2019 IL App (2d) 161046-U
No. 2-16-1046
Order filed July 15, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SALVADOR O. FLORES, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 14-CF-194 Honorable Brian F. Telander, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied defendant's motions to quash and suppress: based on a reasonable suspicion, the police validly stopped him to obtain his identity, and, based on probable cause, they validly arrested him, even though they did so without a warrant and 22 days after the offense.

¶ 2 Defendant, Salvador O. Flores, sold cocaine to an undercover police officer. Officers later learned defendant's identity and address, arrested defendant, and obtained defendant's confession. As a result of this police activity, defendant was charged with unlawful delivery of a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2014)), and he moved to quash his arrest and suppress evidence. At a hearing on those motions, the court granted the State's motion

for a directed finding. At trial, defendant never objected when the evidence that was the subject of his motions was admitted. Defendant was convicted and sentenced, and he now timely appeals the ruling on his motions to quash and suppress. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant filed several suppression motions. These motions challenged evidence of defendant's identity obtained on September 25, 2012; defendant's arrest on October 17, 2012; and the voluntariness of statements defendant made after his arrest.

¶ 5 At the suppression hearing, Officer Kenneth Czubak testified that in 2012 he worked as an undercover officer with the Du Page County Metropolitan Enforcement Group (DuMEG). In the fall of 2012, he was working undercover with a confidential informant. The confidential informant identified Andri Vazquez-Pedraza as his source for illegal drugs. Vazquez-Pedraza arranged drug purchases for Czubak in August and September 2012. One of those purchases occurred on September 25, 2012. On that date, Vasquez-Pedraza arranged for defendant to sell drugs to Czubak at 10 p.m. in the parking lot of the Burger King in Addison where Vazquez-Pedraza worked.

¶ 6 At 10:20 p.m., Vazquez-Pedraza exited the Burger King, and after acknowledging his cousin who was in a nearby Jeep and saying something to him, Vazquez-Pedraza walked to the passenger side of a white Nissan Maxima. Czubak knew that the Maxima was Vazquez-Pedraza's source for drugs. The Maxima was parked five to six parking spaces away from Czubak. Czubak saw the Maxima's front-seat passenger, whom he recognized as defendant. Czubak clearly saw Vasquez-Pedraza put his hand through the window and receive an object from defendant. Vazquez-Pedraza placed that object in his right pants pocket. Vazquez-Pedraza then walked toward Czubak with his hand still in his right pants pocket.

¶ 7 Vazquez-Pedraza approached Czubak's car, took his hand out of his right pants pocket, opened the door, and then retrieved from his right pants pocket a substance that appeared to be cocaine. Czubak inspected the substance, smelled it, and believed that it was cocaine. Czubak then gave Vazquez-Pedraza money and watched as Vazquez-Pedraza gave that money to defendant. Czubak then left the Burger King.

¶ 8 Officer Glomb was then told to stop the Maxima and get the driver's and passenger's identification information. Glomb did so and then allowed the driver and defendant to leave in the Maxima.

¶ 9 On October 17, 2012, officers went to defendant's home to arrest him. Although the police had already arrested Vazquez-Pedraza and obtained his statement, defendant's arrest was not based on any new evidence obtained after September 25, 2012.

¶ 10 At the police station, defendant was admonished about his *Miranda* rights. Defendant waived those rights and admitted in verbal and written statements that he had sold cocaine to Vazquez-Pedraza on September 25, 2012. Although defendant claimed that the police obtained his confession through threats and coercion, Czubak denied that claim. However, Czubak admitted that the police wanted defendant to work with them as a confidential informant. Czubak told defendant that if he agreed to do so he could work off the charge. Defendant opted not to work as a confidential informant.

¶ 11 Before presenting its case, the State moved for a directed finding. The trial court granted that motion. The court found that Czubak was credible; the stop of defendant's car was a valid *Terry* stop; and defendant's subsequent arrest was supported by probable cause.

¶ 12 At trial, defendant never objected when evidence surrounding his stop and arrest was admitted. In fact, when specifically asked, the only evidence defendant objected to was a map used as demonstrative evidence.

¶ 13 After defendant was convicted, he moved the court to reconsider its ruling on the motions to quash and suppress. The court denied that motion.

¶ 14 II. ANALYSIS

¶ 15 At issue in this appeal is whether defendant's motions to quash and suppress should have been granted. Before considering the merits of that issue, we address what evidence we may consider in assessing the trial court's ruling on the motions to quash and suppress. Both parties suggest that we may consider the evidence presented at the suppression hearing and at the trial. Although this court and our supreme court have done this, it is not appropriate here. "[A] defendant cannot challenge the propriety of the trial court's denial of the defendant's pretrial motion to suppress by citing subsequent trial testimony where the defendant failed to renew his objection at trial." *People v. Ramos*, 339 Ill. App. 3d 891, 898 (2003) (citing *People v. Brooks*, 187 Ill. 2d 91, 127-28 (1999)); see also *People v. Hughes*, 2015 IL 117242, ¶¶ 42-43. Because defendant did not object at trial to the admission of the evidence that was the subject of his motions to quash and suppress, we will consider only the evidence presented at the suppression hearing in assessing the ruling on the motions.[1]

¶ 16 Turning to the merits, on appeal from an order denying a motion to quash and suppress, we employ a two-part standard of review. *People v. Almond*, 2015 IL 113817, ¶ 55. First, we

[1] We note that, even if we were to consider the evidence presented at trial, our resolution of this appeal would not be different. Any discrepancies between what was presented at the suppression hearing and at trial were minor and of no real import to the issues raised here.

uphold the trial court's findings of fact unless they are against the manifest weight of the evidence. *Id.* Second, we review *de novo* the ultimate issue of whether to quash an arrest and suppress evidence. *Id.* Because no factual findings are at issue here, we only consider *de novo* whether the trial court's denial of defendant's motions to quash and suppress was proper. *People v. Miller*, 2014 IL App (2d) 120873, ¶ 25. This *de novo* standard also applies to the ruling on a motion for a directed finding in a criminal case. *People v. Williams*, 2017 IL App (1st) 152021, ¶ 26.[2]

¶ 17 Defendant essentially argues that the police lacked a proper basis to (1) stop him; (2) investigate his identity; (3) arrest him; and (4) delay his arrest. We consider each issue in turn.

¶ 18 A. Was the Stop Proper?

¶ 19 The first issue we address is whether the stop of the Maxima in which defendant was a passenger was proper. "Generally, the police may seize an individual only if they first obtain a warrant supported by probable cause." *Miller*, 2014 IL App (2d) 120873, ¶ 21. "However, warrantless seizures are proper in limited circumstances." *Id.* "One of those is a stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968)." *Id.* "Under *Terry*, an officer may make an investigatory stop without probable cause if the officer reasonably believes that the person stopped or seized has committed, is committing, or is about to commit a crime." *Id.*

[2] Relying on *People v. Miller*, 393 Ill. App. 3d 1060, 1063 (2009), defendant argues that we must give substantial deference to the trial court's factual findings and view the evidence in a light most favorable to him. Even if we were to do so, the resolution of this appeal would not be different.

¶ 20 " 'In order to stop a vehicle, an officer must have a reasonable suspicion that the vehicle or an occupant is subject to seizure for a violation of law.' " *Id.* ¶ 22 (quoting *People v. DiPace*, 354 Ill. App. 3d 104, 108 (2004). "Reasonable suspicion is premised on specific and articulable facts, not a mere hunch." *Id.* "In determining whether the police had reasonable suspicion, a court looks at the totality of the circumstances." *Id.* "Information available to one police officer may be imputed to another officer conducting the stop." *Id.*

¶ 21 Here, Czubak testified that he saw defendant commit a crime. Specifically, Czubak knew that Vasquez-Pedraza's source for illegal drugs used a white Maxima. On a specified date, at around a specified time, and at a specified location, Czubak saw defendant in a white Maxima. Czubak then saw defendant give Vasquez-Pedraza an object and saw Vazquez-Pedraza put that object in his right pants pocket. Vazquez-Pedraza then pulled from that pocket an object that he gave to Czubak. Czubak concluded that that object was cocaine. Czubak then gave Vazquez-Pedraza money that Vazquez-Pedraza gave to defendant. This was evidence of unlawful delivery of a controlled substance (720 ILCS 570/407(a)(2)(A) (West 2014)). Based on this observation of a violation of the law, Glomb was told to stop the white Maxima. *Terry* clearly allowed the police to stop defendant for this violation of the law.[3]

¶ 22 B. Was there a Proper Basis to Investigate Defendant's Identity?

¶ 23 The second issue we consider is whether Glomb had a proper basis to investigate defendant's identity. Instructive on this issue is *United States v. Hensley*, 469 U.S. 221 (1985). There, the defendant was suspected of being the getaway driver in an armed robbery. *Id.* at 223.

[3] Defendant argues that the stop was improper because Glomb testified at trial that he did not see the Maxima commit any traffic violation. That was not required. See *Miller*, 2014 IL App (2d) 120873, ¶¶ 15, 26.

The police issued a " 'wanted flyer,' " informing other police departments that the defendant was wanted for questioning. *Id.* A second police department located the defendant. *Id.* at 223-24. Without first determining if there was a warrant for the defendant's arrest, the second police department stopped the defendant. *Id.* at 224. The defendant was arrested based on evidence found in the defendant's car. *Id.* at 225. The defendant moved to suppress that evidence, arguing that the stop was improper. *Id.* The Supreme Court disagreed. *Id.* at 226. The Court determined that "if a flyer or bulletin has been issued on the basis of articulable facts supporting reasonable suspicion that the wanted person has committed an offense, then reliance on that flyer or bulletin justifies a [brief] stop to check identification." *Id.* at 232; see also *id.* at 234.

¶ 24 Here, although Glomb's stop of defendant was not based on a flyer issued by another police department, it was based on Czubak's reasonable suspicion that defendant had committed a crime. Glomb, like the officers in *Hensley*, could thus rely on that reasonable suspicion of criminal activity to stop defendant and obtain his identification. *Id.* at 232, 234.

¶ 25 C. Was the Arrest Proper?

¶ 26 The third issue we address is whether defendant's arrest was proper. Police must have probable cause before they may arrest a defendant. See *People v. Meo*, 2018 IL App (2d) 170135, ¶ 25. "Probable cause to arrest exists when the totality of the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the [defendant] has committed a crime." *Id.* "Probable cause concerns probabilities and not technicalities." *Id.* "That is, probable cause is based on the factual and practical considerations of everyday life upon which reasonable, prudent people, not legal technicians, act." *Id.* "Probable cause is more than a mere suspicion [citation] but less than proof beyond a reasonable doubt [citation]." *Id.*

¶ 27 A defendant commits unlawful delivery of controlled substance as charged here when he knowingly delivers 15 grams or more but less than 100 grams of a substance containing cocaine. 720 ILCS 570/401(a)(2)(A) (West 2014). Defendant claims that lacking here was evidence that the object defendant sold was in fact cocaine.

¶ 28 Proof beyond a reasonable doubt that the object was in fact cocaine was not required. *People v. Rucker*, 346 Ill. App. 3d 873, 889 (2003), *abrogated on other grounds by People v. Ayres*, 2017 IL 120071 ("[O]ur courts have never conditioned probable cause in narcotics cases on prior visual identification of a narcotic substance."). Rather, what was required was something more than a mere suspicion. Evidence of more than a mere suspicion was presented here. Specifically, Czubak testified that he was an officer working undercover with DuMEG. In that capacity, he learned that Vazquez-Pedraza sold illegal drugs. Czubak knew that Vazquez-Pedraza's source for drugs would be in a white Maxima at the Burger King in Addison at 10 p.m. on September 25, 2012. Defendant was in that car at that location at around that time. Czubak then clearly saw defendant hand Vazquez-Pedraza an object that Vazquez-Pedraza put in his right pants pocket. Although Czubak could not identify that object as cocaine, he saw that Vazquez-Pedraza's hand remained in his right pants pocket until he approached Czubak's car. After opening the car door, Vazquez-Pedraza removed an object from his right pants pocket and gave that object to Czubak. Czubak examined that object and concluded that it was cocaine. No scientific test confirming that the substance was cocaine was required for probable cause.

¶ 29 The cases defendant relies on are clearly distinguishable. See *People v. Byrd*, 408 Ill. App. 3d 71, 76-77 (2011) (anonymous tip, coupled with officer's experience in drug transactions, did not provide probable cause to arrest the defendant for drug offense, where, among other things, officers never obtained possession of object sold); *People v. Oliver*, 368 Ill.

App. 3d 690, 696-98 (2006) (in addressing whether grand jury received deceptive or inaccurate evidence, we noted that testifying officer did not witness the sale of drugs and no evidence was presented concerning what in fact the defendant sold or bought); *People v. Moore*, 286 Ill. App. 3d 649, 651, 653 (1997) (stop of the defendant was improper where officer did not see who "was giving or receiving money or if anything else was exchanged"). Unlike in those cases, Czubak saw defendant give Vazquez-Pedraza an object; Czubak saw Vazquez-Pedraza put that object in his pocket and keep it there until he approached Czubak; and Czubak examined the object defendant sold Vazquez-Pedraza.

¶ 30 D. Was the Delay in Arresting Defendant Proper?

¶ 31 The last issue we consider is whether the delay in arresting defendant was proper. Instructive on this issue is *People v. Johnson*, 45 Ill. 2d 283 (1970). There, the defendant was convicted of a robbery that took place in March 1967. *Id.* at 284. Although the victims were able to give a description of the assailant, no arrests were made. *Id.* In June 1967, a similar robbery was committed. *Id.* at 285. An eyewitness identified the defendant as the perpetrator and told police where he lived. *Id.* In July 1967, the police staked out the defendant's apartment building; waited for the defendant to enter his apartment; and arrested him. *Id.* The police found stolen property in the defendant's apartment and the defendant confessed after being warned of his rights. *Id.* On appeal, the defendant argued that the arrest was unlawful. *Id.* at 288. Our supreme court found that it was not. *Id.* The court noted:

> "We agree that it is desirable for an arrest to be based upon a warrant when the circumstances permit, and such action here would have eliminated some of the problems now before us. At the same time, however, we recognize that an arrest may be lawful when based upon probable cause, notwithstanding the absence of a warrant. [Citation.]

> In this case, it is important to recognize that prior to arriving at the apartment, earlier identified as [the] defendant's, the arresting officers already had reasonable grounds to believe he had committed a crime; and when he opened the door the officers were able to verify his description as well as confirm that he was present in the identified apartment. This is not a case when probable cause was developed only as a result of an unlawful entry, and authority to the effect that an entry cannot be justified by its fruits is inapplicable. [Citations.] Since the basis for a valid arrest existed prior to the entry, the entry was clearly justified." *Id.*

See also 725 ILCS 5/107-2(1)(c) (West 2014) (police may arrest a defendant in the absence of a warrant when they have reasonable grounds to believe that the defendant is committing or has committed a crime).

¶ 32 Although here, as in *Johnson*, the better practice would have been for the police to obtain a warrant for defendant's arrest before arresting defendant at his home, the fact that they did not does not invalidate his arrest. Rather, because the police had probable cause to believe that defendant had committed a crime, they were justified in arresting defendant. The fact that they waited 22 days to do so, like the over 30 days in *Johnson*, is simply immaterial.

¶ 33 The case defendant relies on is inapplicable. See *People v. Scudder*, 175 Ill. App. 3d 798, 800, 804 (1988) (drug paraphernalia was unlawfully seized from the defendant's car after police failed to arrest the defendant when he walked into the police station, opting instead to arrest him minutes later when he exited his car after leaving the station). Here, unlike in *Scudder*, the police continued their investigation of defendant after letting him go on September 25, 2012. Although no new evidence was discovered during that investigation, nothing presented at the suppression hearing indicated that the police had an earlier opportunity to arrest defendant after

that investigation concluded. Thus, we cannot conclude that defendant's arrest at his home on October 17, 2012, was improper.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 36 Affirmed.