2019 IL App (4th) 180258-UB

NO. 4-18-0258

Rule 23 filed June 10, 2019

Modified upon denial of Rehearing July 16, 2019

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Vermilion County
DONTREZ WILLIAMS,	)	No. 16CF885
Defendant-Appellee.	)	
	)	Honorable
	)	Nancy S. Fahey,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Holder White and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court erred by granting defendant's motion to suppress where the totality of the circumstances established the police had probable cause to arrest defendant.

¶ 2 In January 2017, a grand jury indicted defendant, Dontrez Williams, with two counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(1), (a)(2) (West 2016)), one count of possession of a stolen firearm (720 ILCS 5/24-3.8(a) (West 2016)), one count of not having a Firearm Owners Identification (FOID) card (430 ILCS 65/2(a)(2) (West 2016)), and one count of obstructing justice (720 ILCS 5/31-4(a)(1) (West 2016)). In December 2017, defendant filed a motion to suppress, seeking to suppress the evidence that was discovered as a result of an illegal seizure. After an evidentiary hearing, the Vermilion County circuit court granted defendant's motion and suppressed the State's evidence. The State then filed a certificate of impairment and an appeal under Illinois Supreme Court Rule 604(a) (eff. July 1,

2017).

¶ 3 On appeal, the State asserted the circuit court erred by suppressing the evidence based on its finding the police lacked probable cause to arrest defendant. In November 2018, this court reversed the circuit court's grant of the motion to suppress and remanded the cause for further proceedings. Defendant filed a petition for leave to appeal to the Illinois Supreme Court. In March 2019, the supreme court denied defendant's petition; however, in the exercise of its supervisory authority, it directed this court to vacate our judgment and "address defendant's alternative argument that even if the arresting officer had probable cause to detain defendant, the continued detention was unreasonable after two negative show-ups." *People v. Williams*, No. 124390 (Ill. Mar. 20, 2019) (nonprecedential supervisory order on denial of petition for leave to appeal). Accordingly, we vacate our original judgment, and we again reverse and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 In this case, the charges stem from defendant's alleged actions on December 26, 2016. In his December 2017 motion to suppress evidence, defendant argued the police seized defendant without probable cause or reasonable suspicion. Specifically, he alleged Trooper Jennifer Smit's entry into the building in which he was staying to arrest him was presumptively unconstitutional. Moreover, defendant contended that, even if Trooper Smit's entry was reasonable, she lacked probable cause to arrest him. Defendant further argued Trooper Smit's seizure and detention of him were not justified under *Terry v. Ohio*, 392 U.S. 1 (1968). Thus, defendant alleged the officer's seizure was unreasonable and any fruit of the seizure should be suppressed. The State filed a response to defendant's motion, asserting the police had probable cause to arrest defendant for (1) aggravated discharge of a firearm, (2) obstructing a peace

officer, and (3) obstructing identification. The State further argued the gunshot residue test results and defendant's fingerprints should not be suppressed even if defendant's arrest was unlawful. Defendant filed a reply, contesting the State's assertions.

¶ 6 On January 25, 2018, the circuit court commenced the hearing on defendant's suppression motion. Defendant testified on his own behalf and presented the testimony of Danielle Lewallen, a Danville police officer. Defendant stated he was in the lobby of Mer Che Manor, an apartment building located at 723 Oak Street in Danville, Illinois, at approximately 8:50 p.m. on December 26, 2016. He was wearing a bright red Jordan Windbreaker and intended to visit his mother and April Hampton, his auntie. The lobby contains two elevators, a gym, and an area for bikes and recreational items. A person must be "buzzed in" to enter. While he was waiting for an elevator, defendant saw a police officer "bailing out" of her squad car. He then saw her pull out her gun and "walkie talkie." The police officer came into the building, grabbed defendant's left hand, snatched the cellular telephone out of his hand, and cuffed defendant. To his knowledge, defendant was not free to leave. Defendant did not have any warrants for his arrest.

¶ 7 Defendant also testified that, before going to Mer Che Manor, defendant was at a house on Chandler Street with his brother and uncle. Thereafter, he went to a house on English Street. From the house on English Street, he walked to Mer Che Manor.

¶ 8 Officer Lewallen testified she was on duty on December 26, 2016. She met with defendant at the police station and conducted a gunshot residue test on defendant. Defendant was under arrest when she conducted the test.

¶ 9 After Officer Lewallen's testimony, defendant moved to shift the burden of proof to the State. The State made no comment and offered to present testimony. The circuit court

declared the burden was shifted. The State then presented the testimony of (1) Eric Kizer, a Danville police sergeant; and (2) Jennifer Smit, an Illinois State Police trooper who worked for the Danville police department at the time of defendant's arrest.

¶ 10 Sergeant Kizer testified he was on duty on December 26, 2016. At 8:58 p.m. on that date, he was responding to a shots-fired complaint in the 700 block of Sherman Street. While en route, he was advised the incident involved two suspects who were black males and had left the area on foot heading eastbound on Woodbury. Additionally, one of the suspects was described by the complainant as wearing a red, black, and grey multicolored jacket. The other suspect's clothing was not described. As he approached the intersection of Gilbert and Woodbury, Sergeant Kizer saw two black males walking northbound on the west side of Gilbert Street.

¶ 11 Sergeant Kizer testified about the area in which he saw the two males. To the north was a Walgreens, which was located on the southwest corner of the intersection of Gilbert and Fairchild Streets. A Domino's was to the south of the Walgreens on Gilbert Street, and a Jimmy John's and a Papa John's were located across the street from the Walgreens. A Dollar General store was east of the Jimmy John's. All of the businesses were open when he observed the two males.

¶ 12 Regarding the two males, Sergeant Kizer testified one male was wearing a bright red jacket and the other male was wearing "a dark hooded jacket but underneath it was a red, black and gray multicolored sweatshirt." While Sergeant Kizer was observing the pair, the man in the dark-hooded jacket took the jacket off. The police took the multicolored sweatshirt suspect into custody on Gilbert Street, and he was later identified as Shawn Stingley. The police recovered Stingley's dark-hooded jacket from the bushes in front of Title Max. A gun was also

found in the bushes.

¶ 13 Sergeant Kizer observed the other male, who was wearing the bright red jacket, talking on a cellular telephone. When the male wearing the red jacket saw Sergeant Kizer, he had a "deer in the headlights kind of look" on his face. The man wearing the bright red jacket was walking north toward the businesses, was not running or sweating, did not appear to be out of breath, and was walking erect. Stingley was approximately 15 feet behind the man in the red jacket. When Sergeant Kizer first observed the two men, the man in the red jacket was walking northbound on Gilbert Street, and Stingley was at the intersection.

¶ 14 After he saw the two individuals, Sergeant Kizer contacted other units over the radio and turned his vehicle around to keep an eye on the subjects. Over the radio, he noted where the subjects were walking and what they were wearing. After he turned his car around, the two men went in different directions. The male wearing the multicolored sweatshirt went northbound, and the male in the red jacket went in a northeast direction away from the man in the multicolored sweatshirt. Sergeant Kizer went to Mer Che Manor where defendant was being taken into custody and identified him as the male he saw walking away. Sergeant Kizer marked on a map where he first saw the two men and where the shots were fired. In responding to the call, Sergeant Kizer did not see not see any other individuals matching the description of the two suspects.

¶ 15 Trooper Smit testified she was a police officer with the Danville police department on December 16, 2016. At around 8:54 p.m. that night, she was responding to the report of gunshots. Trooper Smit had received a description of a "suspect in red" and had been advised by Sergeant Kizer the suspect in red had run northbound from the area. While she was searching the area for suspects, Trooper Smit received word a subject in red was in the lobby of

723 Oak Street. Trooper Smit had not seen anyone else who matched the description of the subject in red.

¶ 16 When Trooper Smit approached defendant inside the lobby of the building, she asked him to stop, and defendant ignored her order. She may have asked him what he was doing there. Defendant never ran from her but did not talk to her. Since defendant matched the description of one of the suspects, Trooper Smit detained defendant pending further investigation for identification. Once detained, defendant told Trooper Smit he was there to visit his aunt. Defendant also told Trooper Smit his name was "Nate Wallace" and his birth date was November 18, 2000. While Trooper Smit still had defendant detained at Mer Che Manor, Sergeant Kizer came there and positively identified defendant as the subject he had seen taking off northbound.

¶ 17 Defendant recalled Officer Lewallen, who testified she spoke with a "Mr. Brown," who was an eyewitness. Brown saw two subjects by the porch of the residence at 721 Sherman. He admitted he did not see their faces but thought he might be able to identify them by their clothing. Officer Lewallen took Brown to Mer Che Manor. The police showed Brown defendant, and Brown was unable to identify defendant as one of the shooters. Brown was also unable to identify Stingley.

¶ 18 After Officer Lewallen's testimony, the circuit court continued the hearing because one of the witnesses had failed to appear.

¶ 19 On February 9, 2018, the circuit court resumed the hearing on defendant's motion to suppress. Defendant presented the testimony of Officer Troy Nipper, and defendant again testified on his own behalf. Defendant testified that, after his arrest, he was fingerprinted. Officer Nipper testified that, at 9:15 p.m. on December 26, 2016, he performed a "show-up" at

723 Oak Street with Katrina Nawls, another eyewitness. Nawls was not able to identify defendant as a suspect in the crime. In fact, Nawls was never able to see the second suspect. However, she was confident about her identification of Stingley. Officer Nipper also testified he first responded to 721 Sherman for shots fired. Shortly thereafter, he responded to the corner of Woodbury and Gilbert to assist Sergeant Kizer with one of the suspects and a recovered firearm. According to Officer Nipper, Sergeant Kizer advised Officer Nipper a black male in a red jacket did not stop for Sergeant Kizer. At that time, Officer Nipper looked over to the east down Woodbury Street and saw a subject in a red jacket walking south across Woodbury Street from the alley directly east of Oak towards Mer Che Manor.

¶ 20 At the close of evidence, the circuit court allowed the parties to file written arguments. The parties did so. In a March 28, 2018, docket entry, the circuit court granted defendant's motion to suppress, finding the police lacked probable cause to arrest defendant. The court pointed out a "red jacket" was never part of any general description of one of the shooters. It also noted it gave no consideration to the evidence two separate witnesses from the scene of the shooting were unable to identify defendant following defendant's arrest. The court suppressed all evidence seized pursuant to defendant's arrest.

¶ 21 On April 2, 2018, the State filed a certificate of impairment and notice of appeal from the circuit court's order granting defendant's motion to suppress. The notice of appeal was timely filed and in sufficient compliance with Illinois Supreme Court Rule 606 (eff. July 1, 2017). The next day, the State filed a timely amended notice of appeal. Thus, we have jurisdiction under Illinois Supreme Court Rule 604(a) (eff. July 1, 2017).

¶ 22 II. ANALYSIS

¶ 23 The State's sole contention on appeal is the circuit court erred by granting

defendant's motion to suppress based on a finding the police lacked probable cause to arrest him. Defendant disagrees, asserting the police lacked probable cause to arrest him and lacked reasonable suspicion to perform a *Terry* stop. In the alternative, he purports to argue his continued detention was unreasonable after two negative show-ups even if the police had probable cause or reasonable suspicion to detain him.

¶ 24 A. Standard of Review

¶ 25 In reviewing a circuit court's ruling on a motion to suppress evidence, this court applies a two-part standard of review. *People v. Timmsen*, 2016 IL 118181, ¶ 11, 50 N.E.3d 1092. First, we uphold the circuit court's factual findings unless they are against the manifest weight of the evidence. *Timmsen*, 2016 IL 118181, ¶ 11. In this case, the parties are in agreement as to the facts. Second, this court reviews *de novo* the circuit court's ultimate legal conclusion regarding whether suppression is warranted. *Timmsen*, 2016 IL 118181, ¶ 11.

¶ 26 With a motion to suppress, the defendant bears the burden of proof. *People v. Cregan*, 2014 IL 113600, ¶ 23, 10 N.E.3d 1196. If the defendant makes a *prima facie* showing the State obtained the evidence from an illegal search or seizure, the burden shifts to the State to provide evidence to counter the defendant's *prima facie* case. *Cregan*, 2014 IL 113600, ¶ 23. However, the ultimate burden of proof remains with the defendant. *Cregan*, 2014 IL 113600, ¶ 23.

¶ 27 B. Probable Cause to Arrest

¶ 28 The circuit court concluded the police lacked probable cause to arrest defendant. The State contends that finding is erroneous. Our supreme court has explained a warrantless arrest as follows:

> "An arrest executed without a warrant is valid only if supported by

> probable cause. [Citation.] Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime. [Citation.] In determining whether the officer had probable cause, his factual knowledge, based on law enforcement experience, is relevant. [Citation.] The existence of probable cause depends upon the totality of the circumstances at the time of the arrest. [Citation.] Whether probable cause exists is governed by commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt. [Citation.]" *People v. Grant*, 2013 IL 112734, ¶ 11, 983 N.E.2d 1009.

¶ 29 When the police know a crime has been committed, the difficulty of establishing probable cause is lessened. *People v. Hopkins*, 235 Ill. 2d 453, 476, 922 N.E.2d 1042, 1054 (2009) (citing *People v. Lippert*, 89 Ill. 2d 171, 179-80, 432 N.E.2d 605, 608-09 (1982)). "In cases of serious crime, experience has shown that the chances of apprehending the offender are slight unless he is caught in the vicinity of the crime." (Internal quotation marks omitted.) *Hopkins*, 235 Ill. 2d at 476, 922 N.E.2d at 1055 (quoting *Lippert*, 89 Ill. 2d at 180, 432 N.E.2d at 609)). In *Hopkins*, 235 Ill. 2d at 477, 922 N.E.2d at 1055, our supreme court applied the aforementioned principles to the alleged crime of attempt (armed robbery). The firing of a gun in a residential neighborhood is also a serious crime, as evidenced by the police taking Stingley into custody at gunpoint and Trooper Smit pulling out her gun.

¶ 30 Moreover, an arresting officer may rely upon police radio transmissions to make an arrest even if the officer is unaware of the specific facts that established probable cause to make that arrest. *People v. Maxey*, 2011 IL App (1st) 100011, ¶ 54, 949 N.E.2d 755.

Additionally, when officers are working in concert, "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." *Maxey*, 2011 IL App (1st) 100011, ¶ 54; see also *People v. Green*, 2014 IL App (3d) 120522, ¶ 30, 19 N.E.3d 13 (noting the collective knowledge of all of the officers involved in the apprehension of a defendant can be considered by the circuit court in determining whether reasonable suspicion existed). Accordingly, we find if the arresting officer is relying solely on another officer's dispatch for arresting an individual, the officer who sent the dispatch must have possessed the facts necessary to establish probable cause. However, if the arresting officer has also gained independent knowledge, the collective knowledge of both officers is relevant to the determination of whether probable cause exists. Thus, we disagree with defendant probable cause cannot be established in a piecemeal manner.

¶ 31 In this case, Sergeant Kizer had received radio transmission at 8:54 p.m. of a complaint of shots fired in the 700 block of Sherman Street. The two individuals involved in firing the shots were black males who left the area on foot heading eastbound on Woodbury. The complainant could only describe what one of the males was wearing, and that clothing was a red, black, and grey multicolored jacket. Four minutes later as he approached the intersection of Gilbert Street and Woodbury Street, Sergeant Kizer saw two black male subjects walking northbound on the west side of Gilbert. Sergeant Kizer observed one of the men, later identified as defendant, was wearing a bright red jacket and the other was wearing a dark-hooded jacket with a red, black, and grey multicolored sweatshirt underneath. The male in the bright red jacket was walking approximately 15 feet in front of the other male. Additionally, Sergeant Kizer described the male in the bright red jacket as having a look of "deer in the headlights" when he first saw Sergeant Kizer. After seeing the two individuals, Sergeant Kizer contacted the other

units over the radio and turned his vehicle around to try to keep an eye on both subjects. Sergeant Kizer told the other units which way the suspects were walking and what they were wearing. After he turned around, Sergeant Kizer observed the male in the bright red jacket walk in a northeast direction and the male in the multicolored sweatshirt walk northbound. Trooper Smit received Sergeant Kizer's transmission and learned the male in the red jacket was in the lobby of Mer Che Manor. Trooper Smit went there, and when she tried to talk to defendant, he did not acknowledge her.

¶ 32 In his appellate brief, defendant looks at each fact individually and gives an innocent explanation for the fact. However, courts examine the totality of the circumstances at the time of the arrest when determining the existence of probable cause. *Grant*, 2013 IL 112734, ¶ 11. Moreover, "probable cause does not even demand a showing that the belief that the suspect has committed a crime be more likely true than false." *People v. Wear*, 229 Ill. 2d 545, 564, 893 N.E.2d 631, 643 (2008). "Thus, the existence of possible innocent explanations for the individual circumstances or even for the totality of the circumstances does not necessarily negate probable cause." *People v. Geier*, 407 Ill. App. 3d 553, 557, 944 N.E.2d 793, 797 (2011).

¶ 33 When we examine the totality of the circumstances, the facts are defendant was in close proximity of where the shots were fired by two black male subjects shortly after the complaint was received. Moreover, defendant was around 15 feet from another black male who was wearing clothing that matched the description given by the complainant. Defendant made eye contact with Sergeant Kizer when defendant first saw Sergeant Kizer. Defendant then walked in a different direction from the other male when Sergeant Kizer turned his squad car around. Defendant also gave a "deer in the headlights look" when he made eye contact with Sergeant Kizer. Further, the police had not observed anyone else in the area matching the

description of the suspects. Sergeant Kizer transmitted on the radio where the suspects were heading and what they were wearing. Trooper Smit heard this transmission and was looking for the subject in red. She received word the suspect was in the lobby of 723 Oak Street and went to that address. There, defendant matched the description given by Sergeant Kizer, and defendant refused to acknowledge Trooper Smit when she attempted to talk with him. Based on Trooper Smit's and Sergeant Kizer's information, a reasonably cautious person would believe defendant committed the crime. The fact the two suspects were not communicating with each other while walking does not destroy probable cause as defendant was talking on a cellular telephone when the two were observed. Accordingly, we find the police had probable cause to arrest defendant, and thus the circuit court erred by granting defendant's motion to suppress.

¶ 34 C. Negative Show-ups

¶ 35 In the heading for his alternative argument, defendant asserts "[e]ven if Smit had probable cause or reasonable suspicion to detain [defendant], the continued detention was unreasonable after two negative show-ups." However, the entire argument under the heading only addresses defendant's detention if the detention was considered a *Terry* stop. Moreover, in the case defendant cites in support of his argument, *People v. Gherna*, 203 Ill. 2d 165, 181-87, 784 N.E.2d 799, 808-12 (2003), the supreme court first found the police's actions constituted a *Terry* stop and then addressed whether the police officer exceeded the scope of their *Terry* authority. Defendant acknowledged in his December 2018 petition for rehearing he did not explicitly analyze probable cause in his brief.

¶ 36 As to probable cause, defendant cites no authority addressing any limitation on the length of a detention based on probable cause to arrest and makes no argument probable cause to arrest can be affected by subsequent negative show-ups. Illinois Supreme Court Rule

341(h)(7) (eff. May 25, 2018) requires arguments in the appellant brief to include "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Illinois Supreme Court Rule 341(i) (eff. May 25, 2018) provides Rule 341(h)(7) also applies to appellee briefs. Supreme court rules on brief requirements are "not mere suggestions; they are rules that must be followed." *Epstein v. Davis*, 2017 IL App (1st) 170605, ¶ 22, 95 N.E.3d 1243. In accord with Rule 341's briefing requirements, this court has held a reviewing court is "not simply a depository into which the appealing party may dump the burden of argument and research." *People v. Hood*, 210 Ill. App. 3d 743, 746, 569 N.E.2d 228, 230 (1991). "[M]ere contentions, without argument or citation of authority, do not merit consideration on appeal." *Hood*, 210 Ill. App. 3d at 746, 569 N.E.2d at 230. Likewise, "[a]n issue that is merely listed or included in a vague allegation of error is not 'argued' and will not satisfy the requirements of the rule." *Vancura v. Katris*, 238 Ill. 2d 352, 370, 939 N.E.2d 328, 340 (2010). Additionally, a party may not raise arguments for the first time in a petition for rehearing. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018); *People v. Grigorov*, 2017 IL App (1st) 143274, ¶ 23, 91 N.E.3d 390. For the aforementioned reasons, we chose not to address the issue in our original appeal. Now, at the supreme court's direction, we expressly find defendant has forfeited this issue by failing to provide any argument and citation to authority. See *Hood*, 210 Ill. App. 3d at 746, 569 N.E.2d at 231 (noting this court would have been justified to find the defendant's point forfeited based on the defendant's failure to cite any interpretation of the statutes by Illinois courts, although several cases on point existed, and his offering minimal argument in support of his position).

¶ 37 Even absent forfeiture, the two negative show-ups do not change the outcome of our decision. As to Brown's show-up, Officer Lewallen testified she spoke with Brown at the

scene. Brown told her he had observed two individuals in the area where the shots were fired but did not see their faces. Officer Lewallen further testified Brown stated he "[might] possibly be able to identify them by their clothing." The evidence at the suppression hearing did not indicate Brown had provided the officers with a description of either individual's clothing before he arrived at Mer Che Manor for the show-up. At the show-up, Brown did not identify defendant or Stingley as one of the two individuals he had observed. Regarding Nawls's show-up, Officer Nipper conducted that one. Officer Nipper testified Nawls identified Stingley and was confident in her identification of him as one of the two suspects. While Nawls was unable to identify defendant, she reported she was never able to see the second suspect.

¶ 38 Based on the aforementioned testimony, we find neither negative show-up served to diminish or negate the officers' probable cause. Brown indicated he did not see the suspects' faces and was unsure of his ability to identify the suspects based on what they were wearing. While Brown was unable to identify defendant as one of the two individuals he had seen, no evidence was presented Brown *excluded* defendant as one of the individuals. Moreover, Nawls was never able to see the second suspect, and she had already positively identified Stingley as one of the individuals involved.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we reverse the Vermilion County circuit court's judgment and remand the cause for further proceedings.

¶ 41 Reversed; cause remanded.