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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 16-CF-1780
)	
GRAMBLING T. DOMINIQUE,)	Honorable
)	George J. Bakalis,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in granting defendant’s motion to suppress: the police had probable cause to arrest defendant, and they lawfully discovered a gun in his car either in plain view or incident to the arrest.

¶ 2 The State appeals from an order of the circuit court of Du Page County suppressing a handgun found in defendant Grambling T. Dominique’s vehicle. Because the discovery of the handgun did not violate the fourth amendment, we reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on one count of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2016)), one count of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2016)), and one count of possession of a handgun without a firearm owner's identification card (430 ILCS 65/2(a)(1), 14(c)(3) (West 2016)). Defendant moved to suppress the handgun found in his vehicle, and the trial court conducted an evidentiary hearing.

¶ 5 The following facts were established at the hearing. On October 5, 2016, at approximately 12:26 p.m., Deputy Chief Michael McLean of the Elmhurst Police Department was in an unmarked squad car when he received a radio dispatch that a driver in a white vehicle had called 911 to report that he was being followed by a black Range Rover and a black Toyota Camry. The caller reported that the driver of the Range Rover had pointed a gun at him. The caller described the driver as a black male.

¶ 6 Officer McLean drove to an area where, based on the dispatch, he thought he might observe the three vehicles. As he drove north on Kirk Avenue, he saw a white car being followed by a Range Rover, which in turn was being followed closely by a black Camry. Officer McLean believed that the three vehicles were those described in the dispatch, because they were in the described sequence and were the only vehicles in the area. As he followed the three vehicles, he received dispatched updates.

¶ 7 After the vehicles stopped at a stop sign, the white vehicle turned west onto Butterfield Road. The Range Rover also turned west, as did the Camry. Officer McLean believed that the Range Rover and Camry were following the white vehicle. As the three vehicles were stopped at Kirk Avenue and Butterfield Road, Officer McLean could see that the driver of the Range Rover was male, but he could not identify the driver's race.

¶ 8 All three vehicles stopped at a red light on Butterfield Road. As the Range Rover sat behind the white vehicle, its driver's door was opened for about seven to eight seconds. Officer McLean did not see anyone exit or throw anything out of the open door. The door then closed, the light turned green, and the three vehicles proceeded west on Butterfield Road. Officer McLean testified that, based on the door being opened, he believed that there was a connection between the Range Rover and the white vehicle.

¶ 9 As the three vehicles drove west on Butterfield, the white vehicle turned off. The Range Rover and Camry, neither of which followed the white vehicle, turned north onto Saylor Street. Immediately after turning onto Saylor Street, the Camry turned into the parking lot of an automobile repair shop. Officer McLean continued to follow the Range Rover.

¶ 10 As Officer McLean followed the Range Rover north on Saylor Street, he activated his emergency lights and stopped the vehicle. An officer in another squad car assisted in the stop. The Range Rover stopped in the street. After he activated his emergency lights, and as other officers arrived, the dispatcher notified Officer McLean that another officer had spoken to the caller in the white vehicle.

¶ 11 Because the officers conducted a felony stop, they drew their weapons and pointed them at the Range Rover. They ordered the driver, who was the only occupant, to exit the vehicle with his hands up. As the driver exited, the officers ordered him to keep his hands up and to walk backward toward them. The driver initially complied, although he pointed to his ears as though he could not hear the officers.

¶ 12 According to Officer McLean, the driver did not completely follow his orders. After initially walking backward, the driver momentarily turned and walked forward. After again walking backward, he began to walk to his left and onto a grassy strip adjacent to the street. The

officers then took the driver into custody and handcuffed him. When asked if the driver was under arrest at that point, Officer McLean testified that he was.

¶ 13 After defendant was in custody, Officer McLean and three other officers, including Officer Victor Valdez, approached the Range Rover and began looking for a weapon. When two of the officers said that they saw a gun, Officer McLean walked to the passenger's side of the Range Rover and saw a silver handgun on the rear passenger floorboard. When asked if any of the doors were open when he saw the gun, he said that he thought so. When asked if the officers opened the doors and looked in the Range Rover, Officer McLean said yes. When asked if the gun was found as a result of that, Officer McLean answered that "[i]t was located in the vehicle, yes."

¶ 14 Officer Valdez testified that he also heard the dispatcher say that the 911 caller was being followed by a black Range Rover and a black Camry. According to Officer Valdez, the caller had provided the license plate numbers of the two vehicles. Based on what the caller was reporting, the dispatcher continuously updated the officers as to the location of the three vehicles.

¶ 15 Officer Valdez responded to the scene of the stop. When he arrived, one squad car was in front of the Range Rover and three were behind it.

¶ 16 According to Officer Valdez, when the driver exited the Range Rover his hands were visible. However, the driver did not follow directions. At one point, as he faced away from the officers, his hands were not visible. Because the driver had reached for his ears, it appeared as though he could not understand the officers' directions.

¶ 17 According to Officer Valdez, as the driver moved away from the Range Rover, the officers handcuffed him and placed him under arrest. They then patted him down but found no weapons. They then secured him in a squad car.

¶ 18 When asked when he viewed the handgun in the Range Rover, Officer Valdez testified that it was in “plain view before opening any of the doors or anything, it was in plain view on the passenger rear floor board of the vehicle.” Officer Valdez admitted that he did not include in his report that the handgun was in plain view. The officers thereafter searched the entire Range Rover but found no more weapons.

¶ 19 The State argued that defendant’s conduct before he exited the Range Rover allowed the officers to place him in “temporary custody as they [continued] with the investigation.” When the trial court noted that the officers said that defendant was arrested, the State responded that the officers had probable cause to arrest defendant and that the search of the Range Rover was incident to that arrest.

¶ 20 In ruling, the trial court commented that it had no problem with the stop, with the officers ordering defendant out of the vehicle, or with them handcuffing defendant, because of the report of a gun. However, the court found that there was not probable cause for the arrest and thus granted the motion to suppress.

¶ 21 The State filed a motion to reconsider, arguing only that there was probable cause for the arrest. In denying the motion to reconsider, the trial court noted that the caller was “not necessarily anonymous.” The court further commented that the facts justified an investigatory stop and that it had expected the officers to identify that as the basis for defendant’s detention. The court added that, instead of taking that approach, the officers arrested defendant. The State then filed this timely appeal.

¶ 22

II. ANALYSIS

¶ 23 On appeal, the State contends, among other things, that there was probable cause to arrest defendant and that the handgun was discovered in plain view.

¶ 24 Defendant responds that there was no probable cause for the arrest. Further, defendant asserts that the handgun was not discovered in plain view.

¶ 25 In reviewing a trial court's ruling on a motion to suppress, we apply a two-part standard. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Under that approach, we greatly defer to the trial court's factual findings and will reverse only if they are against the manifest weight of the evidence. *Luedemann*, 222 Ill. 2d at 542. We remain free, however, to undertake our own assessment of the facts in relation to the issues and draw our own conclusions when deciding what relief should have been granted. *Luedemann*, 222 Ill. 2d at 542. Accordingly, we review *de novo* the trial court's ultimate legal ruling as to whether suppression was proper. *Luedemann*, 222 Ill. 2d at 542-43.

¶ 26 We initially note that the State has persisted, both in the trial court and in this court, that defendant was under arrest before the handgun was found in his vehicle. Thus, we must decide whether that arrest was lawful. It was.

¶ 27 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 is committing or has committed an offense. *People v. Wear*, 229 Ill. 2d 545, 563-64 (2008). The existence of probable cause depends upon the totality of the circumstances at the time of the arrest. *Wear*, 229 Ill. 2d at 564. Probable cause is about probabilities that are based on the factual and practical considerations of everyday life upon which reasonable and prudent people, not legal technicians, act. *Wear*, 229 Ill. 2d at 564. The standard is based on the probability of criminal activity and not proof beyond a reasonable doubt. *Wear*, 229 Ill. 2d at 564. It does not even require a belief that it is more likely true than false that the suspect committed a crime. *Wear*, 229 Ill. 2d at 564.

¶ 28 As to whether a tip can form the basis for probable cause, a court considers the veracity, reliability, and basis of knowledge of the informant. *In re K.M.*, 2019 IL App (1st) 172322, ¶ 24. One indicium of reliability is when the facts learned through independent police investigation verify a substantial part of the informant's tip. *People v. Johnson*, 368 Ill. App. 3d 1073, 1081 (2006). Another indicium of reliability is when the informant is known to the police. *People v. Meo*, 2018 IL App (2d) 170135, ¶ 18. A call to a police emergency line is not anonymous and should not be viewed with the skepticism applied to tips from anonymous informants. *Meo*, 2018 IL App (2d) 170135, ¶ 18.

¶ 29 In this case, the informant was a citizen who called 911 to report criminal conduct. Additionally, the informant maintained contact with the police and continued to provide information as to the location and conduct of defendant as defendant followed the informant. Further, the 911 caller made himself available for questioning by updating his location for the police. The fact that the caller was known in this way to the police and made himself available for questioning provided a significant degree of reliability.

¶ 30 The informant also provided a basis for his knowledge. He reported being in his vehicle when he saw defendant point a gun at him. Thus, his knowledge was based on his first-hand observation of the crime. That further supported his reliability.

¶ 31 Additionally, Officer McLean verified the information. He drove to the location provided by the 911 caller. Upon arriving there, the only three vehicles that he saw matched the descriptions provided by the informant. Further, the three vehicles were driving in the precise sequence that the informant had described. When Officer McLean followed the three vehicles, he observed, consistent with the informant's report, that the Range Rover and Camry appeared to

be following the white vehicle. The verification of a substantial portion of the information added to the reliability of the 911 caller.

¶ 32 Because the information came from a 911 caller, and the police verified much of the information, the information was reliable. That information, which included a report that defendant had pointed a gun at the informant, contributed significantly to probable cause to believe that defendant had committed a crime.

¶ 33 There were also additional facts that would have led a reasonable person to believe that defendant possessed a firearm in his vehicle. When the three vehicles stopped at a red light, the driver's door of the Range Rover, which was directly behind the informant's vehicle, was opened for almost eight seconds. During that time, defendant did not exit the vehicle or throw anything out. That was certainly suspicious, as a person does not ordinarily open his driver's door at a stop light for such an extended period of time. It was even more suspicious, however, considering the context in which it occurred. The informant had reported that defendant had pointed a gun at him and was following him. Thus, it was reasonable to infer that defendant had opened the door to further intimidate the informant. The suspicious opening of the door added to the probable-cause equation.

¶ 34 Further, when Officer McLean stopped defendant's vehicle, defendant behaved suspiciously. Instead of pulling over onto the shoulder, he stopped in his lane of traffic. When he was ordered out of his vehicle and to walk backward with his hands up, he did not entirely comply. At one point, he turned and faced the officers. Then, with his back to the officers, instead of walking toward them, he walked onto a grassy area adjacent to the roadway. Although defendant pointed at his ears, as though he could not hear or understand the officers, he had clearly responded to their oral commands when he initially exited the vehicle and walked

backward with his hands up. Defendant's lack of compliance, when viewed in the context of the report that he was armed, significantly contributed to probable cause to believe that he possessed a gun in his vehicle.

¶ 35 When viewed in their totality, the facts known to the officers established probable cause to arrest defendant. Accordingly, the arrest was valid. Thus, it did not render the subsequent discovery of the handgun improper.

¶ 36 We next address whether the discovery of the handgun was otherwise proper. It was.

¶ 37 Defendant asserts that the evidence was disputed as to whether the handgun was first seen through the window. Officer Valdez, however, testified unequivocally that the handgun was visible from outside the vehicle. Officer McLean, when asked whether the handgun was found only after the officers entered the Range Rover, did not answer that precise question but instead responded that it was located in the vehicle. That response did not contradict Officer Valdez's testimony that the handgun was visible from outside the vehicle. Nor did Officer Valdez's failure to include in his report that he saw the handgun through the window contradict his testimony. Because the handgun was visible from outside the Range Rover, and its incriminating nature was immediately apparent, the officers were justified in seizing it. See *People v. Jones*, 215 Ill. 2d 261, 271-72 (2005) (during *Terry* stop of vehicle, police may seize an object in plain view if the officer is lawfully in a position when he views the object, the incriminating nature of the object is immediately apparent, and the officer has a lawful right of access to the object).

¶ 38 Even if the officers did not first see the handgun in plain view from outside the vehicle, its discovery was still valid. Police officers are authorized to search a vehicle incident to a recent occupant's lawful arrest, either when the arrestee is unsecured and is within reaching distance of the passenger compartment, or when it is reasonable to believe that evidence relevant to the

crime of arrest might be found in the vehicle. *People v. Bridgewater*, 235 Ill. 2d 85, 94 (2009) (citing *Arizona v. Gant*, 556 U.S. 332, 343 (2009)).

¶ 39 Here, there is no question that defendant was secured and had no opportunity to access the passenger compartment of his vehicle. However, based on our foregoing discussion, it was reasonable to believe that evidence of the crime of arrest, a gun, would be found in the vehicle. Accordingly, the officers were justified in searching the passenger compartment of the vehicle for a gun. Thus, the handgun, which was found on the rear passenger floorboard, was discovered incident to defendant's lawful arrest.

¶ 40 Even if the arrest was unlawful, the handgun should not have been suppressed, as its discovery was justified by a valid investigative detention.¹ An officer may make an investigative stop if he has reasonable suspicion that a person has committed, or is committing, an offense. *People v. Miller*, 2014 IL App (2d) 120873, ¶ 21 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). In order to stop a vehicle, an officer must have a reasonable suspicion that the vehicle or an occupant is subject to seizure for violating the law. *Miller*, 2014 IL App (2d) 120873, ¶ 22. Reasonable suspicion to stop a vehicle may be based on information from a reliable citizen informant. *Miller*, 2014 IL App (2d) 170783, ¶ 23.

¶ 41 Here, as discussed, the informant was reliable. The information provided, along with the suspicious behavior observed by Officer McLean, constituted reasonable suspicion that defendant had committed a crime. Thus, the initial stop of defendant's vehicle was lawful.

¹ Although the State has never argued that the handgun was discovered pursuant to an investigative detention, and thus has forfeited that issue (see *People v. Raibley*, 338 Ill. App. 3d 692, 698 (2003)), we may disregard the forfeiture (see *People v. Slavin*, 2011 IL App (2d) 100764, ¶ 24; see also *People v. Carter*, 208 Ill. 2d 309, 318 (2003)).

¶ 42 Further, the officers were justified in ordering defendant out of the vehicle. It is well established that the police may, as part of a lawful traffic stop, order the driver to exit the vehicle. *People v. Gonzalez*, 184 Ill. 2d 402, 413-14 (1998) (citing *Pennsylvania v. Mimms*, 434 U.S. 106 (1977)).

¶ 43 Additionally, pointing firearms at defendant, handcuffing him, and placing him in a squad car were justified by a reasonable suspicion that he was armed and dangerous. Pointing a gun at a suspect, or putting him in a squad car during an investigative stop, does not necessarily convert the stop into an arrest. *People v. Ross*, 317 Ill. App. 3d 26, 32 (2000). Although the use of handcuffs is ordinarily associated with an arrest, it likewise does not necessarily turn a stop into an arrest. *People v. Arnold*, 394 Ill. App. 3d 63, 71 (2009). Where the police conduct a stop, and there is a reasonable belief that the driver is armed and dangerous, concerns for officer safety support the use of handcuffs during the stop. *Arnold*, 394 Ill. App. 3d at 71. Here, because the police had a reasonable suspicion that defendant was armed and dangerous, directing him out of the vehicle at gunpoint, handcuffing him, and securing him in a squad car were all reasonable safety measures taken pursuant to a valid investigative detention.

¶ 44 Further, the handgun was discovered pursuant to the valid investigative detention. As discussed, when Officer Valdez approached the vehicle, he saw the handgun in plain view. Thus, even if the arrest was unlawful, the discovery of the handgun was justified by an investigative detention.

¶ 45 Because the seizure of defendant was justified by either probable cause or reasonable suspicion, the subsequent discovery of the handgun in his vehicle was proper. Thus, it was error to suppress the handgun.

¶ 46

III. CONCLUSION

¶ 47 For the reasons stated, we reverse the judgment of the circuit court of Du Page County and remand for further proceedings.

¶ 48 Reversed and remanded.