. 3d 231 (1994) (finding the officers did not exceed the scope of their investigatory stop when they were investigating an armed robbery, stopped a vehicle that contained individuals that matched the description of the suspects within three minutes of the crime, and had a reasonable belief that they were armed); *People v. Smith*, 346 Ill. App. 3d 146, 164 (2004) (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).

¶ 36 Accordingly, where the officers were justified in performing the *Terry* stop and conducting a protective pat down of defendant and Tucker, the trial court did not err in denying defendant's motion to quash his arrest and suppress evidence.

¶ 37 For the reasons stated, we affirm the judgment of the trial court.

¶ 38 Affirmed.