2019 IL App (1st) 153320-U

FIRST DIVISION
April 22, 2019

No. 1-15-3320

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MAURICE VERNON, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County, Criminal Division. No. 12 CR 5197 Honorable Timothy Joseph Joyce, Judge Presiding.

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

ORDER

¶ 1 *Held*: Trial court did not err when it denied defendant's (1) pretrial motion to quash arrest and suppress evidence and (2) posttrial motion to dismiss charges.

¶ 2 After a bench trial, defendant Maurice Vernon was convicted of possessing heroin with the intent to deliver (720 ILCS 570/401(a)(1)(A) (West 2012)) and sentenced to seven years' imprisonment. Defendant appeals his conviction and argues that the trial court erred when it denied his pretrial motion to quash and suppress evidence and posttrial motion to dismiss charges.

¶ 3 Defendant contends that both motions should have been granted because: (1) he had a

reasonable expectation of privacy in the apartment building where he was arrested such that the police officers' warrantless entry was unlawful; and (2) he had a cooperation agreement with police that was violated when his charges were neither dropped nor reduced as allegedly promised. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On February 14, 2012 at 12:30 p.m., Chicago police officers Andrew Kemps and Brian Cahill went to investigate alleged drug activity in an apartment building located at 5017 S. Loomis St. in Chicago. Four other police officers accompanied them.

¶ 6 The two-story building had front and rear apartments on both floors. The two front doors to the building were boarded up with plywood. The two side doors, which provided access to the front and rear first floor apartments, were each boarded up and barricaded with a couch, respectively.

¶ 7 Officer Kemps entered the rear first floor apartment through the side door. He moved the couch to gain entry and once inside, saw defendant run past him holding a sandwich bag in his right hand with numerous smaller bags that contained a white powdery substance. Officer Kemps observed defendant throw the bag to the floor. He retrieved it and arrested defendant.

¶ 8 The State charged defendant with one count of possession of 15 grams or more, but less than 100 grams of heroin with the intent to deliver (720 ILCS 570/401(a)(1)(A) (West 2012)) and one count of possession of a controlled substance (*Id*. § 402(a)(1)(A)). Defendant filed a motion to quash his arrest and suppress the evidence.

¶ 9 A. Motion to Quash and Suppress Evidence

¶ 10 In his motion, defendant claimed that he had a reasonable expectation of privacy in both rear apartments such that the officers' warrantless entry into his home was unlawful. The trial

court held a hearing on the motion.

¶ 11 Defendant called arresting Officer Kemps, who testified that on February 14, 2012, at 12:30 p.m., he went to an abandoned building located at 5017 S. Loomis St. He had been to the same property twice before and recalled arresting defendant there on October 21, 2011.

¶ 12 Officer Kemps testified that prior to February 14, 2012, he learned from another officer, who was in charge of cataloging foreclosed or abandoned properties in the area, that the apartment building was owned by Banna Holdings, Inc. He contacted the company and spoke with a representative who told him there were no renters at the property. Officer Kemps could not remember the name or phone number of the representative with whom he spoke.

¶ 13 Testifying to the condition of the property, he saw a couch upon entering the building, old clothing, buckets of feces and urine, dog feces on the floor, some old appliances that were not hooked up, and a stove in the middle of the kitchen. There were smears on the walls and a four-to five foot high hole in the drywall in between the studs where a person could pass back and forth through the front and rear first floor apartments. The place was "completely unlivable."

¶ 14 The building's exterior entryways were boarded up, the windows were covered with plywood and the rear side door where he entered was closed off with a torn up couch. On the second floor there was a "makeshift sleeping arrangement" and a few space heaters. He could not determine whether the apartment had gas and water. Certain parts had electricity, but he did not know whether the electricity had been run from an extension cord connected to the electric box.

¶ 15 When he arrested defendant, Officer Kemps did not have a warrant. No one other than defendant was on the first floor when he entered, but he did find other individuals on the second floor whom he told to leave.

¶ 16 The mother of defendant's four children testified next. She stayed overnight at the

apartment building "numerous times" between October 2011 and February 2012 and testified that none of the doors to the building were boarded up and the second floor was completely furnished. There were working televisions, electricity, hot and cold running water. She and defendant cooked there and it was a "clean, livable apartment."

¶ 17 Defendant took the stand and testified that he lived at the apartment building starting in June of 2010 and paid $300 in rent to a man named "Wesley." He testified that on the day of his arrest there were no holes in the walls, the second floor apartment had a couch in the living room and two televisions, a bedroom set with dresser and a bed and box frame.

¶ 18 On the first floor, there was a couch with cushions against the living room wall, a connected stove and a dining room table and chairs. There was electricity, running water, and gas throughout the whole building. Defendant further testified that the building was never boarded up while he lived there and when the officers arrested him they failed to present him with a warrant.

¶ 19 On cross-examination, defendant stated that he never had a lease or signed any paperwork in connection with his renting of the apartments. He never put the electricity bill into his name because his rent agreement with Wesley included utilities. He further knew the apartment building was in foreclosure, but thought Wesley owned it.

¶ 20 The State recalled Officer Kemps who testified that, after he arrested defendant and read him his *Miranda* rights, defendant told him that he and others sold drugs out of the building. Officer Cahill, who assisted Officer Kemps in arresting defendant, testified similarly to Officer Kemps as to the condition of the building and noted that he entered it with his flashlight turned on.

¶ 21 The trial court denied defendant's motion. Before proceeding to a bench trial, the parties

stipulated that Officers Kemps and Cahill would testify consistently with their testimony given at the hearing on defendant's motion to quash arrest and suppress evidence.

¶ 22 B. Bench Trial

¶ 23 The arresting officers provided limited additional testimony at defendant's trial. They both identified defendant in open court and Officer Kemps identified defendant as the person he saw running through the apartment with a plastic bag in his right hand on the date in question. Defendant was detained by police, searched and the officers testified that they recovered $182 on defendant's person and a clear plastic bag containing 65 smaller bags which contained a white powdery substance that, as the parties stipulated, later tested positive for heroin.

¶ 24 Officer Kemps testified that he read defendant his *Miranda* rights and defendant told him there was a bunch of people who sold drugs out of the apartment building. The State rested its case.

¶ 25 Defendant took the stand and disputed the officer's testimony. He testified that he never told Officer Kemps that he sold drugs out of the apartment building. Defendant rested.

¶ 26 The trial court found defendant guilty of the possession of a controlled substance (720 ILCS 570/402(a)(1)(A) (West 2012)) and the possession of 15 grams or more, but less than 100 grams of heroin with the intent to deliver (*Id*., § 401(a)(1)(A)). Defendant filed a posttrial motion for a new trial and, 57 days later, filed a motion to dismiss charges.

¶ 27 C. Motion to Dismiss Charges

¶ 28 Defendant claimed in his motion that he was an informant who had entered into a cooperation agreement with the police. Defendant alleged that pursuant to the agreement his drug charges, and a separate pending burglary charge, would be dismissed in exchange for information about three murder cases. Defendant argued that he relied on the agreement to his

detriment when he turned down the State's offer to plead guilty to a lesser offense and receive three years in prison. The trial court held a hearing on his motion.

¶ 29 Defendant called Cook County Sheriff's Investigator Mike Davis, who worked as an investigator in the Sheriff's Criminal Intelligence Unit. His duties were to ensure the safety and security of the Cook County jail and he testified to only handling things that occurred in the jail.

¶ 30 Investigator Davis testified that in 2011 he met with defendant multiple times. Defendant provided him with information that was "of use to [him] in the jail." He introduced defendant to another investigator who worked in a division of the Sheriff's office that dealt with the interviewing and placing cooperators, but testified that after the introduction he was "out of the loop." He did "vouch" for defendant after his arrest in this case and told Officers Kemps and Cahill that he was an informant in the jail.

¶ 31 Investigator Davis was unaware defendant was at the apartment building selling drugs and "would never tell anybody to stay anywhere, let alone sell drugs." He did not have any undercover operations and the only promise he ever made to defendant was that he could "get him in front of the right people." He testified that he never approached the State about proffering defendant in the instant case and did not make any promises with respect to defendant's pending burglary case.

¶ 32 Defendant took the stand and testified that he met Investigator Davis in October of 2011. Defendant contacted him from jail; he was in custody on a charge of crack cocaine possession and was arrested at the apartment building at issue here. Defendant testified that he had a discussion with Investigator Davis who told him that he could set up a proffer with the State and get him released in exchange for information. Defendant's crack cocaine possession charges were dismissed after a finding of no probable cause at a preliminary hearing.

¶ 33 He testified that after his arrest in this case, he called Investigator Davis from jail, who told defendant that everything would be "worked out." Defendant claimed that, based on Investigator Davis' statement, he turned down an offer from the State to plead guilty in exchange for a reduced charge and three years in prison.

¶ 34 Defendant further testified that, after he was charged with the instant offenses, but before he was found guilty, he provided information to a Chicago Police Sergeant named Brian Hawkinson. He testified that Sergeant Hawkinson told him, that based on the information defendant provided, his charges would be reduced to a misdemeanor.

¶ 35 The State called Sergeant Hawkinson, who testified that he never made any promises to defendant, in writing or otherwise, regarding the reduction or dismissal of his charges. He explained to defendant "*ad naseum*" that he was not in a position to promise him anything because such a promise could only come from the State.

¶ 36 Sergeant Hawkinson testified to telling defendant that if he "could provide information on cold case murders, on burglary, and on fencing operations, that [he] would speak to the State's attorney on his behalf to discuss whether not we could do a proffer." Sergeant Hawkinson "absolutely" attempted to proffer defendant to the State in this case based on the information defendant provided, but was told by the State to cease his conversations with defendant because one of defendant's attorneys had misrepresented the nature of his interaction with defendant.

¶ 37 The trial court denied defendant's motion after finding that there was no cooperation agreement between defendant and the police. The trial court held a sentencing hearing, merged the drug convictions and sentenced defendant to seven years' imprisonment for the possession of heroin with the intent to deliver. 720 ILCS 570/401(a)(1)(A) (West 2012).

¶ 38 Defendant appeals his conviction and argues that the trial court erred when it denied his

pretrial and posttrial motions.

¶ 39 II. ANALYSIS

¶ 40 The issues on appeal are whether the trial court erred when it denied defendant's pretrial motion to quash arrest and suppress evidence and his posttrial motion to dismiss charges.

¶ 41 We apply a two-part standard of review to a trial court's ruling on a motion to quash arrest and suppress evidence. *People v. Dailey*, 2018 IL App (1st) 152882, ¶ 16. We review the trial court's factual findings under the manifest weight of the evidence standard and its ultimate ruling *de novo*. *Id*.

¶ 42 Defendant argues that the trial court erred when it denied his motion. He maintains that the officers' entry into the building without a warrant was unlawful because he had a legitimate expectation of privacy in the area of the apartment building where he was arrested.

¶ 43 The fourth amendment to the United States Constitution protects the "right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The Illinois Constitution similarly provides that "people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches [and] seizures." Ill. Const. 1970, art. 1, § 6. This section of the Illinois Constitution has been interpreted in a manner consistent with the fourth amendment jurisprudence of the United States Supreme Court. See *Fink v. Ryan*, 174 Ill. 2d 302, 314 (1996).

¶ 44 The fourth amendment "protects people, not places." *Katz v. United States*, 389 U.S. 347, 351 (1967). However, the capacity to claim such protection depends on whether the person claiming it has a reasonable expectation of privacy in the place invaded. *Minnesota v. Carter*, 525 U.S. 83, 88 (1998).

¶ 45 A defendant claiming fourth amendment protection must demonstrate that he or she

personally has an expectation of privacy in the place searched and that his or her expectation is reasonable. *People v. Pitman,* 211 Ill. 2d 502, 514 (2004). Factors relevant to the inquiry include: (1) whether defendant was legitimately present in the area searched, (2) his possessory interest in the area searched or property seized, (3) prior use of the area searched or property seized, (4) ability to control or exclude others' use of the property, and (5) a subjective expectation of privacy in the property. *People v. Carodine*, 374 Ill. App. 3d 16, 22 (2007). The question of whether one has a legitimate expectation of privacy in a place is measured by an objective standard drawn from common experience. *People v. Nichols*, 2012 IL App (2d) 100028, ¶ 41.

¶ 46 In this case, the trial court simply weighed and resolved the conflicting evidence against defendant. *People v. Walker*, 2012 IL App (1st) 083655, ¶ 46 (on a motion to suppress, the trial court is in the best position to assess the credibility and demeanor of the witnesses, and it must resolve any conflicts in the evidence). Its factual findings that the apartment building was abandoned and that defendant was a squatter whose presence at the building was illegitimate were not unreasonable, arbitrary or not based on the evidence. *People v. Bianca*, 2017 IL App (2d) 160608, ¶ 12 (trial court's factual findings are against the manifest weight of the evidence only if it is unreasonable, arbitrary, or not based on the evidence presented, or if the opposite conclusion is clearly evident). Accordingly, the trial court's ultimate ruling based on the evidence was not incorrect.

¶ 47 The testimony of the witnesses at the suppression hearing was completely at odds with each other. In particular, their descriptions of the interior and exterior conditions of the apartment building on the day of defendant's arrest were so conflicting that the acceptance of both accounts would have required a finding that they testified about two different properties. However, the trial court accepted one account and found defendant's version "simply not worthy

of belief at all." *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001) (finder of fact need not accept the defendant's version of events as among competing versions).

¶ 48 Officers Kemps and Cahill testified that the exterior entryways of the building, as well as its first floor windows, were boarded up with plywood. The side door to the rear apartment was closed off with stained couch that was unsuitable for sitting. The interior of the building was "completely unlivable." Buckets of feces and urine and dog feces littered the floors, garbage was strewn about, there were no lights, no running water, furniture, or hooked up appliances and there was a four-to-five foot high hole in a wall that divided the front and rear first floor apartments. In contrast, defendant and the mother of his children testified to a "clean, livable apartment" with electricity, hot and cold running water, gas, working televisions and a dining room set. There were no holes in the interior walls and exterior doors were not boarded up with plywood on the day defendant was arrested.

¶ 49 On the question of rent, Officer Kemps testified that he spoke with a representative of the building's owner (Banna Properties, Inc.) prior to entering the building on the date in question and was told that there were no renters at the property. Defendant testified that he was a legitimate tenant who paid rent to a man named "Wesley." Officer Kemps testified that defendant admitted he and others sold drugs out of the apartment building. Defendant denied ever making such a statment.

¶ 50 We decline the invitation to reverse the trial court's denial of defendant's motion to quash and suppress evidence. We defer to the trial court's credibility determinations and the trial court's factual finding that the apartment building was abandoned was not unreasonable, arbitrary or not based on the evidence. *People v. Sims*, 358 Ill. App. 3d 627, 634 (2005) (reviewing court will not substitute its assessment of the credibility of the witnesses for that of

the trial judge when testimony is merely contradictory). Moreover, the inference drawn from the evidence, that defendant's presence at the apartment building was illegitimate, was reasonable. *People v. Austin*, 328 Ill. App. 3d 798, 804 (2002) (it is for the trial court to draw reasonable inferences from the evidence). Accordingly, we cannot conclude that the trial court erred when it denied defendant's motion to quash arrest and suppress the evidence.

¶ 51 Defendant argues that the doctrine of adverse possession and the "permissive user exception to trespass liability" apply to this case and command a reversal of the trial court's ruling on his motion. Defendant claims he had a legitimate expectation of privacy in the premises as either an attempted adverse possessor or a permissive user. Defendant has gone far afield.

¶ 52 The doctrine of adverse possession holds that a person who, for more than 20 years, possesses property under certain circumstances may obtain title to that property. See 735 ILCS 5/13-101 (West 2012) (20-year statute of limitations for the recovery of lands; *McNeil v. Ketchens*, 397 Ill. App. 3d 375, 393 (2010) citing *Joiner v. Janssen*, 85 Ill. 2d 74, 81 (1981) (party claiming ownership by adverse possession must prove that the following five elements existed concurrently for 20 years: "(1) continuous, (2) hostile or adverse, (3) actual, (4) open, notorious, and exclusive possession of the premises, (5) under claim of title inconsistent with that of the true owner"). Under the permissive user exception, a landowner owes a duty of reasonable care to a trespasser when the landowner permits regular use of his land and where the landowner is engaged in a dangerous activity involving a risk of death or serious bodily harm. *Benamon v. Soo Line Railroad Co.*, 294 Ill. App. 3d 85, 92 (1997).

¶ 53 Defendant advances no basis to support the argument that one who attempts to adversely possess property has a reasonable expectation of privacy in that property. Furthermore, defendant's testimony that he paid rent to "Wesley" is in direct conflict with his claim that he

was in the process of *adversely* possessing the property.

¶ 54 With respect defendant's permissive user exception argument, even if it applied in this case, the trial court accepted the arresting officers' testimony that the apartment building's front and side doors, and first floor windows were boarded up with plywood. These facts belie any contention that defendant was permitted to remain on the premises. Defendant's adverse possession and permissive user exception arguments are rejected.

¶ 55 Defendant asks us to reverse the trial court's denial of his motion to dismiss charges on the grounds that he waived his right to a jury and denied an offer from the State to plead guilty to a reduced charge in reliance on a cooperation agreement he had with police. He argues that the trial court preliminarily erred by limiting his motion to "post-charge promises." He further challenges the trial court's finding that there was no cooperation as against the manifest weight of the evidence presented at the hearing on his motion.

¶ 56 A cooperation agreement is neither a plea agreement nor a grant of immunity. *People v. Stapinski*, 2015 IL 118278, ¶ 46. They are different in that the detrimental reliance for a plea agreement is the defendant's waiver of the right to a trial, whereas with a cooperation agreement, the parties agree that the defendant's cooperation is sufficient consideration for the government's promise of immunity." *Id*. Therefore, in the context of a cooperation agreement, it is the violation of the right not to be haled into court at all that operates to deny the defendant due process of law. *People v. Smith*, 233 Ill. App. 3d 342, 350 (1992).

¶ 57 Trial courts have inherent authority to dismiss a criminal indictment where the defendant has been denied due process. *People v. Stapinski*, 2015 IL 118278, ¶ 50. However, in defendant's case, we resolve the issue short of any due process analysis.

¶ 58 First, the trial court did not limit the scope of defendant's motion and exclude pretrial

promises allegedly made by police. Defendant explicitly claimed in his motion that given the promises made by police, "[t]he State was obligated to dismiss this case, prior to, during and after *the trial*." Second, and more importantly, the trial court's factual finding as to the lack of a cooperation agreement between defendant and the police was not against the manifest weight of the evidence. *People v. Dasaky*, 303 Ill. App. 3d 986, 992 (1999) (trial court's determination of whether there was a cooperation agreement should not be reversed unless it was against the manifest weight of the evidence).

¶ 59 The question of whether Investigator Davis and Sergeant Hawkinson promised to arrange for a reduction or dismissal of defendant's charges was largely a matter of witness credibility and purely conflicting testimony. *People v. Bannister,* 236 Ill. 2d 1, 17 (2009) ("our legal system tests a witness' credibility through cross-examination and leaves the determination of that credibility to the finder of fact"); *People v. McBride*, 2012 IL App (1st) 100375, ¶ 19 (reviewing court may not substitute its judgment for that of the trier of fact with regard to the resolution of conflicting testimony).

¶ 60 The trial court found it "stupefying" that Investigator Davis would allow or direct defendant to sell drugs out of the abandoned apartment building. At the hearing on defendant's posttrial motion, Investigator Davis testified he would never tell anyone to sell drugs, never promised defendant a dismissal of his charges He further indicated that he dealt with jail safety and had no undercover operations.

¶ 61 Sergeant Hawkinson testified that he knew defendant, received information from him that he thought was useful and admitted to speaking with the State during the pendency of the case about a potential proffer. However, Sergeant Hawkinson testified that he told defendant, "*ad naseum*," he was unable to promise him anything in exchange for his information.

¶ 62 In light of the trial court's credibility determinations, the conflicting testimonial evidence and the fact that cooperation agreements are construed under the principles of contract (See *Stapinski*, 2015 IL 118278, ¶ 47), we cannot say the trial court's finding as to the absence of a binding promise on the part of police, which was necessary to form a valid and binding cooperation agreement, was unreasonable, arbitrary or not based on the evidence.

¶ 63 III. CONCLUSION

¶ 64 Accordingly, we affirm.

¶ 65 Affirmed.