

No. 1-17-2700

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellee,) Cook County.
)
 v.) No. 16 CR 14920
)
 MARTELL CROWDER,) Honorable
) James B. Linn,
 Defendant-Appellant.) Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s conviction for being an armed habitual criminal is affirmed where the trial court properly denied his motion to quash his arrest and suppress evidence.

¶ 2 Following a bench trial, defendant Martell Crowder was convicted of being an armed habitual criminal and sentenced to 6½ years’ imprisonment. On appeal, Mr. Crowder argues the trial court erred in denying his motion to quash his arrest and suppress evidence because the police officers lacked probable cause to arrest him. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Mr. Crowder was charged by indictment with one count of being an armed habitual

criminal (720 ILCS 5/24-1.7(a) (West 2016)), six counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (3)(A-5); (a)(1), (3)(C); (a)(2), (3)(A-5); (a)(2), (3)(C) (West 2016)), two counts of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2016)), and one count of defacing the identification marks of a firearm (720 ILCS 5/24-5(b) (West 2016)), all arising from an incident in Chicago on September 15, 2016.

¶ 5 Before trial, Mr. Crowder filed a written motion to quash his arrest and suppress evidence—including his statement to the police after the arrest—arguing that Chicago police officers Dercola and Garibay arrested him without probable cause. The motion alleged the officers saw Mr. Crowder approach a “parked vehicle” and make a “crotch adjustment.” The officers then “ordered [Mr. Crowder] out of the car and arrested him,” searched the vehicle, and recovered a firearm that was “hidden in a closed container.” Mr. Crowder contended that his arrest violated the fourth amendment to the United States Constitution (U.S. Const., amend. IV), and article I, section 6, of the Illinois Constitution (Ill. Const. 1970, art. I, § 6). Mr. Crowder also asserted that, following his unlawful arrest, “he was searched, photographed, fingerprinted and otherwise processed, questioned and exhibited by the police.” He asked the trial court to suppress this evidence, which was gathered as a result of his arrest.

¶ 6 At defense counsel’s request, the court conducted the hearing on Mr. Crowder’s motion to quash his arrest and suppress evidence simultaneously with the trial. The evidence in support of the motion was thus incorporated into the evidence presented at trial.

¶ 7 Mr. Crowder called Officer Dercola, who testified that at about 6:58 p.m., he saw Mr. Crowder walking on the 1500 block of West 79th Street. Officer Dercola did not have a warrant for Mr. Crowder’s arrest or see him violate any laws. He searched Mr. Crowder and the vehicle he was in, and recovered a weapon.

¶ 8 On cross-examination, Officer Dercola testified that he and his partner, Officer Garibay, were in a police vehicle and saw Mr. Crowder in an alley. Mr. Crowder looked toward the police vehicle, “adjust[ed] his waistband,” and fled to a Chevrolet Trailblazer, which appeared abandoned because its tires were flat. Officer Garibay approached Mr. Crowder, who had reached the Trailblazer, while Officer Dercola went to the passenger side. Officer Dercola looked inside the vehicle and saw a firearm in the open center console. He recovered the firearm, a 9-millimeter handgun loaded with 12 live rounds, and noticed the Trailblazer contained “a lot of clutter.” Officer Dercola did not believe he observed the Trailblazer’s license plate. On redirect examination, however, he acknowledged that a case report showed the Trailblazer had a vehicle identification number and license plate that expired in August 2016. Officer Dercola confirmed he never saw Mr. Crowder touch the handgun in the Trailblazer.

¶ 9 The State then called Officer Garibay in its case-in-chief, with the understanding that Mr. Crowder had not yet rested on his motion.

¶ 10 Officer Garibay testified that he and Officer Dercola were in an unmarked police vehicle when Officer Garibay saw Mr. Crowder from 100 to 150 feet away in a lighted alley on the 7900 block of South Bishop Street. Officers Dercola and Garibay drove towards Mr. Crowder. When they were about 50 feet away, he looked in their direction and tugged the right side of his waistband with his right hand. Mr. Crowder then ran, turned into an open, private, lighted parking lot with a chain-link fence, and went to the front passenger side of the Trailblazer. According to Officer Gaibay, the vehicle “had a lot of dirt,” “looked like it hadn’t been moved in quite a while,” and “appeared abandoned.” The interior contained “a lot of garbage” and “was in disarray.”

¶ 11 Officer Garibay exited his vehicle and approached Mr. Crowder with a “clear, straight

line vantage point.” From 6 to 10 feet away, Officer Garibay saw Mr. Crowder open the passenger-side door with his right hand, and with his left hand remove an object from the same part of his waistband that he previously tugged. Mr. Crowder moved his left hand toward the center console and tried to shut the door behind him, but the door did not “close right” and Officer Garibay reopened it. Officer Garibay explained what happened next:

“Q. And then what did you do?

A. *** [A]t that time, I immediately didn’t allow [Mr. Crowder] to exit the vehicle. I made him turn his torso. I instructed him to turn his torso and put his hands behind his back and that’s when I immediately placed him in custody after observing a two-tone handgun in the center console.

* * *

Q. What did you do after you saw the handgun?

A. I immediately, as I stated, instructed him to turn his torso. I placed him in custody.”

Officer Garibay explained that the center console was open and the handgun was lying on “potato chip bags” and other “garbage.” Nothing was on top of the handgun.

¶ 12 Officer Dercola recovered the handgun, and Officer Garibay removed Mr. Crowder from the vehicle. Mr. Crowder said, “This is a trap car, this is the block gun, and I’m parole.” Officer Garibay understood “trap car” to mean “a vehicle that is abandoned and is utilized to conceal or hide illegal contraband.” The officers searched Mr. Crowder, but did not recover anything. Officers Garibay and Dercola took Mr. Crowder and the handgun to the police station, where Officer Garibay saw that the handgun’s serial number was scratched out.

¶ 13 On cross-examination, Officer Garibay agreed that he “never saw *** anything

protruding or leaving some type of impression under [Mr. Crowder's] clothing” and that Mr. Crowder's gesture in the alley was “[m]ore of an adjustment, not a holding.” The following exchange occurred:

“Q. And while [Mr. Crowder] was fleeing, seeing his pace change, you couldn't make any observation of a weapon; isn't that true?

A. Based on my experience, the manner in which he tugged his waistband, the question you're asking me Counsel, if I saw a weapon while he was running, no, sir.”

Officer Garibay added that, when Mr. Crowder reached the Trailblazer, he did not see the size, color, or shape of the object Mr. Crowder removed from his waistband.

¶ 14 The State entered certifications showing Mr. Crowder had two prior convictions for delivery of a controlled substance and then rested. Mr. Crowder rested on both the motion and trial, and the cause proceeded to argument.

¶ 15 On the motion to quash and suppress, defense counsel asserted that Mr. Crowder's flight did not support probable cause, and that Officer Garibay arrested Mr. Crowder before finding the handgun in the Trailblazer. As to the trial, defense counsel argued the State did not show Mr. Crowder possessed the weapon found in the vehicle. The State presented no closing arguments on the motion or trial.

¶ 16 The trial court denied Mr. Crowder's motion, stating that no seizure occurred “until the police saw [Mr. Crowder] in the car and saw the gun in plain view and then [Mr. Crowder] talked about the car and the gun and the circumstances about it.” The court found Mr. Crowder guilty on all counts, and stated that “[e]verything merges” into his conviction for being an armed habitual criminal.

¶ 17 Mr. Crowder filed a motion for new trial, which the court denied. Defense counsel then

argued that the case had been “speed-balled,” denying Mr. Crowder an opportunity to argue his motion to suppress. The court stated it would review the transcript and allow counsel to reargue the issue.

¶ 18 At a later hearing, defense counsel argued, in relevant part, that Officers Dercola and Garibay arrested Mr. Crowder without “reasonable suspicion that a crime had been committed or was about to occur.” Counsel noted the officers did not see anything resembling a firearm on Mr. Crowder’s person when he fled, and never saw him touch the firearm in the Trailblazer. Contrary to the officers’ testimony, counsel posited the Trailblazer was not “abandoned” because its license plate and registration were valid on the date of the incident. The State did not substantively respond to these arguments, but noted that Mr. Crowder was the one who had asked to conduct the hearing on his motion to quash and suppress simultaneously with the trial.

¶ 19 The trial court again denied Mr. Crowder’s posttrial trial motion, explaining “the police saw some suspicion with [Mr. Crowder] and his conduct” based on “what he may have been doing with his waistband when he ran from the police” and “going into a car that wasn’t his in this secluded area.” Following a hearing, the court sentenced Mr. Crowder to 6½ years’ imprisonment for being an armed habitual criminal.

¶ 20

II. JURISDICTION

¶ 21 Mr. Crowder was sentenced on October 6, 2017, and timely filed his notice of appeal that same day. We have jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 (eff. Feb. 6, 2013) and 606 (eff. July 1, 2017), governing appeals from final judgments of conviction in criminal cases.

¶ 22

III. ANALYSIS

¶ 23 On appeal, Mr. Crowder argues the trial court erred in denying his motion to quash his

arrest and suppress evidence because the police officers lacked probable cause to arrest him, where he adjusted his pants, ran from an unmarked police vehicle, entered another vehicle in a lot, and placed an object in the center console.

¶ 24 As an initial matter, we note that the State argues that the seizure of the gun itself was lawful because the Trailblazer was an abandoned vehicle in which Mr. Crowder had no reasonable expectation of privacy. However, Mr. Crowder's motion to suppress and his arguments on appeal go beyond the gun itself, into the evidence that the police gathered as a result of his arrest, including his statement about the Trailblazer being a "trap car," which the officer then testified was a vehicle used to conceal illegal contraband.

¶ 25 In the trial court, when a defendant moves to quash an arrest and suppress evidence, it is the defendant's burden to "make a *prima facie* case that the evidence was obtained by an illegal search or seizure." *People v. Gipson*, 203 Ill. 2d 298, 306-07 (2003). If the defendant meets this burden, "the State has the burden of going forward with evidence to counter the defendant's *prima facie* case." *Id.* at 307. "However, the ultimate burden of proof remains with the defendant." *Id.*

¶ 26 When reviewing the denial of a motion to quash an arrest and suppress evidence, we apply a "two-part standard of review." *People v. Grant*, 2013 IL 112734, ¶ 12. "While we accord great deference to the trial court's factual findings, and will reverse those findings only if they are against the manifest weight of the evidence, we review *de novo* the court's ultimate ruling on a motion to suppress involving probable cause." *Id.*

¶ 27 The fourth amendment to the United States Constitution (U.S. Const., amend. IV) and article I, section 6, of the Illinois Constitution of 1970 (Ill. Const. 1970, art. I, § 6) guarantee "the right of individuals to be free from unreasonable searches and seizures." *People v. Almond*, 2015

IL 113817, ¶ 56. When determining the constitutionality of a search or seizure, Illinois courts have recognized at least three categories of police-citizen encounters: “(1) arrests, which must be supported by probable cause; (2) brief investigative detentions, which must be supported by ‘a reasonable, articulable suspicion of criminal activity’; and (3) consensual encounters, which ‘involve no coercion or detention and thus do not implicate fourth amendment interests.’” *People v. Jackson*, 389 Ill. App. 3d 283, 287 (2009) (quoting *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006)).

¶ 28 “A person has been arrested when his freedom of movement has been restrained by means of physical force or a show of authority.” *People v. Melock*, 149 Ill. 2d 423, 436-37 (1992) (citing *United States v. Mendenhall*, 446 U.S. 544, 553 (1980)). Absent probable cause, a warrantless arrest is unconstitutional. *People v. Lee*, 214 Ill. 2d 476, 484 (2005).

¶ 29 Probable cause to arrest exists where “the facts known to the officer at the time are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime, based on the totality of the circumstances.” *People v. Gocmen*, 2018 IL 122388, ¶ 19. The standard for determining probable cause is “probability of criminal activity,” not “proof beyond a reasonable doubt or even that it be more likely than not.” *Id.* But a “mere hunch or suspicion of criminal activity” is insufficient to show probable cause. *People v. Harris*, 352 Ill. App. 3d 63, 66 (2004). When determining probable cause, we are governed by “commonsense, practical considerations,” not “technical legal rules.” *People v. Sims*, 192 Ill. 2d 592, 615 (2000).

¶ 30 The evidence at the hearing on Mr. Crowder’s motion to quash his arrest and suppress evidence showed that Officers Dercola and Garibay were driving an unmarked vehicle on September 15, 2015. At around 6:58 p.m., they approached Mr. Crowder in an alley. From a distance of about 50 feet, Mr. Crowder looked in their direction, “tug[ged]” or “adjust[ed]” his

waistband, and ran. Officer Garibay did not see Mr. Crowder with a weapon, but noticed “the manner in which he tugged his waistband.” The officers followed Mr. Crowder into a lighted lot, where he went to the front passenger side of an apparently abandoned vehicle. Officer Dercola noted that the vehicle’s tires were flat, and Officer Garibay observed “a lot of dirt,” as though it “hadn’t been moved in quite a while.” Officer Garibay also saw the vehicle contained “a lot of garbage” and “was in disarray.”

¶ 31 Officer Garibay exited his police vehicle and approached Mr. Crowder. From 6 to 10 feet away, Officer Garibay saw Mr. Crowder open the passenger side door of the apparently abandoned vehicle, remove an object from the same part of his waistband that he had previously tugged, move towards the center console, and try to close the door behind him. Officer Garibay opened the vehicle’s door, observed the firearm on top of garbage in the console, “didn’t allow [Mr. Crowder] to exit the vehicle,” and ordered him to turn and place his hands behind his back. Officer Dercola recovered the firearm, and Officer Garibay removed Mr. Crowder from the vehicle. At that point, according to Officer Garibay, Mr. Crowder had been placed in custody. Mr. Crowder then said, “This is a trap car, this is the block gun, and I’m parole.”

¶ 32 As an initial matter, we must determine when Mr. Crowder was seized, since the fourth amendment is not implicated until a “seizure” occurs. *People v. Thomas*, 198 Ill. 2d 103, 110-11 (2001). “[A] person is ‘seized’ only when, by means of physical force or a show of authority, his freedom of movement is restrained.” *Mendenhall*, 446 U.S. at 553. Thus, a seizure occurs “if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *Id.* at 554. As noted, Officer Garibay testified that Mr. Crowder entered the Trailblazer and tried to close the door behind him, but Officer Garibay stopped him. As the trial court found, Officer Garibay then saw the gun in plain view, and at that

point, Mr. Crowder was seized.

¶ 33 Given the totality of the circumstances, we find the officers had probable cause to arrest Mr. Crowder. Prior to the seizure, Mr. Crowder saw the unmarked police vehicle, grabbed his waistband, and fled. We have recognized that a defendant's flight in response to police is a factor to be considered in determining probable cause. *People v. Jones*, 196 Ill. App. 3d 937, 956 (1990). We have also specifically recognized that where an officer observes what appears to be a gun and sees a defendant attempt to flee, this can give rise to probable cause to believe that the defendant lacks a concealed carry license, which he would need to lawfully carry a concealed or partially concealed firearm (*People v. Thomas*, 2019 IL App (1st) 170474, ¶¶ 37-38).

¶ 34 In addition, Mr. Crowder fled directly to the Trailblazer, which, the officers observed, was dirty, had flat tires, contained garbage, and appeared to be abandoned. Officer Garibay then saw Mr. Crowder enter the vehicle, remove an object from his waistband, extend his arm, and try to shut the door. Officer Garibay stopped Mr. Crowder from closing the door, observed the handgun on top of trash in the center console, and seized him. Thus, at the time of his arrest, the police had observed the handgun, had seen Mr. Crowder's flight to the Trailblazer, and had observed his conduct inside the vehicle, including an apparent attempt to rid himself of the gun by leaving it in the vehicle. Viewing these circumstances with reasonable caution, the officers had probable to cause to believe Mr. Crowder's possession of the firearm was unlawful. See *Grant*, 2013 IL 112734, ¶ 11 (noting probable cause to arrest exists when the totality of the facts and circumstances known to the officer at the time are such that a reasonably cautious person would believe that the suspect is committing or has committed a crime).

¶ 35 Notwithstanding this, Mr. Crowder maintains the officers lacked probable cause because they did not inquire whether he had a concealed carry license, Firearm Owner's Identification

card, or felony convictions before arresting him. Although our supreme court had already held that a categorical prohibition on the possession of an operable firearm outside the home was unconstitutional when Mr. Crowder was arrested (see *People v. Aguilar*, 2013 IL 112116), the existence of probable cause reflects “the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act” (*People v. Wear*, 229 Ill. 2d 545, 564 (2008) (internal quotation marks omitted)). As we have explained, the facts known to the officers did not merely support a suspicion that Mr. Crowder possessed a firearm, but strongly suggested that he possessed the weapon unlawfully. Consequently, “the existence of a possible innocent explanation, like Mr. Crowder’s possession of the required gun licenses, did not necessarily negate probable cause.” *Thomas*, 2019 IL App (1st) 170474, ¶ 39.

¶ 36 We granted a motion by Mr. Crowder to cite *People v. Horton*, 2019 IL App (1st) 142019-B, as additional authority. As Mr. Crowder points out, this court in *Horton* held that the defendant’s flight from the police did not support a finding of probable cause. That case, however, rested at least in part on the court’s determination that there was no probable cause to believe that the defendant even had a gun. In this case, Officer Garibay confirmed there was a gun before Mr. Crowder was arrested.

¶ 37 **IV. CONCLUSION**

¶ 38 In sum, the evidence showed that Mr. Crowder’s arrest was supported by probable cause, and the trial court did not err in denying Mr. Crowder’s motion to quash his arrest and suppress evidence. Because none of the evidence resulting from Mr. Crowder’s arrest was subject to exclusion, we affirm his conviction for being an armed habitual criminal.

¶ 39 Affirmed.