2018 IL App (2d) 160252-U
No. 2-16-0252
Order filed September 26, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. PARIS L. BRANDON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 14-CF-1043 Honorable John A. Barsanti, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Hudson and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of resisting a peace officer: the officer's attempt to detain defendant was an authorized act, as he had a reasonable suspicion to justify a *Terry* stop.

¶ 2 Following a bench trial, defendant, Paris L. Brandon, was convicted of resisting a peace officer (720 ILCS 5/31-1(a-7) (West 2014)). He appeals, contending that the State failed to prove beyond a reasonable doubt that the police were engaged in an authorized act when he resisted by fleeing into his house. We affirm.

¶ 3 At trial, Officer Christopher Moore testified that, on October 25, 2013, Aurora police received an anonymous report that shots had been fired near the Eastwood apartment complex. The caller described a small, green vehicle with several males leaving the area. Moore testified that, from a previous incident, Officer Jay Ellis recalled that defendant owned a similar vehicle and that someone had told him that there was a pistol in it. Based on this information, Ellis put out a radio dispatch that defendant might be involved. He gave a possible address for defendant, which was a little more than four miles from the alleged crime scene. Based on this "hunch," Ellis went to defendant's house.

¶ 4 Ellis radioed Moore and his partner, Tracey Archer, that defendant's vehicle had just pulled into the driveway, so Moore and Archer responded to the scene as well. When they arrived, they saw a green Honda in the driveway. Two men were walking away from it while defendant was standing near the front stoop.

¶ 5 Moore approached defendant, informing him that a witness had described his vehicle near a crime scene. Defendant consented to a pat-down search that revealed no contraband or weapons. Defendant was calm to this point. Moore asked defendant from where he had come and defendant said that he had been at the Eastwood Apartments. Moore said that a witness to the crime could possibly identify defendant. Defendant responded that he had "a lot of enemies" at that apartment complex. At that point, he began to look around, and he stepped away from Moore.

¶ 6 Moore asked defendant for consent to search the vehicle. Defendant agreed but said that he would have to go inside the house to get the keys. Moore told him to remain outside until the witness arrived. Defendant took a few more steps toward the door, and Moore repeated that he

could not go into the house. Defendant responded that he had to use the phone and ran toward the door.

¶ 7 Moore gave chase. He briefly grabbed defendant's sweatshirt but defendant broke free. As Moore attempted to step into the doorway behind him, defendant slammed the door, which struck Moore's knee.

¶ 8 Moore unsuccessfully attempted to kick in the door. Eventually, other officers arrived and used a battering ram to open the door. Two or three other people were inside the house, but Moore's immediate objective was to find defendant. He feared that defendant was going to get the gun. Police found defendant in a bedroom, hiding under a pile of clothes.

¶ 9 Later, while returning to the police station, Moore felt pain in his right knee. He received treatment, missed time from work, and was on light duty for a time.

¶ 10 The court found defendant guilty of resisting and sentenced him to 24 months' probation. Defendant timely appeals.

¶ 11 Defendant contends that he was not proved guilty beyond a reasonable doubt of resisting. He notes that a conviction of resisting requires that the officers be engaged in an authorized act. However, he argues, the officers were not authorized to detain him when they had merely a vague, anonymous report of a green car and an officer's hunch that the car belonged to defendant.

¶ 12 In reviewing the sufficiency of the evidence to support a criminal conviction, we ask whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985); *People v. Kent*, 2016 IL App (2d) 140340, ¶ 18. Defendant was convicted of resisting a peace officer, which required the State to prove that

defendant knowingly resisted the performance of someone he knew to be a peace officer "of any authorized act within his or her official capacity." 720 ILCS 5/31-1(a) (West 2014).

¶ 13 A *Terry* stop is an authorized act that, if resisted, can be the basis of a conviction of resisting. *People v. Johnson*, 285 Ill. App. 3d 307, 309 (1996). Officers may conduct a *Terry* stop if they have a reasonable belief that "the person is committing, is about to commit or has committed an offense." 725 ILCS 5/107-14 (West 2014); see *Terry v. Ohio*, 392 U.S. 1 (1968).

¶ 14 To justify an investigative stop, an officer must have observed unusual conduct leading to a reasonable, articulable suspicion that the person in question has committed or is about to commit a crime. *People v. Kipfer*, 356 Ill. App. 3d 132, 137 (2005). "Viewed as a whole, the situation confronting the police officer must be so far from the ordinary that any competent officer would be expected to act quickly." *People v. Thomas*, 198 Ill. 2d 103, 110 (2001). The facts supporting the officer's suspicion need not reach the level of probable cause, but they must amount to more than a mere hunch. *Id.* The facts should be viewed not with analytical hindsight, but from the perspective of a reasonable officer in that situation. *Id.*

¶ 15 Defendant argues that the police did not have reasonable grounds for a *Terry* stop based on the limited information available to them: an anonymous tip about several males in a green car near where shots had recently been fired. He further argues that Ellis was able to corroborate only innocent details of the tip—several males in a green car—and that Ellis admittedly had only a "hunch" that the car in question was defendant's. See *People v. Henderson*, 2013 IL 114040, ¶ 26 (anonymous tip may provide grounds for *Terry* stop but it must be reliable in its assertion of illegality).

¶ 16 The State responds that the encounter was initially consensual—defendant consented to a pat-down and to a search of his car—but that the officers subsequently developed reasonable grounds for a *Terry* stop. We agree.

¶ 17 Aurora police initially received a report of shots fired near the Eastwood Apartments. The caller described a small green car leaving the area. Ellis, knowing that defendant owned such a car and reportedly had a gun, went to defendant's house. Moments later, Moore and Archer arrived. They saw a green Honda in the driveway and defendant standing on the driveway. When questioned, defendant said that he had just come from the Eastwood Apartments. When Moore mentioned that a witness could possibly identify him, defendant, who had been calm and cooperative to that point, suddenly became nervous, stating that he had "enemies" at that apartment complex. He took a step away from Moore and began inventing excuses to go into the house. See *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (nervous, evasive behavior is pertinent in finding reasonable suspicion). At that point, the police had a reasonable suspicion that defendant was involved in the "shots fired" incident, and Moore was justified in restraining his movement. Thus, Moore's actions were "authorized," and defendant was not privileged to resist. See *Johnson*, 285 Ill. App. 3d at 309.

¶ 18 Defendant cites *Henderson*. There, however, the police had only an anonymous tip about a "possible gun" in a tan Lincoln. *Henderson*, 2013 IL 114040, ¶ 3. Here, the State essentially concedes that the initial tip did not establish a reasonable suspicion. However, in following up, the police learned that defendant had indeed been at the Eastwood Apartments. Moreover, he became nervous and evasive when told that a witness could possibly identify him as having been involved in the incident.

¶ 19 The officers here also had much more information than those in *People v. Shipp*, 2015 IL App (2d) 130587, which defendant also cites. There, the Freeport police received a 911 call about a fight involving weapons. No description was given of the people allegedly involved in the fight. None of the officers witnessed a fight. An officer who arrived at the area less than a minute after the dispatch saw the defendant and a woman walking about a block from where the fight occurred. The defendant and his companion did not appear to be agitated, sweating, or out of breath, and they were not doing anything unusual. Their clothing was not disheveled, and the defendant did not have any injuries or marks consistent with a fight. The officer asked whether they had been involved in, or knew of, any fights. The defendant and his friend responded to several questions but continued walking. *Id.*, ¶¶ 4-5. Later, a van pulled up. The occupants said that they had made the 911 call and that the people involved in the fight were located to the north. *Id.*, ¶ 7. After ignoring several requests to keep his hands out of his pockets, the defendant was arrested. *Id.* ¶ 11. In reversing an order denying the defendant's postconviction petition, we found that the stop was unreasonable. *Id.* ¶ 37.

¶ 20 In *Shipp*, there was no indication that the defendant was involved in the fight. In fact, the original callers affirmatively said that the defendant was not involved in the fight. This court specifically noted that the defendant was not attempting to leave the area. Here, by contrast, defendant said that he had just come from the area where the shots were allegedly fired and became nervous and evasive, and attempted to flee into his house, when told that a witness was coming to possibly identify him.

¶ 21 In his reply brief, defendant contends that the encounter between Moore and defendant lost its consensual character much earlier, when Moore " 'told him he had to stay with [Moore], he couldn't go in the house.' " However, defendant was not charged with resisting that

command. He voluntarily complied with Moore's directive. It was only later, after the police developed reasonable grounds for a stop, that defendant actively resisted by running into the house.

¶ 22 In *United States v. Mendenhall*, 446 U.S. 544 (1980), which defendant cites, the defendant moved to suppress evidence seized by federal agents. Thus, it was critical to decide when, if ever, the encounter lost its consensual nature. Here, the relevant question was whether the officers were authorized to restrain defendant when he ran into his house. It is immaterial whether they exceeded their authority at some earlier time, given that defendant voluntarily cooperated to that point.

¶ 23 Defendant further argues that the police were not authorized to pursue him into his home to effectuate a *Terry* stop. However, as defendant appears to acknowledge, police may enter a home without a warrant if they are in "hot pursuit" of a suspect whom they have probable cause to believe has committed a crime. *People v. Wear*, 229 Ill. 2d 545, 563 (2008). Here, because the police had reasonable grounds for a *Terry* stop, they also had probable cause to arrest him for resisting when he ran into the house.

¶ 24 The judgment of the circuit court of Kane County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 20/16); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 25 Affirmed.