

2021 IL App (1st) 190990-U

No. 1-19-0990

Order filed September 10, 2021

SIXTH DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

RASHAD ROBINSON,

Defendant-Appellant.

) Appeal from the
) Circuit Court of
) Cook County.
)
)

) No. 17 CR 10624
)

) Honorable
) Stanley J. Sacks and
) Peggy Chiampas
) Judges, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justice Mikva and Justice Oden Johnson concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm defendant’s conviction where the trial court did not err in denying his motion to quash arrest and suppress evidence.

¶ 2 Following a stipulated bench trial, defendant Rashad Robinson was found guilty of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5), (C) (West 2016)) and sentenced to 18 months in prison. On appeal, he contends that the trial court erroneously

denied his motion to quash arrest and suppress evidence when a “bulge” in his pants and his subsequent flight did not establish probable cause for his arrest. We affirm.

¶ 3 Following his arrest, defendant was charged with six counts of AUUW. He then filed a motion to quash arrest and suppress evidence alleging that his warrantless arrest was not supported by reasonable suspicion or probable cause.¹

¶ 4 At the hearing on the motion, Chicago police officer Ronald Ayala testified that on June 27, 2017, around 7:31 p.m., he was in a vehicle with Officers George Whiting and Fuentes, and observed defendant cross a street outside of a crosswalk.² Ayala did not observe other illegal activity, ticket defendant for crossing outside of a crosswalk, or remember whether he documented the violation in any reports. Ayala and Whiting exited the vehicle and ordered defendant to the ground. Ayala recovered a firearm, and defendant made statements about the firearm following his arrest. There was no investigative alert, arrest warrant, or search warrant for defendant.

¶ 5 During cross-examination, Ayala testified that the officers were in an unmarked vehicle, wearing plain clothes and vests marked with the word “Police,” and were responding to a “vice complaint” at a certain address. Vice complaints include “selling narcotics, smoking or consuming any sort of narcotic, gambling, [or] drinking on a public way.” When the officers arrived at the address, Ayala observed defendant and another person walking away from a group on the street. As defendant passed in front of the vehicle, he turned, and Ayala observed a “large bulge” in defendant’s right front waistband. Ayala found this bulge significant, as he knew from working on vice complaints in the area that drug dealers usually have a weapon for defense. Based on his

¹ The Honorable Peggy Chiampas heard the motion.

² The report of proceedings does not contain Officer Fuentes’s first name.

training and experience, which included prior arrests where firearms were recovered from a person's pants, Ayala believe that the bulge was a firearm.

¶ 6 As Ayala watched, defendant adjusted the right side of his pants, made eye contact, and fled. Ayala exited the vehicle and chased defendant into a yard. Defendant kneeled, and Ayala ordered him to ground and began to handcuff him. At this point, defendant said, "the gun is down there." Ayala saw a large bulge in defendant's right pant leg, felt the bulge, and recovered a loaded firearm.

¶ 7 Ayala was wearing a body camera which activated as he exited the vehicle. He testified that the footage truly and accurately depicted the events, and it was then published. The footage, which is included in the record on appeal, depicts the events Ayala described after the foot pursuit began.³

¶ 8 During redirect, Ayala acknowledged that he did not know whether the vice complaint involved smoking, drinking, or "selling." The group was described as containing men and women. Ayala did not see defendant drinking, gambling, or consuming or selling drugs. He acknowledged that the arrest and incident case report did not state that he observed a bulge in defendant's waistband, but asserted that the phrase "suspicious bulge" appeared in a document. Upon refreshing his recollection with the arrest report, Ayala acknowledged that the report mentioned a suspicious bulge in the right side of defendant's pants rather than in the waistband, and did not mention his belief that the suspicious bulge was a firearm.

¶ 9 In denying defendant's motion, the court acknowledged that Ayala did not testify that the arrest occurred in a high narcotics area, but did testify there was a vice complaint involving a

³ The first 30 seconds of the 3:05 video lacks audio.

mixed-gender group and that vice complaints generally related to gambling or narcotics. Moreover, Ayala observed a large bulge in the waistband of defendant's trousers which, consistent with his experience, he believed was a firearm. Defendant then adjusted the bulge, made eye contact, and fled. The court noted that defendant merely crossing the street would not have supported Ayala exiting the vehicle, but differentiated this situation from a "flight alone case" as defendant turned, adjusted the bulge, made eye contact, and then fled. Based on these observations, Ayala had reason to pursue defendant. The court found that Ayala had reasonable suspicion that elevated to probable cause after defendant fled, and denied the motion. Defendant filed a motion and amended motion to reconsider, which the trial court denied.

¶ 10 The matter proceeded to a bench trial where the State stipulated to Ayala's testimony at the hearing on the motion to quash arrest and suppress evidence and to the body-camera video.⁴ The State further stipulated that defendant lacked a valid Firearm Owners Identification Card or concealed carry permit. The trial court found defendant guilty of six counts of AUUW, which merged into count I. Defendant moved for a new trial, alleging that the court erred when it denied the motion to quash arrest and suppress evidence. The trial court denied the motion, and following a hearing, sentenced defendant to 18 months in prison.

¶ 11 On appeal, defendant contends that the trial court erred when it denied his motion to quash arrest and suppress evidence because the bulge in his waistband and flight did not establish probable cause to arrest him.

¶ 12 A reviewing court applies a two-part standard of review to a trial court's ruling on a motion to quash arrest and suppress evidence. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009). We defer to

⁴ The Honorable Stanley J. Sacks presided over the stipulated bench trial.

the trial court's factual findings and will reverse them only if they are against the manifest weight of the evidence. *Id.* We review *de novo* the trial court's ultimate legal ruling as to whether the evidence should be suppressed. *People v. Holmes*, 2017 IL 120407, ¶ 9.

¶ 13 In the case at bar, defendant does not challenge the trial court's findings of fact at the hearing on the motion to quash and suppress. Rather, he contends that even if Ayala believed that the bulge was a firearm, in light of *People v. Aguilar*, 2013 IL 112116, the mere possession of a firearm outside the home is no longer a crime and therefore insufficient to create probable cause.

¶ 14 Both the Illinois Constitution (Ill. Const. 1970, art. I, § 6) and the United States Constitution (U.S. Const., amend. IV) protect individuals against unreasonable searches and seizures. *Holmes*, 2017 IL 120407, ¶ 25. "The essential purpose of the fourth amendment is to safeguard against arbitrary invasions by requiring that law enforcement officers exercise their discretion reasonably." (Internal quotation marks omitted.) *People v. Thomas*, 2019 IL App (1st) 162791, ¶ 18. As such, "[r]easonableness under the fourth amendment generally requires a warrant supported by probable cause." *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 13. An arrest made without probable cause violates the constitutional prohibitions against unreasonable searches and seizures. *People v. Lee*, 214 Ill. 2d 476, 484 (2005).

¶ 15 "Probable cause to arrest 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 arrestee has committed a crime." *People v. Grant*, 2013 IL 112734, ¶ 11. The existence of probable cause depends upon the totality of the circumstances at the time of the arrest, and the officer's "factual knowledge, based upon law enforcement experience, is relevant" to that determination. *Id.* "Whether probable cause

exists is governed by commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt.” *Id.*

¶ 16 Here, the totality of the circumstances supports a finding of probable cause. The record establishes that Ayala and fellow officers responded to a vice complaint concerning a mixed-gender group at a certain location. Ayala did not know the details of the complaint, but testified that vice complaints generally encompass the sale or consumption of narcotics, gambling, or drinking on the public way. When the officers arrived, defendant walked away from a group and crossed the street outside of a crosswalk. Defendant turned as he passed in front of the officers’ vehicle and Ayala observed a large bulge in the waistband area. Ayala believed this bulge was a firearm because he had previously recovered firearms from individuals’ pants. Defendant then adjusted the right side of his waistband, made eye contact, and fled. Ayala chased him, ordered him to the ground, and arrested him.

¶ 17 The facts known to Ayala at the time were sufficient to lead a reasonably cautious person to believe that defendant committed a crime. *Id.* While Ayala did not explicitly testify that these events occurred in a high-crime area, Ayala testified that he knew from working on vice complaints in the area that drug dealers carried weapons for defense. Additionally, it was not defendant’s mere presence in the area that caused Ayala to act; rather, Ayala only pursued defendant after he adjusted the bulge, made eye contact, and fled. See *People v. Salgado*, 2019 IL App (1st) 171377, ¶ 26 (“Conduct, not mere presence in the high crime area, is at issue in this case.”); see also *People v. Thomas*, 2019 IL App (1st) 170474, ¶ 19 (citing *Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000)) (“unprovoked flight on seeing police in an area known for crime is suggestive of wrongdoing and

may justify police suspecting that individual of criminal activity, which warrants further investigation”).

¶ 18 *People v. Johnson*, 2019 IL App (1st) 161104, is instructive. In that case, police officers in an unmarked vehicle were patrolling “ ‘an area known for high narcotic and gang activity’ ” when an officer observed the defendant standing in an alley. *Id.* ¶ 3. The defendant turned toward the officers, saw them, and “ ‘grabbed onto the front of his waistband and continued walking briskly eastbound as if to avoid’ ” them. *Id.* An officer testified that this gesture is common “ ‘for people who are trying to hold onto and conceal a weapon.’ ” *Id.* The officers chased the defendant, who “held ‘onto his waistband to secure an object’ ” and jumped onto the hood of a squad car in order to evade the officers, but was unsuccessful. *Id.* At that point, the officers patted down the defendant and found a loaded semiautomatic handgun.

¶ 19 In support of a motion to quash arrest and suppress evidence, heard simultaneously with defendant’s bench trial, trial counsel argued that the officers lacked a sufficient basis for a stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), and subsequent pat-down, when he merely stood in an alley and touched his waistband. *Id.* ¶ 6. The trial court agreed that the defendant had a right to be in the alley, but noted that he was in a high crime area and motioned towards his waistband, which the officers believed indicated that he was armed. The court found that the defendant was not detained until after he ran and jumped onto the hood of the squad car, at which point the officers had an articulable suspicion to detain and pat him down. *Id.* ¶ 8.

¶ 20 On appeal, this court noted that the defendant was present in a high crime area at night, retreated when he saw police officers, and held his waistband while trying to evade them, including

by jumping onto the hood of a police vehicle. Combined, these facts supported a reasonable articulable suspicion of criminal activity and justified the *Terry* stop. *Id.* ¶ 16.

¶ 21 Here, as in *Johnson*, the totality of the circumstances led to Ayala chasing and arresting defendant. While *Aguilar* established that police officers “cannot simply assume a person who possesses a firearm outside the home is involved in criminal activity” (*Thomas*, 2019 IL App (1st) 170474, ¶ 40), the totality of the circumstances known to Ayala went beyond the fact that defendant may have possessed a firearm. Rather, Ayala’s experience, the fact that officers were responding to a call of criminal activity, and defendant’s jaywalking, adjustment of the bulge, and immediate flight after making eye contact with Ayala would lead a reasonably cautious person to believe defendant was committing or had committed a crime, thereby establishing probable cause. See *Hopkins*, 235 Ill. 2d at 472 (probable cause rests on “commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt”). Therefore, the trial court did not err when it denied defendant’s motion to quash arrest and suppress evidence.

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.