2024 IL App (1st) 221451-U

No. 1-22-1451

Order filed September 30, 2024

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 18 CR 9603
	)	
	)	Honorable
OTIS DUNN,	)	Thaddeus Wilson and
	)	Sophia Atcherson,
Defendant-Appellant.	)	Judges, presiding.

JUSTICE D.B. WALKER delivered the judgment of the court.
Justices Reyes and Martin concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in denying defendant's motion to suppress evidence when the investigatory stop exceeded the frisk permissible under *Terry v. Ohio*, 392 U.S. 1 (1968). The court's order denying the motion is reversed and defendant's conviction is vacated.

¶ 2 Following a bench trial, defendant Otis Dunn was found guilty of possession of a controlled substance and sentenced to four years in prison.[1] On appeal, defendant contends that the trial court erred in denying his motion to suppress evidence when the police lacked reasonable suspicion to stop, seize, and pat him down. He further contends that he was denied effective assistance when trial counsel failed to allege that his statement should be suppressed because police officers violated his fifth amendment rights. For the following reasons, we reverse the trial court's denial of defendant's motion to suppress evidence and vacate defendant's conviction.

¶ 3 I. BACKGROUND

¶ 4 Following events on December 1, 2017, defendant was charged by indictment with criminal drug conspiracy and possession of a controlled substance with intent to deliver. Trail Brown was also charged with criminal drug conspiracy and possession of a controlled substance with intent to deliver arising from the same incident.[2]

¶ 5 A. MOTION TO SUPPRESS

¶ 6 On October 28, 2019, defendant filed a motion to suppress evidence, alleging that when police officers stopped and searched him, no reasonable person could have inferred that he was in violation of any law. According to the motion, because the search and seizure was unreasonable, the evidence recovered pursuant to the search should be suppressed.

¶ 7 On December 11, 2019, the trial court heard argument on the motion to suppress. Prior to argument, the trial court asked whether the motion referred to "both" defendant and Brown.

[1] The Honorable Thaddeus Wilson presided over the motion to suppress evidence and the Honorable Sophia Atcherson presided over trial.

[2] Brown is not a party to this appeal.

Defense counsel, who also represented Brown, stated that both men were in the "same" vehicle at the time of the stop, so it "cover[ed] both of them."

¶ 8 Chicago police officer Darren Ohle testified that on December 1, 2017, at approximately 6:20 p.m., he and his partner were on the 5000 block of West Augusta Boulevard in Chicago. There, they conducted an investigatory stop on a silver Chevrolet van. Ohle identified defendant and Brown, in court, as the van's occupants. Defendant was driving and Brown was in the front passenger seat. Ohle did not observe defendant commit a traffic violation and did not have a warrant.

¶ 9 After curbing the van, Ohle asked defendant and Brown to exit the vehicle. Both complied. Ohle then performed a protective patdown of each man to ensure that neither had weapons. Ohle recovered a bag of narcotics from defendant's front right pocket. Ohle acknowledged that no part of the bag was "sticking out" of the pocket; rather, he felt a large object and asked defendant what it was. Defendant was not handcuffed at this time. Defendant stated that it was his "work," which Ohle understood "as being narcotics." Ohle asked "how much," and defendant replied, "eight."

¶ 10 The object recovered from defendant was a clear plastic bag which contained several smaller bags. The exterior bag was "[m]aybe a little bit bigger" than Ohle's hand and its thickness was smaller than a baseball, but larger than a golf ball. Ohle "recovered" this item. After a conversation with defendant and Brown, the officers "released them." Because of an ongoing narcotics investigation, the men were not arrested.

¶ 11 During cross-examination, Ohle testified that, on December 1, 2017, a court order was in effect which allowed for the electronic surveillance of telephone calls to and from a phone used by an individual named Donald Holmes. Earlier that day, several calls were intercepted pertaining

to "defendants" picking up narcotics. Based on this information and surveillance, officers determined that a narcotics transaction occurred between "defendants" and Holmes. Based on information received from officers in the "wire room," including a description of a vehicle, Ohle was directed to the 5000 block of West Augusta.

¶ 12 Ohle asked defendant and Brown whether they had any weapons before and after they exited the vehicle, and each time the men denied having weapons. During a protective patdown of Brown, Ohle felt a large bulge in Brown's front right pocket. After Brown stated that the bulge was money, Ohle looked inside the pocket to verify. After determining that the bulge was money, Ohle left the money in Brown's pocket.

¶ 13 Ohle felt a large, hard object in defendant's front right pocket that was larger than a golf ball. Based upon Ohle's experience and training, he believed that defendant's statement that this object was "work" meant that it was narcotics, and "eight" was the amount. The object consisted of a plastic bag containing eight bundles of small, black-tinted Ziploc bags, each wrapped in a black rubber band. The eight bundles, in turn, contained a total of 111 bags. Ohle believed that the bags contained suspect heroin and recovered these items. After defendant and Brown were released, Brown returned and asked for his "stuff" back.

¶ 14 During redirect, Ohle acknowledged that, although he had an idea of what was in defendant's pocket, it was not "immediately apparent," so he asked. Earlier on the day of the stop, the surveillance team saw defendant and Brown speaking with Holmes at an apartment complex in Oak Park. Ohle did not believe that the surveillance team observed a narcotics transaction, but, based on that conversation and phone surveillance, officers believed that a narcotics transaction occurred. Only Holmes's phone was "tapped."

¶ 15 When asked how officers knew that defendant or Brown were speaking to Holmes, Ohle replied that, based upon prior surveillance, officers had information on defendant and his vehicle. Ohle heard Brown on the phone prior to December 1, 2017, and was familiar with Brown's voice, but was not familiar with defendant's voice prior to the stop. Ohle did not know if defendant's phone was used to call Holmes or whether defendant spoke on a phone call to Holmes, and did not remember seeing defendant prior to December 1, 2017.

¶ 16 The State then called Chicago police detective Michael Galligan, who testified that in 2016 and 2017, he investigated a "drug trafficking organization." As part of the investigation, a judge granted an order to intercept calls relating to phone number 312-***-8255. This phone number, tied to a phone operated by Holmes, was referred to as target phone 11. Target phone 11 had contact with phone 773-***-7084 multiple times during the investigation. A "wire room" was maintained at a police station that intercepted and recorded phone calls and monitored pod cameras.

¶ 17 On December 1, 2017, officers monitored a pod camera near a Subway restaurant in the 3600 block of West Grand Avenue. At the hearing, Galligan identified "still shots" taken from that pod camera's video between 1:35 and 1:56 p.m., including one in which he identified defendant, Brown, and a silver van.[3] Shortly after 6 p.m., Galligan responded to an investigatory stop involving defendant, Brown, and that van.

¶ 18 The State then presented a disk containing eight telephone calls recorded on December 1, 2017, to and from target phone 11. Galligan testified that this disk contained a true and accurate

[3] The record contains photographs depicting a Subway restaurant, and a silver van in a parking lot with two figures.

copy of the calls. When a call was intercepted, a transcript was generated. He identified the transcripts of these calls, which were "fair translations."

¶ 19 The State sought to enter the disk into evidence and to use the transcripts for "demonstrative purposes only." Defendant's counsel objected to the transcripts, which the court overruled, admitting the transcripts for demonstrative purposes only. The State later withdrew the transcripts for demonstrative purposes, and published them.

¶ 20 The State then played the calls.[4] Galligan testified that the "louder and deeper" voice belonged to Holmes and the second voice was Brown, and that Brown was requesting narcotics. Another phone call was a discussion of how long it would take to prepare the narcotics. In a later call, Brown asked whether " '[i]t's already put together,' " and Holmes replied affirmatively, but stated that someone was out of rubber bands. Galligan explained that this conversation addressed narcotics packaging, noting that rubber bands are used to bundle individual bags of heroin. In another call, the men discussed a location in the 900 block of North Austin in Oak Park, where Holmes was previously observed. Following that phone call, Galligan arranged for surveillance at the North Austin location.

¶ 21 At the hearing, Galligan identified a photograph of the North Austin location, which he described as having a "driveway" that went to the back of the building. From the street, one could not see behind the building. Around 5:30 p.m. on December 1, 2017, Galligan observed the silver van drive to the back of the building. Approximately 6:03 p.m., he observed a vehicle, registered

[4] The disk containing eight audio files, and transcripts of eight phone calls, are included in the record on appeal. This court has reviewed the audio files and the transcripts. The audio files are low quality and parts are inaudible. Although the identification numbers on several of these transcripts vary from the identification numbers used by the State at trial, their contents generally correspond to the content of Galligan's testimony.

to Holmes, drive to the back of the building. Several minutes later, both vehicles departed. Galligan believed that a narcotics transaction occurred behind the building, and therefore instructed that the van be stopped.

¶ 22 Galligan then testified that around 6:39 p.m., a call took place between Brown and Holmes in which Brown stated that he would "pull back up" and to "bring more back out." Galligan understood that to mean Brown needed additional narcotics. This call was played for the court.

¶ 23 During cross-examination, Galligan acknowledged that, in the last phone call, the person requesting "more" did not identify himself or state that the police took his "stuff." He did not know to whom the other number in the calls was registered. When the vehicles arrived at the building, Galligan did not see their occupants. He could not see the vehicles when they were behind the building and did not see defendant or Brown speaking to Holmes.

¶ 24 During redirect examination, Galligan testified that target phone 11 was a prepaid cellular phone without an associated address. Galligan asserted that Brown used the other number in the December 1, 2017 calls because Brown's voice was identified in relation to that number.

¶ 25 In closing argument, the defense argued that after the vehicles drove behind the building, no one observed a narcotics transaction or an interaction. Because no one observed the vehicles' occupants, there was no probable cause to stop the van or reason to perform a protective patdown on defendant. Moreover, the search of defendant was improper because Ohle did not "feel" a firearm and it was "not immediately apparent" that the bulge was narcotics. The State responded that the van was not stopped on a "mere" hunch, but because Brown was under police suspicion for a "over a month" and officers believed that phone calls between Brown and Holmes discussed a narcotics transaction.

¶ 26 The court denied the motion to suppress, as the van was stopped because of a long-term investigation with the collective knowledge of "lots" of officers, and, therefore, the totality of the information known at the time was sufficient. As to the patdown of defendant, Ohle felt an object, asked what it was, and believed that it was narcotics based upon defendant's statements.

¶ 27 On December 19, 2019, defendant retained new counsel. On January 27, 2020, new counsel filed a motion to suppress evidence alleging that at the time of the search, officers did not have a warrant, exigent circumstances, or articulable facts constituting probable cause. In a supporting memorandum, new counsel asserted that defendant was never seen with members of the alleged drug conspiracy or observed engaging in a narcotics transaction, and that officers had no idea of his identity prior to the stop. Moreover, the officers did not articulate a reason for searching defendant. Attached was a December 1, 2017 "Narcotics Division Supplementary Report," which included an investigation summary. The summary stated, relevant here, that Brown was seated in the van's front passenger seat with "his hand down towards the center console" and that defendant and Brown were ordered to show their hands for safety reasons.

¶ 28 At a February 14, 2020 hearing, new counsel represented to the trial court that he was unaware that the court had previously ruled on a motion to suppress. Therefore, new counsel asked the trial court to consider his motion as a motion to reconsider, which the court allowed.

¶ 29 The trial court denied the motion, finding that the investigatory stop was based on phone calls, surveillance cameras, and "a lot" of people on tape. The court further found a basis for a patdown, as the officers said "they saw movement *** into the console area," this was an investigation into a suspected "drug organization," and "some might say drugs and guns *** tend to follow each other."

¶ 30 B. TRIAL

¶ 31 The matter proceeded to a bench trial solely on the charge of possession of a controlled substance with intent to deliver. Galligan and Ohle testified consistently with their testimony at the hearing on the motion to suppress. Ohle additionally testified that when he approached the passenger side of the van, he observed Brown "placing" his hands toward the middle console but could not see whether Brown held anything. The State presented testimony establishing that the contents of 35 of the 111 items recovered from defendant weighed 15.3 grams and tested positive for heroin and the synthetic opiate U-47700. The trial court found defendant guilty of the lesser-included offense of possession of a controlled substance.

¶ 32 Defendant filed a motion for a finding of not guilty or for a new trial alleging, relevant here, that the motion to suppress was erroneously denied. The court denied the motion. Following argument, defendant was sentenced to four years in prison for possession of a controlled substance.

¶ 33 II. ANALYSIS

¶ 34 On appeal, defendant first contends that the trial court erred in denying the motion to suppress and motion to reconsider when the police lacked reasonable suspicion to stop, seize, and search him.

¶ 35 A defendant filing a motion to suppress evidence bears the burden of making a "*prima facie* case that the evidence was obtained by an illegal search or seizure." *People v. Brooks*, 2017 IL 121413, ¶ 22. Where the basis for the motion is an allegedly illegal search, a defendant must establish that there was a search and that it was illegal. *Id*. Once the defendant makes a *prima facie* case, the burden shifts to the State to present evidence to counter it. *Id*.

¶ 36 When reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Grant*, 2013 IL 112734, ¶ 12. We accord great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence. *Id.* That being said, "a reviewing court remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted" *People v. Hackett*, 2012 IL 111781, ¶ 18. We review *de novo* the trial court's ultimate legal ruling as to whether suppression was warranted and may consider evidence from the suppression hearing and the trial. *Id.*; *People v. Hood*, 2019 IL App (1st) 162194, ¶¶ 38-39.

¶ 37 A. INVESTIGATIVE STOP

¶ 38 Defendant first contends that the stop in this case was not justified at its inception, and, therefore, he was unlawfully seized.

¶ 39 The fourth amendment to the United States Constitution, and the Illinois Constitution, guarantee the "right of individuals to be free from unreasonable searches and seizures." *People v. Colyar*, 2013 IL 111835, ¶ 31 (citing U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6). "Reasonableness under the fourth amendment generally requires a warrant supported by probable cause." *People v. Johnson*, 237 Ill. 2d 81, 89 (2010). However, " '[w]hen faced with special law enforcement needs, *** circumstances may render a warrantless search or seizure reasonable.' " *People v. Jones*, 215 Ill. 2d 261, 269 (2005) (quoting *Illinois v. McArthur*, 531 U.S. 326, 330 (2001)).

¶ 40 "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." (Internal

quotation marks omitted.) *People v. Luedemann*, 222 Ill. 2d 530, 550 (2006). "It is well settled that not every encounter between the police and a private citizen results in a seizure." *Id*. at 544. Rather, police-citizen encounters are categorized into three tiers: (1) the arrest of a citizen, which must be supported by probable cause; (2) a "temporary investigative seizure" pursuant to *Terry*; and (3) a consensual encounter involving "no coercion or detention" and no fourth amendment interests. *People v. McDonough*, 239 Ill. 2d 260, 268 (2010). Under the " 'fruit of the poisonous tree' " doctrine, "evidence obtained by exploiting a fourth amendment violation is subject to suppression as the 'fruit' of that poisonous tree." *People v. Henderson*, 2013 IL 114040, ¶ 33.

¶ 41 Pursuant to *Terry*, a police officer may "briefly" detain a person for temporary questioning when the officer reasonably believes that the person has committed, or is about to commit, an offense. *People v. Thomas*, 198 Ill. 2d 103, 108-09 (2001) (citing *Terry*, 392 U.S. at 22); see also 725 ILCS 5/107-14(a) (West 2016). "Reasonable suspicion is a low bar." *People v. Patel*, 2020 IL App (4th) 190917, ¶ 25. "[T]he evidence necessary to justify a *Terry* stop need not rise to the level of probable cause and can even arise when no violation of the law is witnessed; however, a mere hunch is insufficient." *People v. Maxey*, 2011 IL App (1st) 100011, ¶ 46.

¶ 42 To justify an investigatory stop, an officer must be able to point to specific, articulable facts, which, taken with rational inferences therefrom, reasonably warranted the intrusion. *Thomas*, 198 Ill. 2d at 109 (citing *Terry*, 392 U.S. at 20-21). The decision to make an investigatory stop is based on the totality of the circumstances. *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 14. A finding of reasonable suspicion "must be based on commonsense judgments and inferences about human behavior, and due weight must be given to the reasonable inferences the officer is entitled to draw from the facts in light of his experience." *People v. Thomas*, 2019 IL App (1st) 170474,

¶ 19. Further, "information known to all of the police officers acting in concert can be examined when determining whether the officer initiating the stop had reasonable suspicion to justify a *Terry* stop." *People v. Ewing*, 377 Ill. App. 3d 585, 593 (2007).

¶ 43 In the case at bar, based upon the totality of the circumstances, there were sufficient facts to warrant an investigatory stop of the van. See *Sanders*, 2013 IL App (1st) 102696, ¶ 14. At the suppression hearing, Ohle and Galligan's testimony established that numerous officers were involved in an investigation that included intercepting and recording phone calls associated with Holmes and the monitoring of pod camera footage.

¶ 44 Galligan testified that, on December 1, 2017, officers listened to phone calls on target phone 11 between Holmes and a voice determined to be Brown, which detailed plans to meet for a narcotics transaction at a location on North Austin where Holmes was previously observed. Additional surveillance indicated that defendant, Brown, and a silver van were involved. Thereafter, Galligan relocated to the North Austin address, where he observed the van and a vehicle registered to Holmes drive behind a building.

¶ 45 Galligan could not see the occupants of these vehicles and lost sight of the vehicles when they went behind the building. But he concluded, based upon the investigation, the previous phone calls, pod camera footage, and his observations at the North Austin location, that a narcotics transaction occurred. Galligan therefore instructed that the van be stopped, and Ohle and his partner effectuated a *Terry* stop. See *Ewing*, 377 Ill. App. 3d at 593 (collective knowledge of all officers can be examined when determining whether the officer performing the stop had reasonable suspicion to justify it).

¶ 46 Here, Galligan's testimony detailed the investigation, including how defendant and the van were identified and Brown was associated with the van, as well as the phone calls establishing that Brown and Holmes planned a narcotics transaction at a location where Holmes was previously observed. Thereafter, Galligan observed the van and a vehicle registered to Holmes proceed behind that building. See *People v. Edwards*, 2020 IL App (1st) 182245, ¶ 24 ("the officer must be able to point to specific and articulable facts that, taken together with rational inferences from those facts, reasonably warrant that intrusion"). While Galligan admitted that he did not observe a narcotics transaction, he made the reasonable inference that one occurred based upon the facts and in light of his experience. See *Patel*, 2020 IL App (4th) 190917, ¶ 25 (reasonable suspicion is a low bar). Accordingly, based upon the totality of these circumstances, officers had the reasonable suspicion necessary to warrant a *Terry* stop. See *Thomas*, 198 Ill. 2d at 109.

¶ 47 B. PATDOWN

¶ 48 Defendant next contends that, even accepting that the *Terry* stop was proper, Ohle's patdown was not justified.

¶ 49 "Whether an investigatory stop is valid is a separate question from whether a search for weapons is valid." *People v. Flowers*, 179 Ill. 2d 257, 263 (1997). In other words, "[t]he right to frisk does not automatically flow from a valid *Terry* stop." *People v. Lockett*, 2022 IL App (1st) 190716, ¶ 21. "When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others," the officer may "take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Terry*, 392 U.S. at 24. The search

is "strictly limited to a search for weapons," and its "sole justification" is "the protection of the police officer and others in the vicinity, not to gather evidence." *Flowers*, 179 Ill. 2d at 263.

¶ 50 The validity of a frisk conducted during a valid investigatory stop is assessed by an objective standard. *Id.* at 264. The officer performing the frisk must point to specific articulable facts, which, taken with natural inferences, reasonably warranted the intrusion. *Id*. While an officer must have more than a mere hunch, the officer's subjective belief regarding the safety of the situation is one factor that may be considered in determining whether a weapons frisk was valid under *Terry*. *Id.* However, the officer's belief that a person is armed must be reasonable. *People v. Rivera*, 272 Ill. App. 3d 502, 505 (1995). Once a reasonable belief of danger arises, an officer may conduct a frisk limited to the minimum scope necessary to discover objects capable of being used as weapons. *Id*.; see also *People v. Morquecho*, 347 Ill. App. 3d 382, 386-87 (2004) (when the only possible "factual basis" for a search was officer safety, the investigation of an " 'unusual bulge' " that " 'did not feel like a weapon' " exceeded the permissible scope of a weapons frisk).

¶ 51 In *People v. Fox*, 2014 IL App (2d) 130320, ¶ 13, the court listed factors to consider when determining whether the objective standard is satisfied, that is, whether "a reasonably prudent person in that situation would believe that his or her safety or the safety of others [was] in danger." These included whether the officers were outnumbered and whether the suspect behaved in a way that gave rise to a reasonable suspicion that he or she was "armed and dangerous." *Id.* ¶¶ 15, 17. The court further noted that the "risk of flight does not support a search even though it might support a stop." *Id.* ¶ 19. The court determined that the time of day "standing alone" did not justify a search; rather, this factor arose "only in conjunction with an already potentially dangerous

situation, such as where the officer is outnumbered or the suspects are making furtive motions that could be consistent with holding a weapon or another dangerous object." *Id.* ¶ 21.

¶ 52 The court further explained that, while an officer's experience and subjective opinion were relevant, "they must be used to demonstrate that a defendant was presently dangerous to the officer or others, based upon specific, articulable facts." *Id.* ¶ 22. The fact that an officer's experience led to the conclusion that suspects in a certain offense "tended to carry weapons," for example, was not sufficient because those "experiential inferences" would lead to a search "simply" because a person was suspected of a certain offense. *Id.* The court reiterated that the officer's experience and subjective opinion may be considered, but there must also be a tie to "some other, specific circumstance" which justifies a "reasonable, articulable suspicion of danger." *Id.*

¶ 53 Here, at the hearing on the motion to suppress, Ohle testified that he performed a protective patdown on defendant and Brown to ensure that neither had weapons. Ohle also testified that defendant and Brown twice denied having weapons and complied with instructions to exit the van. The record reveals that Ohle and his partner were not outnumbered; rather, there were two officers and two suspects. While the search took place in the evening, at the hearing on the motion to suppress, Ohle did not identify any behavior supporting a conclusion that defendant and Brown were armed and dangerous. Moreover, defendant and Brown complied with officers' instructions, "minimiz[ing] the danger in the situation." See *Fox*, 2014 IL App (2d) 130320, ¶ 21. Considering the circumstances known to Ohle at the time of the patdown, there was no justification for believing that defendant was armed and dangerous. See *Lockett*, 2022 IL App (1st) 190716, ¶¶ 21-22; see also *Fox*, 2014 IL App (2d) 130320, ¶ 25 (search was unreasonable absent "specific information" suggesting that a defendant was dangerous at the time of the stop).

¶ 54 The State posits that Ohle's patdown of defendant was justified by his "reasonable belief" that a narcotics transaction had recently occurred. We disagree, and find *People v. Rivera*, 272 Ill. App. 3d 502 (1995), instructive.

¶ 55 In that case, the defendant, who was charged with possession of a controlled substance, filed a motion to suppress evidence alleging that he was stopped and frisked in violation of *Terry*. *Id.* at 503. At the hearing on the motion, an officer testified that he and his partner responded to radio calls indicating that two men were selling drugs at a particular address, then left the scene and walked on a certain street. *Id.* The calls contained descriptions of the men. Upon seeing the defendant and a companion, who fit those descriptions, the officers told the men to stop. *Id.* The men complied. *Id.* The men's jackets were zipped. *Id.* at 503-04. The officer testified that " 'sometimes normally in narcotics arrests, subjects have been known to carry weapons,' " so the officers asked the men to unzip their coats. *Id.* at 504. The men complied and did not threaten the officers. *Id.* Once the jackets were unzipped, plastic bags were observed protruding from each man's waistband. *Id*. The officer testified that he believed that the bags contained narcotics and removed them. *Id.*

¶ 56 In denying the motion to suppress, the trial court found that, given the nature of the drug trade and the officer's experience, it was proper to determine whether the suspects were armed in order to secure officer safety. *Id.* The court further found that asking the suspects to unzip their jackets was reasonable, which led to evidence in plain view that the officers were entitled to seize. *Id*.

¶ 57 On appeal, the court found that the police had the minimum articulable suspicion required to stop the defendant, noting that the defendant and the other man were approximately two blocks

from an alleged crime scene and fit the description broadcast on the radio calls. *Id.* at 506. After finding the stop proper, the court turned to "whether an officer's statement or belief that 'narcotic arrests often or sometimes or always involve weapons' " was "sufficient to automatically justify a frisk." *Id.* The court determined that "*Terry* requires more than a generalized belief or statement that narcotic dealers may carry weapons." *Id.* at 509. Thus, "the mere fact that an officer believes drug dealers carry weapons or narcotic arrests involve weapons is insufficient alone to support reasonable suspicion to justify a *Terry* frisk." *Id.*

¶ 58 The court further noted that the record demonstrated that the officers frisked the defendant based upon the fact that he was a suspect in a narcotics transaction, and therefore, may have been armed. *Id.* However, the officers did not observe the narcotics transaction and so did not have a reasonable suspicion that the defendant was a "drug dealer." *Id.* Moreover, the record did not demonstrate that the defendant attempted to avoid officers, run, hide his hands, make sudden movements, or act scared, nervous or "jittery." *Id*. Therefore, the court determined the trial court erred in denying the defendant's motion to suppress because the officers did not have reasonable suspicion to frisk the defendant. *Id.*

¶ 59 Here, as in *Rivera*, the mere fact that defendant was suspected of participating in a drug transaction was insufficient to support a reasonable suspicion to justify a *Terry* frisk. At the suppression hearing, Ohle did not identify any specific facts that caused him to believe that defendant was armed and dangerous. Rather, he testified that the patdown was to ensure that neither defendant nor Brown had weapons. Moreover, Ohle's testimony established that defendant pulled over, complied with officer instructions, and twice denied having a weapon.

¶ 60 As noted, when reviewing a ruling on a motion to suppress, this court may consider evidence from the suppression hearing and the trial. *Hood*, 2019 IL App (1st) 162194, ¶¶ 38-39. At trial, Ohle did not identify any additional facts that caused him to believe that defendant was armed and dangerous. See *Rivera*, 272 Ill. App. 3d at 509 ("*Terry* requires more than a generalized belief or statement that narcotic dealers may carry weapons"). Ohle merely added that Brown "plac[ed]" his hands toward the middle console, but acknowledged that he could not see whether Brown held anything.

¶ 61 Ultimately, Ohle "failed to identify any 'specific and articulable facts necessary to justify a search for weapons.' " *Lockett*, 2022 IL App (1st) 190716, ¶ 24 (quoting *People v. Galvin*, 127 Ill. 2d 153, 169 (1989)). Accordingly, Ohle unconstitutionally performed a patdown of defendant without justification, and the trial court erred in denying defendant's motion to suppress. *Id.* The evidence obtained through the improper frisk of defendant should have been suppressed. *Id.* ¶ 36; see also *Henderson*, 2013 IL 114040, ¶ 33 (evidence obtained by an illegal search is subject to suppression as fruit of the poisonous tree). Without the suppressed evidence, the State cannot prove beyond a reasonable doubt that defendant possessed narcotics and his conviction must be vacated. See *Lockett*, 2022 IL App (1st) 190716, ¶ 36. We therefore need not address defendant's remaining contention on appeal. *Id.*

¶ 62 III. CONCLUSION

¶ 63 For the foregoing reasons, we reverse the trial court's order denying defendant's motion to suppress evidence. The seized evidence is suppressed, and defendant's conviction is vacated.

¶ 64 Reversed and vacated.