

**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).

2019 IL App (3d) 150848-U

Order filed January 10, 2019

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-15-0848
ASLAN LEWIS BUTLER,	)	Circuit No. 14-CF-765
Defendant-Appellant.	)	The Honorable David A. Brown, Judge, presiding.

---

JUSTICE CARTER delivered the judgment of the court.  
Justice Wright concurred in the judgment.  
Justice Lytton dissented.

---

**ORDER**

- ¶ 1 *Held:* In an appeal in a criminal case for unlawful possession of a weapon by a felon, the appellate court found that the trial court properly denied defendant's motion to suppress evidence. The appellate court, therefore, affirmed the trial court's judgment.
- ¶ 2 After a stipulated bench trial, defendant, Aslan Lewis Butler, was convicted of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)) and was sentenced to four years in prison. Defendant appeals, arguing that: (1) the trial court erred in denying his

motion to suppress evidence; (2) he was denied effective assistance of counsel; and (3) he is entitled to a credit against his fines for the time that he would have served in custody if his attorney would have moved to withdraw his bond. We affirm the trial court's judgment.

¶ 3

## I. FACTS

¶ 4

On October 1, 2014, shortly before 6 p.m., police officers Corey Miller and Clint Rezac were on patrol in an undercover police car in Peoria, Illinois, heading southbound on Livingston Street. Officer Miller was driving, and Officer Rezac was sitting in the passenger's seat. The vehicle that was in front of the officers turned left at a stop sign and disappeared from Miller's sight. Miller turned as well to see where the vehicle went. After the officers turned, Rezac informed Miller that the vehicle they had seen was parked on Lydia. The officers drove toward the location of the vehicle and saw that the passenger's side door of the vehicle was open; that the passenger had apparently fled; and that the driver, who was later identified as the defendant, was standing outside of the vehicle on the driver's side. When the defendant saw the officers approaching his location, he took off and ran away on foot. Without activating their vehicle's lights or sirens, the officers pursued defendant in their vehicle, and other officers responded to the area to assist in the chase. Officers Miller and Rezac apprehended defendant about two minutes later, although they had lost sight of defendant momentarily. After being apprehended, defendant told the officers that he had run from them because he thought he had an outstanding warrant for his arrest. Miller recognized defendant at that point as someone that he knew from a prior police assignment. Miller had previously received information from confidential sources that defendant was selling drugs. Miller also knew that defendant had a prior felony conviction and knew or believed that defendant was a drug dealer.

¶ 5 Miller and Rezac detained defendant, placed him in handcuffs, and put him in the back of their unmarked police car. Rezac checked on the car's computer to see if defendant had any outstanding warrants for his arrest. The warrant check took no longer than five minutes and revealed that there were no outstanding warrants for defendant's arrest. As Rezac was checking defendant's warrant status, Miller and the other officers, who had either responded to or were called to the scene, checked the area of defendant's flight path. Although neither Miller nor Rezac had seen defendant throw or drop anything, Miller believed that the defendant might have run away from the officers for some reason other than an active arrest warrant and thought that defendant may have dropped a weapon or contraband while he was fleeing. Within 5 or 10 minutes, the officers found a large quantity of cocaine in a clear plastic bag. The bag was located approximately 50 to 100 feet from where defendant had stopped running from the officers, although it could have been as much as 300 feet. The bag had been placed under a piece of metal located next to an elderly woman's house. The bag did not appear to be weathered and was not wet, even though it had recently started raining outside. The officers asked the elderly woman about the bag, although the record does not indicate how the elderly woman responded. In addition, there were no passersby in the area.

¶ 6 After the police officers recovered the bag of cocaine, Miller arrested defendant for possession of a controlled substance and defendant was transported to the police station. While defendant was being transported, Miller drove to defendant's residence, spoke to defendant's girlfriend, explained to defendant's girlfriend what had occurred, and asked for permission to station two officers at the residence because Miller was going to ask for consent to search the residence or try to obtain a search warrant to do so. Defendant's girlfriend consented to Miller's request, and Miller and Rezac went to the police station to interview defendant.

¶ 7 At the police station, defendant denied having any knowledge of the cocaine. Miller asked defendant if he had anything illegal in his house, and defendant responded that he had an illegal firearm. Miller asked defendant for consent to search the home and told defendant that he would try to obtain a search warrant for the residence if defendant did not consent. Defendant consented and signed a written consent form. Defendant went to the residence with the officers and showed the officers where the gun was located. The officers recovered the gun and took it into police possession. Defendant was later charged by the State's Attorney's office with unlawful possession of a weapon by a felon but was not charged with possession of the cocaine that was found at the scene.

¶ 8 Defendant filed a pretrial motion to suppress evidence (the gun and his statement to police), claiming that the evidence was the product of an illegal arrest, which had been made without an arrest warrant and without probable cause. At the hearing, defendant testified and so did Rezac and Miller. The evidence presented at the hearing established the facts as set forth above. At the conclusion of the hearing, the trial court took the case under advisement. The trial court later denied defendant's motion to suppress. In so doing, the trial court found that: (1) based upon the circumstances of this case, the officers had acted reasonably in detaining defendant while they checked his warrant status and in searching the area of defendant's flight path; (2) upon finding the drugs, the officers had probable cause to arrest defendant for unlawful possession of a controlled substance; and (3) even if the detention of defendant was improper, the officers would have inevitably discovered the drugs when they searched the area and would then have had probable cause to arrest defendant. The trial court concluded, therefore, that defendant's statement, the consent to search, and the recovery of the gun were not tainted by an illegal seizure and were not subject to suppression.

¶ 9 Defendant proceeded to a stipulated bench trial on the gun charge to preserve his objection to the trial court’s ruling on his motion to suppress evidence. Following the presentation of the stipulated evidence, the trial court found defendant guilty of unlawful possession of a weapon by a felon. Defendant filed a motion for new trial, contesting the trial court’s ruling on the motion to suppress. The trial court denied the motion. A sentencing hearing was held, and the trial court sentenced defendant to four years in prison. Defendant filed a motion to reconsider sentence, which the trial court denied. The motion to reconsider was heard on the same day that the trial court took defendant’s guilty plea in an unrelated case for which defendant had been taken into custody on November 20, 2014. Defendant was represented by the same attorney in that case as well. Defendant appealed.

¶ 10 II. ANALYSIS

¶ 11 A. Denial of Motion to Suppress Evidence

¶ 12 As his first point of contention on appeal, defendant argues that the trial court erred in denying his motion to suppress evidence. Defendant asserts that the motion to suppress should have been granted because the evidentiary items at issue—defendant’s statement to police and the gun retrieved from defendant’s home—were recovered as the result of an illegal seizure of defendant’s person. Defendant advances two different theories as to the illegality of the seizure. First, defendant asserts that the seizure of his person, although initially proper, became illegal when the police officers continued to detain him at the initial location after they had determined that there were no outstanding warrants for his arrest. According to defendant, any reasonable suspicion that existed had dissipated at that point and defendant should have been released. Second, and in the alternative, defendant asserts that even if the continued detention was lawful, it became unlawful (an illegal seizure) after the police officers found the drugs and placed

defendant under arrest. According to defendant, because no one saw him holding anything, dropping anything, throwing anything, or near the yard where the drugs were found, the drugs could not be linked to him in any meaningful way, and the recovery of the drugs in the area did not given the police officers probable cause to arrest defendant for possession of the drugs. For those reasons, defendant asks that we reverse the trial court's ruling on the motion to suppress, that we suppress the evidence, and, because there would no longer be any grounds to support defendant's conviction, that we reverse defendant's conviction outright.

¶ 13 The State argues that the trial court's ruling on the motion to suppress was proper and should be upheld. The State asserts, although somewhat implicitly, that the police officers had reasonable suspicion, based upon what had occurred, to detain defendant while they checked the area where defendant had fled to determine if defendant had dropped any weapons or contraband. The State asserts further that once the officers found the recently-placed cocaine in the area of defendant's flight path, they had probable cause to arrest defendant for possession of a controlled substance. Thus, the State maintains that the police officers' detention and subsequent arrest of defendant were proper and that any evidence recovered as a result thereof should not be suppressed. The State asks, therefore, that we affirm the trial court's judgment.

¶ 14 A reviewing court applies a two-part standard of review to a trial court's ruling on a motion to suppress evidence. *Ornelas v. United States*, 517 U.S. 690, 699 (1996); *People v. Gaytan*, 2015 IL 116223, ¶ 18. The trial court's findings of fact are given great deference and will not be reversed on appeal unless they are against the manifest weight of the evidence. *People v. Hackett*, 2012 IL 111781, ¶ 18; *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). However, as to the trial court's ultimate legal ruling of whether reasonable suspicion or probable cause exists and whether suppression is warranted, *de novo* review applies. *Hackett*, 2012 IL

111781, ¶ 18; *Sorenson*, 196 Ill. 2d at 431. The reviewing court is free to make its own assessment of those legal issues, based upon the findings of fact, and to draw its own conclusions. *Hackett*, 2012 IL 111781, ¶ 18.

¶ 15 The fourth amendment to the United States Constitution and article I, section 6, of the Illinois Constitution guarantee citizens the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6; *Gaytan*, 2015 IL 116223, ¶ 20. Under *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968), a police officer may conduct a brief investigatory stop of a person if the officer reasonably believes that the person has committed, or is about to commit, a crime. See 725 ILCS 5/107-14 (2014); *People v. Close*, 238 Ill. 2d 497, 505 (2010). The purpose of a *Terry* investigative stop is to allow the officer to briefly investigate the circumstances that provoked suspicion and to either confirm or dispel that suspicion. *Close*, 238 Ill. 2d at 512. Thus, to be valid for fourth amendment purposes, a *Terry* stop must, at the very least, be supported by reasonable suspicion. See *Hackett*, 2012 IL 111781, ¶ 20. The officer's belief need not rise to the level of suspicion required for probable cause but must be more than an inarticulate hunch. *Id.*; *Close*, 238 Ill. 2d at 505. In addition, a police officer is not required to rule out all possibility of innocent behavior before he initiates a *Terry* stop. *Close*, 238 Ill. 2d at 511-12. In judging a police officer's conduct, a court will apply an objective standard and will determine whether the facts available to the officer at the time of the seizure would lead a reasonably cautious person to believe that the action taken by the officer was appropriate. *Id.* at 505.

¶ 16 An arrest, on the other hand, must be supported by a warrant or by probable cause to be valid. See *People v. Grant*, 2013 IL 112734, ¶ 11. Probable cause 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 individual arrested has committed a crime. *Id.* The existence of probable cause to arrest depends upon the totality of the circumstances at the time of the arrest, including the officer's factual knowledge based upon his law enforcement experience. *Id.* The determination of probable cause is governed by the commonsense practical considerations of everyday life and not by technical legal rules. See *id.*; *People v. Wear*, 229 Ill. 2d 545, 564 (2008); *People v. Sims*, 192 Ill. 2d 592, 615 (2000). Because a probable cause determination is based upon the probability of criminal activity, a finding of probable cause does not require evidence sufficient to support a conviction or even evidence demonstrating by a preponderance that the suspect committed a crime. See *Grant*, 2013 IL 112734, ¶ 11; *United States v. Funches*, 327 F.3d 582, 586 (7th Cir. 2003).

¶ 17 In the present case, after reviewing the record, we find that the police officers had reasonable suspicion to detain defendant, even after the officers determined that no outstanding warrants existed for defendant's arrest. See 725 ILCS 5/107-14 (2014); *Close*, 238 Ill. 2d at 505. Defendant's conduct that night from the outset was highly suspicious. Upon seeing the officers, defendant turned and quickly got off the road. When the officers returned to where defendant was parked, they saw that the passenger door of the car was open, that the passenger was no longer there, and that the passenger had apparently fled. When defendant saw that the officers were returning, he immediately took off on foot and ran away from the officers. The officers apprehended defendant in the area a short time later, although they had lost sight of defendant for a brief period. One of the officers involved in the chase, Officer Miller, knew defendant and had information from confidential sources that defendant was involved in selling drugs. Miller also knew that defendant had a prior felony conviction.



¶ 18 Although defendant stated that he ran away because he thought he had an outstanding warrant for his arrest, the officers were not obligated to accept defendant's explanation and, under the circumstances, could briefly detain defendant further to determine if he had dropped any weapons or contraband. See 725 ILCS 5/107-14 (2014); *Close*, 238 Ill. 2d at 505, 512. Upon doing so, the officers found a bag containing a large quantity of cocaine in close proximity to the area where defendant had been located. The bag had been placed under a piece of metal next to an elderly woman's home, had no signs of weathering, and was not wet, even though it had been raining. The elderly woman was asked about her knowledge of the bag and there were no passersby in the area. Based upon the recovery of the bag of cocaine and the other circumstances present at the time, the officers had probable cause to arrest defendant for possession of a controlled substance. See *Grant*, 2013 IL 112734, ¶ 11. Therefore, the consent to search, the search of defendant's home, and the recovery of the firearm that followed were not tainted by an illegal seizure and were all valid. Defendant's argument to the contrary is not supported by the facts or the law and must be rejected.

¶ 19 B. Ineffective Assistance of Counsel

¶ 20 As his second point of contention on appeal, defendant argues that he was denied effective assistance of counsel when trial counsel failed to move to withdraw defendant's bond in this case so that defendant could earn credit for time served, since defendant was already in custody on another case. As the State correctly points out, however, we lack sufficient information to make a ruling upon this issue. Most notably, we do not know whether defendant and his attorney discussed this issue and what the reason was for why defense counsel did not move to withdraw defendant's bond. We, therefore, decline to make a ruling on defendant's claim of ineffective assistance of counsel. Defendant can raise this issue in a postconviction

petition where he will be able to establish a record as to defense counsel's decision not to withdraw defendant's bond in this case. See *People v. Kunze*, 193 Ill. App. 3d 708, 725-26 (1990) (where consideration of matters outside of the record is required in order to rule upon the issues presented for appellate review, the defendant's contentions are more appropriately addressed in proceedings on a petition for postconviction relief).

¶ 21 C. Additional Credit Against Fines For Time Served in the Other Case

¶ 22 As his third point of contention on appeal, defendant argues that he is entitled to credit against his fines for the time that he would have served in custody if his attorney would not have failed to move to withdraw his bond. As we have noted above, however, there is currently insufficient information in the record for this court to determine whether defense counsel was ineffective for failing to move to withdraw defendant's bond in this case. Therefore, we will not rule upon this issue at this time. See *id.*

¶ 23 III. CONCLUSION

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 25 Affirmed.

¶ 26 JUSTICE LYTTON, dissenting.

¶ 27 I agree that the denial of defendant's motion to suppress evidence should be affirmed. I write separately on the second issue because I believe counsel was ineffective in failing to move to withdraw defendant's bond in this case and the record provides sufficient information to make that ruling.

¶ 28 A defendant who is out on bond on one charge, and who is subsequently arrested and returned to custody on another charge, is not returned to custody on the first charge until his bond is withdrawn or revoked. *People v. Arnhold*, 115 Ill. 2d 379, 383 (1987). Where defense

counsel is aware that defendant is in custody on another offense, it “behooves defense counsel to move to withdraw the bond posted in the instant case in order to allow the defendant to earn credit against his eventual sentences in the instant case at the same time he is earning credit against his sentence” on the other charge. *People v. Dupree*, 353 Ill. App. 3d 1037, 1049 (2004).

¶ 29 In this case, defendant was taken into custody on October 1, 2014, and released on bond two days later. On November 20, 2014, he was taken into custody on an unrelated charge, and he remained in custody until he was sentenced in this case on December 3, 2015. At the time he was taken into custody on the unrelated charge, he was not represented by counsel. On June 29, 2015, defendant retained the same attorney on both this case and the unrelated charge. At that point, counsel had to be aware, through file review, that defendant had been taken into custody on the unrelated case on November 20, 2014, after posting bond in this case. See Ill. R. Prof'l Conduct (2010) R. 1.1 (eff. Jan. 1, 2010) (a lawyer shall provide “competent representation,” which requires “the legal knowledge, skill, thoroughness and preparation reasonably necessary for representation”). Attorneys have a duty to act with a reasonable degree of care and skill in representing their clients, including investigating basic legal issues, tracking cases and learning dates of relevant hearings and motions. See *People v. Pollards*, 367 Ill. App. 3d 17, 23 (2006) (counsel’s failure to offer jury instruction resulted in ineffective assistance of counsel where casual reading of committee notes to criminal jury instruction should have led him to realize that instruction was necessary); see also *Jackson v. Bailey*, 384 Ill. App. 3d 546, 549 (2008) (attorney has legal and ethical duty to act with reasonable diligence in representing his client, including reviewing case files and tracking relevant dates to avoid forfeiture). When counsel appeared at the sentencing hearing in this case on December 3, 2015, he should have moved to withdraw the bond retroactive to the date when defendant was taken into custody on the unrelated matter. Had

he done so, defendant would have been entitled to an additional 378 days of credit for the time spent in simultaneous custody. Thus, I would find that defense counsel's failure to move to exonerate the bond fell below an objective standard of reasonableness and that his deficient performance resulted in prejudice.

¶ 30 The majority cites *Kunze*, 193 Ill. App. 3d at 725-26, as the basis for declining to address defendant's ineffective assistance claim. As our supreme court recently noted, the court in *Kunze* did not cite any authority to support its holding that ineffective assistance of counsel claims are better made in postconviction proceedings. See *People v. Veach*, 2017 IL 120649, ¶ 39. Where, as here, trial counsel's obvious deficiencies are apparent from the record, there is no need to defer the issue to a postconviction proceeding. See *Veach*, 2017 IL 120649, ¶ 46. This is not a case in which a factual record needs to be developed because counsel's decision is strategic or the success of the motion is speculative or a new witness's testimony might alter the outcome. Here, counsel failed to move to exonerate the bond, and if he had made that motion, defendant would have received an additional 378 days of presentencing credit for the time he served in custody. No other facts are needed to resolve defendant's ineffective assistance of counsel claim.

¶ 31 Because counsel's deficient performance deprived defendant of the opportunity to earn full credit for the time he spent in custody against his sentence in this case, we should grant defendant 378 additional days of credit for the time he serviced in presentencing custody. See *People v. Centeno*, 394 Ill. App. 3d 710, 714 (2009) (finding counsel ineffective for failing to file a motion to exonerate defendant's bond and directing circuit court to enter a mittimus reflecting the appropriate presentence custody credit). I would also find that defendant is entitled to receive a \$5 per day credit for each additional day of presentencing credit. See *People v.*

*Woodard*, 175 Ill. 2d 435, 457 (1997) (defendant has an absolute right to whatever credit must be applied toward the sentence and a reviewing court may award the credit even if defendant failed to apply for it in the trial court).