2022 IL App (5th) 210362-U

NO. 5-21-0362



IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Effingham County |
| | ) | |
| v. | ) | No. 19-CF-101 |
| | ) | |
| LUCAS A. CARTRIGHT, | ) | Honorable |
| | ) | Christopher W. Matoush, |
| Defendant-Appellant. | ) | Judge, presiding. |

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JUSTICE WELCH delivered the judgment of the court.
Justices Moore and Wharton concurred in the judgment.

**ORDER**

¶ 1 *Held*: The circuit court erred in denying the defendant's motion to suppress evidence where the evidence was obtained pursuant to an illegal search and seizure as there was no probable cause and the defendant did not consent as a reasonable person would not have felt "free to leave" at any point during the encounter.

¶ 2 After a stipulated bench trial held in Effingham County circuit court, the defendant, Lucas Cartright, was convicted of possession of less than five grams of methamphetamine (720 ILCS 646/60(a)(1) (West 2020)), and on October 20, 2021, he was sentenced to, *inter alia*, two years of probation. The defendant now appeals the court's denial of his

motion to suppress evidence. For the following reasons, we reverse the court's order denying the motion and remand with instructions.

¶ 3 I. BACKGROUND

¶ 4 On March 7, 2019, the defendant was in a convenience store gaming room testing his luck. The gaming room was windowless and had only one exit that led back into the convenience store. Two police officers entered and approached him, standing between him and the exit.

¶ 5 The two officers told the defendant they had been watching him for about one hour and observed him going back and forth from his vehicle to the convenience store. Based on this, they believed he was engaged in suspicious activity. They requested the defendant's identification, and he subsequently forfeited his driver's license. One officer then checked for whether the defendant had any outstanding warrants. The other officer stayed with the defendant and asked whether he could search the defendant's person. At the hearing on the defendant's motion to suppress, the defendant testified that he did not consent to the search, but the officer testified that, while he could not remember what the defendant said specifically, he did consent to the search. Regardless, the officer conducted a search of the defendant and found methamphetamine in his jacket. Meanwhile, the other officer discovered a pending warrant for the defendant's arrest.

¶ 6 The defendant filed a motion to suppress evidence on the basis that it was obtained pursuant to an illegal search and seizure. After a hearing, the circuit court found that the encounter was consensual until the defendant's driver's license was taken. However, the court also held that the State failed to meet its burden to establish that the defendant

consented to the search of his person. Despite this, the court ultimately held that obtaining the defendant's license was a lawful, consensual encounter, and therefore, officers would have inevitably searched the defendant once they knew of the warrant for his arrest and found the contraband anyway. On that basis, the court denied the defendant's motion to suppress.

¶ 7 II. ANALYSIS

¶ 8 In reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006) (citing *Ornelas v. United States*, 517 U.S. 690, 699 (1996)). We give great deference to the trial court's factual findings and reverse those findings only if they are against the manifest weight of the evidence. *Id.* The court's ultimate ruling as to whether the motion to suppress should have been granted is reviewed *de novo*. *Id.*

¶ 9 On a motion to suppress, defendant bears the burden of establishing a *prima facie* case that the evidence at issue was obtained by an illegal seizure. *People v. Gipson*, 203 Ill. 2d 298, 306 (2003). Once a defendant makes a *prima facie* showing that a seizure was unreasonable, the burden shifts to the State to come forward with evidence to rebut. *Id.*

¶ 10 The fourth amendment of the United States Constitution and article I, section 6, of the Illinois Constitution guarantee individuals the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Police-citizen encounters have been classified into three tiers: (1) arrests of a citizen, which must be

supported by probable cause; (2) brief investigative detentions (*Terry* stops) supported by a reasonable, articulable suspicion of criminal activity; and (3) consensual encounters, which do not involve coercion or detention. *Luedemann*, 222 Ill. 2d at 544. Accordingly, consensual encounters do not implicate the fourth amendment. *People v. Gherna*, 203 Ill. 2d 165, 178 (2003).

¶ 11 In the case at bar, it is undisputed that law enforcement lacked probable cause or reasonable suspicion to believe that the defendant had committed or was committing a crime when they approached him. The question before the court is whether the entire encounter between law enforcement and the defendant was consensual.

¶ 12 The trial court found the officer's search of the defendant was not consensual but ultimately denied the defendant's motion to suppress evidence because it found the discovery of the methamphetamine was inevitable. This was based on the court's finding that, when the officer first requested the defendant's identification, his compliance was consensual, and therefore, the resulting discovery of a warrant for the defendant's arrest would have inevitably led to the discovery of contraband.

¶ 13 On appeal, the defendant asks this court to reverse the circuit court and argues the entire interaction with law enforcement was nonconsensual because a reasonable person would not have felt free to decline the officer's requests: both to provide identification and to be searched. In short, the defendant contends that because the police obtained the defendant's identification as a result of an illegal seizure, neither the discovery of an arrest warrant nor the search incident to arrest and the discovery of contraband was proper. The State advocates that the encounter was consensual until the officers took his identification.

¶ 14 For purposes of the fourth amendment, an individual is "seized" when an officer, " 'by means of physical force or show of authority, has in some way restrained the liberty of a citizen.' " *Florida v. Bostick*, 501 U.S. 429, 434 (1991) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)). Put another way, a person has been seized when, after considering the totality of the circumstances, the court finds a reasonable person would believe he is not free to leave. *People v. Oliver*, 236 Ill. 2d 448, 456 (2010). "It is well settled that a seizure does not occur simply because a law enforcement officer approaches an individual and puts questions to that person if he or she is willing to listen." *Gherna*, 203 Ill. 2d at 178 (citing *United States v. Drayton*, 536 U.S. 194, 200 (2002)). A consensual encounter does not violate the fourth amendment because it does not involve coercion or a detention. *People v. McDonough*, 239 Ill. 2d 260, 268 (2010) (citing *Luedemann*, 222 Ill. 2d at 544-45). Generally, to determine whether an encounter was consensual, courts analyze the *Mendenhall* factors: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person; or (4) using language or tone of voice compelling the individual to comply with the officer's requests. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). While these factors are not designed to be exhaustive, the supreme court has recognized that the absence of any *Mendenhall* factors "is highly instructive" on the issue of whether a seizure has occurred. *Luedemann*, 222 Ill. 2d at 554.

¶ 15 The trial court correctly held that none of the *Mendenhall* factors were present. First, there was not a threatening presence of several officers where only two officers

approached the defendant. Although the defendant was alone in the gaming room when the officers approached him, this alone is insufficient. As our supreme court has held, the presence of only two officers, without more, is not a factor that would indicate a seizure occurred. *People v. Cosby*, 231 Ill. 2d 262, 278 (2008).

¶ 16 Second, the trial court correctly held that, while the officers were in uniform and their firearms would have been visible, this was insufficient to indicate the defendant was seized. Nothing in the record indicates that they used their weapons in a coercive manner. *Cf. In re Kendale H.*, 2013 IL App (1st) 130421, ¶ 40 (holding the officer's use of a weapon made their presence more than threatening). Third, the court found the officers did not physically touch the defendant until the pat down after his identification was surrendered. Nothing in the record rebuts this. Finally, the court correctly found that the officers did not use language or tone of voice coercive enough to satisfy this factor.

¶ 17 Moreover, nothing in the record indicates any of these factors were present prior to the request to search when the officers asked the defendant for his identification. However, the Seventh Circuit has acknowledged that courts may also consider other factors such as whether the police made statements to the citizen suggesting they might be a suspect of a crime (*United States v. Borys*, 766 F.2d 304, 311 (7th Cir. 1985)), whether the citizen's freedom of movement was intruded upon (*Michigan v. Chesternut*, 486 U.S. 567, 575 (1988)), whether the encounter occurred in a public or private place (*United States v. Adebayo*, 985 F.2d 1333, 1338 (7th Cir. 1993)), or whether the officers informed the

suspect that he or she was free to leave (*United States v. Smith*, 794 F.3d 681, 684 (7th Cir. 2015)).

¶ 18 Here, the officers told the defendant they believed that the area was one where drugs were prevalent and that they were suspicious of him. As such, they alerted the defendant that he may be the suspect of a crime. Moreover, the officers stood between the defendant and the exit of the room and did not tell him he was free to leave. While this was a public place, the officers intruded upon the defendant's freedom of movement. Considering these circumstances, it takes no stretch of the imagination to understand why a reasonable person would not feel free to walk past the officers and attempt to leave. As such, we hold the encounter was not consensual from the outset of the encounter.

¶ 19 III. CONCLUSION

¶ 20 In sum, because the officers told the defendant they suspected him of a crime, stood between him and the exit, and did not tell him he was free to leave, we find the entire encounter from the outset was nonconsensual. In other words, due to the actions of the officers, the defendant's liberty was restrained in such a way that a reasonable person would not have felt free to leave, thus, the defendant was seized for purposes of the fourth amendment. Because we find the defendant was seized, and the parties have agreed there was no reasonable suspicion or probable cause to support a seizure, the evidence obtained as a result of the illegal seizure should have been suppressed.

¶ 21 For the foregoing reasons, we find that the trial court erred in denying the defendant's motion to suppress evidence. In addition, we find no double jeopardy impediment to a new trial. Accordingly, we reverse the defendant's conviction and remand

for a new trial. We further direct that, upon remand, evidence obtained after the officers approached the defendant be suppressed.

¶ 22 Reversed and remanded with instructions.