SIXTH DIVISION
May 16, 2008

No. 1-07-0990

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JAVON PATTERSON, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 06 CR 13933 Honorable Luciano Panici, Judge Presiding.

O R D E R

Following a bench trial in the circuit court of Cook County, defendant Javon Patterson was found guilty of being an armed habitual criminal, then sentenced as a Class X offender to six years' imprisonment. On appeal, defendant does not contest the sufficiency of the evidence to sustain his conviction, but contends that the trial court erred in denying his motion to quash arrest and suppress evidence.

The record shows that defendant was arrested on April 24, 2006. He was then charged with being an armed habitual criminal, plus unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon. Prior to trial, defendant filed a motion to quash his arrest and suppress evidence claiming that his warrantless arrest and the seizure of a handgun found on his person violated his fourth amendment right to be free from unreasonable searches and seizures.

At the hearing on the motion, Officer Reginald Harris, a former member of the Harvey Police Department, testified that about noon on April 24, 2006, he was on routine patrol when he received a dispatch instructing him to go to the intersection of 146th Street and Clinton Street, and take "Javon Patterson," a heavy set black male, into custody. The dispatch also contained information that defendant was wanted in reference to a previous aggravated battery and cautioned that he might be armed.

When Officer Harris arrived at the designated location, he observed defendant standing on the corner with two women. He acknowledged that defendant was not violating any laws at the time and that he did not have a search or arrest warrant for him.

Officer Harris approached defendant and asked him if he was Javon Patterson. When defendant responded that he was, Officer Harris asked him to place his hands on top of the squad car. At that time, Officer Jonathan Cook arrived on the scene to assist. Due to defendant's large size, Officer Harris had to use two pairs of handcuffs to restrain defendant

After doing so, Officer Harris performed a pat-down search and recovered a small Colt 380 blue steel handgun from defendant's right pants pocket. Officer Harris secured the weapon and then, "because of [defendant's] size," performed two additional pat-down searches to "make sure that [he] didn't miss anything." Officer Harris further testified that Harvey Police

Department policy required a protective pat-down search of any individual who was going to ride in a squad car.

Officer Cook testified to substantially the same sequence of events as Officer Harris. He stated that the dispatcher directed him to bring defendant into the station in connection with an investigation concerning a drive-by shooting that occurred a couple of days earlier. Officer Cook acknowledged that he did not see defendant violating any laws when he arrived on the scene, and he added that he was standing about four feet away from defendant during the pat-down and saw Officer Harris recover a small handgun from defendant's right pants pocket.

Arlene Atwater, defendant's neighbor, testified that at the time and on the date in question, defendant was helping her remove some packages from her car. While they were so engaged, police officers pulled up, exited their vehicles, and asked defendant his name. After defendant provided it, they informed him that they were conducting an investigation, and twice asked him if he had any weapons. According to Atwater, defendant said "no," but the officers proceeded to pat him down. From her vantage point, about "three people away" from defendant, she observed one of the officers remove some money and paper out of defendant's right pocket, but she did not see the officer remove a handgun. She acknowledged, however, that she was standing on the other side of defendant's right pocket.

Latonya Patterson, defendant's sister, testified that she was cleaning her car when she saw police approach defendant across the street. Patterson also testified that she did not see the officers recover a handgun from defendant.

No other evidence was presented at the suppression hearing relating to the source of, or factual basis for, the dispatch concerning the aggravated battery or drive-by shooting transmitted by the Harvey police department to Officers Harris and Cook. At the close of evidence, the State filed a motion for a directed finding and the court entertained arguments from opposing counsel. Thereafter, the trial court noted that there were two "diametrically opposed stories as to the search," and by its decision to deny defendant's motion, accepted the version of events offered by the police officers.

At trial, the parties stipulated to the testimony of Officer Cook, Ms. Atwater, and Ms. Patterson. They also stipulated to Officer Harris' testimony to the point where he recovered the handgun from defendant, subject to cross-examination. Officer Harris further testified that after he recovered the gun he inventoried it at the station, sealed it, and placed it in the evidence vault. The State then introduced certified copies of defendant's two prior felony convictions of armed robbery and aggravated unlawful use of a weapon.

On this evidence, the trial court found defendant guilty of

all charges. At the sentencing hearing that followed, arguments were presented in aggravation and mitigation. In announcing its sentencing decision, the court noted defendant's long criminal history, then merged the charges of unlawful use of a weapon by a felon and aggravated unlawful use of a weapon into the armed habitual criminal charge, and sentenced him to eight years' imprisonment.

Defendant then filed a motion for a new trial, an amended motion for a new trial, and a motion to reconsider. At the hearing on the motions, defendant argued that the trial court erred in denying his pretrial motion to suppress evidence and that his sentence was excessive. The circuit court denied defendant's motions for a new trial, noting that the officers' testimony was unimpeached, and granted his motion to reconsider, reducing his sentence to six years' imprisonment.

In this appeal from that judgment, defendant contends that the trial court erred in denying his motion to quash arrest and suppress evidence. He claims that police lacked any legal basis upon which to search and seize him where the evidence showed that they had no search or arrest warrant, where he was not engaged in any obvious illegal activity, and was being sought solely to voluntarily assist police in an investigation of a past crime. The State responds that the trial court properly denied defendant's motion where the evidence shows that the officers

conducted a proper Terry stop (Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)), which led to the seizure of a weapon and his lawful arrest.

In reviewing an order denying defendant's motion to quash arrest and suppress evidence, mixed questions of law and fact are presented. People v. Pitman, 211 Ill. 2d 502, 512 (2004). Factual findings made by the trial court will be upheld on review unless they are against the manifest weight of the evidence. Pitman, 211 Ill. 2d at 512. The reviewing court, however, remains free to assess the facts in relation to the issues presented and may draw its own conclusions in deciding what relief, if any, should be granted. Pitman, 211 Ill. 2d at 512. Accordingly, we review *de novo* the ultimate question of whether the evidence should be suppressed. Pitman, 211 Ill. 2d at 512.

A defendant who files a motion to quash arrest and suppress evidence must 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 defendant satisfies this burden, then the State must present evidence to counter the defendant's *prima facie* case. Gipson, 203 Ill. 2d at 307. The ultimate burden of proof, however, remains with defendant. Gipson, 203 Ill. 2d at 307.

Here, the facts are undisputed that, when the officers arrived, defendant was standing on the corner of 146th Street and

Clinton Street. According to the officers' testimony, defendant was not violating any laws at the time and they did not have a search or arrest warrant. Officer Harris testified that, after asking defendant his name, he handcuffed defendant and patted him down. Accordingly, defendant made a *prima facie* case by showing that a search and seizure occurred without a warrant, and, thus, the burden shifted to the State to provide evidence establishing the validity of the search and seizure. Gipson, 203 Ill. 2d at 307.

The fourth amendment to the United States Constitution guarantees the right of the people to be free against unreasonable searches and seizures. People v. Gherna, 203 Ill. 2d 165, 176 (2003). The Illinois supreme court has recognized three tiers of police-citizen encounters that do not constitute an unreasonable seizure, including the tier at issue here, a temporary investigative stop conducted under the standards set forth in Terry. Gherna, 203 Ill. 2d at 176-77.

To lawfully conduct a brief investigative or Terry stop, an officer must have reasonable suspicion, supported by specific and articulable facts, that a person is committing, has committed, or is about to commit a crime. People v. James, 365 Ill. App. 3d 847, 851 (2006). This aspect of Terry has been codified in section 107-14 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/107-14 (West 2004)). People v. Austin, 365 Ill. App.

3d 496, 503 (2006). The determination of whether a police officer had the requisite reasonable suspicion is based on the totality of the circumstances. Austin, 365 Ill. App. 3d at 504.

The record here shows that Officers Harris and Cook were directed by police dispatch to the designated location to find and take into custody the named defendant, who was described as a heavy-set, black male, who was wanted in connection with a previous criminal offense. The officers were also advised that defendant could be armed.

The United State Supreme Court in United State v. Hensley, 469 U.S. 221, 232, 83 L. Ed. 2d 604, 105 S. Ct. 675, 682 (1985), examined the legality of a Terry stop to investigate a past crime and concluded, in part, that evidence uncovered as a result of the stop is inadmissible if the officer who issued the dispatch lacked reasonable suspicion to make the stop. Hensley thus requires a finding that a police dispatch be based upon reasonable suspicion if a stop initiated in reliance upon the dispatch is to be justified under the fourth amendment.

This court, like Hensley, has concluded that while a police officer may rely on information received through police communication channels to justify an investigatory stop, the collective knowledge of the law enforcement agency requesting such action must be viewed to determine whether sufficient facts existed warranting a stop. Village of Gurnee v. Gross, 174 Ill.

App. 3d 66, 69 (1988). Similarly, we have also found that, although an officer may rely on a dispatch to make an arrest without knowledge of the facts that established probable cause, the State must demonstrate that the officer who directed the dispatch to be issued possessed sufficient facts to establish probable cause to make the arrest. People v. Crane, 244 Ill. App. 3d 721, 724-25 (1993).

Here, the record contains no evidence of a dispatch issued on the basis of reasonable suspicion. Neither Officer Harris or Cook personally observed, independent of the dispatch, any behavior that would justify the stop. The dispatcher was not called to testify at the suppression hearing and the record is silent as to the source of the information that led to the police dispatch. Without that information this court cannot conclude that the dispatch was based upon reasonable suspicion and that police were justified in making the stop. Accordingly, we find that neither Terry nor section 107-14 of the Code authorized Officer Harris to stop and pat-down defendant. Thus, the trial court's decision to deny defendant's motion to suppress was against the manifest weight of the evidence, and, consequently, we reverse the judgment of conviction. People v. Cox, 295 Ill. App. 3d 666, 676 (1998).

For the reasons stated we reverse the judgment of the circuit court.

Reversed.

JOSEPH GORDON, J., with McBRIDE, P.J., and McNULTY, J., concurring.