2016 IL App (1st) 161015-U

SIXTH DIVISION
DECEMBER 9, 2016

No. 1-16-1015

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re CORTILIUS F., a minor,	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	No. 16 JD 192
v.	)	
	)	
Cortilius F., a minor,	)	Honorable
	)	Marianne Jackson,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The minor-respondent's motion to suppress evidence of a firearm recovered from a pat-down search was properly denied. The arresting officer did not need reasonable suspicion of criminal activity to ask the minor-respondent to remove his hands from his jacket pockets. The minor's subsequent behavior, along with the other circumstances of the encounter and the officer's experience, justified the subsequent pat-down search.

¶ 2 Following his adjudication as delinquent for unlawful use of a weapon, the minor-appellant Cortilius F. appeals from the denial of his pre-trial motion to suppress evidence resulting from a pat-down search. We find his contentions to be without merit and affirm.

¶ 3 BACKGROUND

¶ 4 On January 24, 2016, Cortilius was arrested after police discovered he was carrying a loaded handgun in his jacket pocket. Cortilius moved to suppress that evidence. The court conducted a hearing on the motion to suppress on February 22, 2016. The sole testifying witness at the hearing was Cortilius' arresting officer, Officer Young.[1]

¶ 5 Officer Young testified that on the afternoon of January 24, 2016, he and his partner received a report that a number of youths were smoking marijuana in a hallway inside a multi-unit residential building at 655 North Austin Boulevard in Chicago. The report did not give any particular description of the minors involved.

¶ 6 Entering the front of the building, Officer Young saw "maybe three *** kids that were attempting to leave the vestibule of the building" by "running down the stairs." Officer Young and his partner detained three of the minors.

¶ 7 Officer Young then observed Cortilius descending a stairwell within the building, approaching the vestibule where Officer Young was located. Cortilius stopped on a landing "approximately five to six feet away" from Officer Young. He recalled that Cortilius was facing him about "six steps up above me" on the landing, as Officer Young stood in the vestibule.

¶ 8 Officer Young asked Cortilius if he lived in the building, and Cortilius responded no. Officer Young asked Cortilius what floor he lived on, but Cortilius "couldn't reply."

¶ 9 Officer Young saw that Cortilius had both his hands in the front pockets of his jacket. Officer Young testified that, in his approximately ten years as a police officer, he has arrested "dozens" of individuals who concealed firearms in their jacket pockets. He also testified that Cortilius' jacket pockets were large enough to conceal a firearm.

[1] Officer Young's first name is not mentioned in the appellate record.

¶ 10 Officer Young asked Cortilius to remove his hands from his pockets. Officer Young testified that he made the request for "officer safety" and the safety of anyone else in the building. Cortilius did not remove his hands from his pockets. Instead, Cortilius briefly "turned away" from Officer Young in the direction of going back up the stairs then turned back toward Officer Young. Cortilius kept his hands in his jacket pockets.

¶ 11 Officer Young again asked Cortilius to remove his hands from his pockets. Simultaneously, he approached Cortilius and grabbed the outside of his jacket pockets. Officer Young stated he approached "for officer safety, because I felt the minor wasn't complying with removing his hands." Officer Young testified he feared that Cortilius might have a weapon, based on his "training and encounters with people who refuse to take their hands out of their pockets."

¶ 12 As Officer Young approached him, Cortilius began to take his hands out of his pockets. Officer Young testified that "as his hands were coming out of his pockets, I was going for his pockets." Officer Young felt the outside of Cortilius' jacket pockets. With his hand on the outside of the right jacket pocket, Officer Young "felt a hard, metal object consistent with that being a handgun." Officer Young reached into the front right jacket pocket, and removed a handgun. Officer Young then placed Cortilius under arrest.

¶ 13 Officer Young acknowledged that, before doing the pat-down search, he had not seen any weapon and had not observed Cortilius violating any law. At the time he encountered Cortilius, his partner and "two or three other minors" were in the nearby hallway. No other witnesses testified at the motion to suppress.

¶ 14 In denying the motion to suppress, the court noted that the "officer is in a place where he has a right to be" based on the call reporting children smoking marijuana, "[s]o there is some

basis for him to try to *** determine whether or not [Cortilius] is one of those kids who may have been in the hallway smoking marijuana."

¶ 15 The court found that Officer Young "made a reasonable request" to Cortilius to remove his hands from his pockets. The court reasoned that: "Had the minor at that point in time removed his hands from his pockets, any action on behalf of the police officer to reach and grab his pockets this court would have had a problem with. But the minor does not remove his hands from his pockets. *** What he does is to turn away from that officer, prompting the officer to say again: Take your hands out of your pocket."

¶ 16 The court reasoned: "I don't have any problem *** with what happened next. Under those circumstances, take your hands out of your pockets, please. You don't do that. You turn away from him and then turn around suddenly again and go to remove your hands, and I note that this officer did not reach into the minor's pockets. What he did was he reached and grabbed the pockets. And as soon as he reached and grabbed, he felt an object ***."

¶ 17 The court reasoned "it was an incremental thing" and that after Cortilius was asked to remove his hands from his pockets, he "turned away from [Officer Young] *** looking like he might have been trying to go up the steps and away from the officer and then turned around again suddenly and [went] to remove [his] hands from [his] pocket." The court found that Officer Young's actions "in reaching and grabbing the pocket" were "certainly reasonable under the circumstances," and thus denied the motion to suppress.

¶ 18 The court conducted an adjudicatory hearing immediately after the ruling on the motion to suppress, which incorporated the evidence from the motion to suppress hearing. At the adjudicatory hearing, Officer Young gave additional testimony that the gun recovered was a

"380-caliber semiautomatic weapon loaded with seven live rounds." The defense did not call any witnesses.

¶ 19 Finding that Officer Young's testimony was "very credible" and unimpeached, the trial court found Cortilius delinquent of aggravated unlawful use of a weapon.

¶ 20 On March 31, 2016, Cortilius was judged a ward of the court and placed on 30 months' probation. On April 18, 2016, he filed his notice of appeal.

¶ 21 ANALYSIS

¶ 22 We note that we have jurisdiction as the defendant perfected a timely notice of appeal. See Ill. S. Ct. R. 606(a),(b) (eff. Feb. 6, 2013).

¶ 23 On appeal, Cortilius argues that, pursuant to *Terry v. Ohio* (392 U.S. 1 (1968)) and related case law stemming from the fourth amendment of the United States Constitution, Officer Young never had reasonable articulable suspicion that Cortilius was committing a crime, or that he was armed. Thus, he argues that it was not permissible for Officer Young to *either* (1) ask him to remove his hands from his pockets, or (2) conduct a pat-down search of the outside of his jacket for weapons. In turn, he argues that the motion to suppress the evidence recovered from that search should have been granted.

¶ 24 In response, the State takes the view that Officer Young's initial questioning, including his request to remove his hands from his pockets, was a "consensual encounter" rather than a *Terry* stop that required reasonable suspicion of criminal activity. The State argues that, only after Cortilius refused to comply, the incident "transformed into a valid *Terry* stop," by which point the circumstances were such that Officer Young was justified in conducting a pat-down search.

¶ 25 For the reasons below, we agree with the trial court that that there was nothing unreasonable or improper about the officer's initial request for Cortilius to remove his hands from his pockets. We also agree with the trial court that Cortilius' subsequent conduct, under the totality of the circumstances and in light of Officer Young's many years of experience as a police officer, justified the pat-down search. Thus, we affirm the trial court.

¶ 26 "Both the fourth amendment and the Illinois Constitution of 1970 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). However, "not every encounter between the police and a citizen results in a seizure." *People v. White*, 221 Ill. 2d 1, 21 (2006). "Courts have divided police-citizen encounters into three tiers: (1) arrests which must be supported by probable cause; (2) brief investigative detentions, or '*Terry* stops,' which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) encounters that involve no coercion or detention and thus do not implicate fourth amendment interests. [Citations.] Third-tier encounters are also known as consensual encounters." *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006).

¶ 27 In *Terry*, the United States Supreme Court "held that a brief investigatory stop, even in the absence of probable cause, is reasonable and lawful under the fourth amendment when a totality of the circumstances reasonably lead the officer to conclude that criminal activity may be afoot and the subject is armed and dangerous." *Colyar*, 2013 IL 111835, ¶ 32 (citing *Terry*, 392 U.S. at 30). *Terry* also instructs when an officer may conduct a pat-down search for weapons: if " 'nothing in the initial stages of the encounter serves to dispel [the officer's] reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover

weapons which might be used to assault him.' " *Id.* ¶ 37 (quoting *Terry*, 392 U.S. at 30-31). "The [U.S. Supreme] Court also indicated that courts reviewing the propriety of these types of investigatory stops must decide each case on its own unique facts." *Id.* (quoting *Terry*, 392 U.S. at 30-31).

¶ 28 Our supreme court has delineated a "two-part standard" for reviewing a decision on a motion to suppress. *Colyar*, 2013 IL 111835, ¶ 24. "We afford 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. [Citation.] We review *de novo*, however, the trial court's ultimate legal ruling on whether suppression is warranted. [Citation.]" *Id.*

¶ 29 In this appeal, Cortilius does not dispute the court's factual findings or suggest that Officer Young's testimony was not credible. Rather, based on the testimony elicited, he argues that Officer Young lacked reasonable suspicion that Cortilius "had been smoking marijuana or was armed at the time he asked Cortilius to remove his hands from his pockets." He argues that "[a]t the time he asked Cortilius to remove his hands from his pockets, Officer Young had no articulable suspicion on which to even *stop* Cortilius, let alone frisk him." Apart from his contention that Officer Young could not justifiably ask him to remove his hands from his pockets, Cortilius further argues that refusing Officer Young's request did not provide sufficient justification for Officer Young to conduct the pat-down search that led to the discovery of the weapon in his jacket pocket.

¶ 30 We find that Cortilius' arguments are without merit. First, we reject Cortilius' suggestion that Officer Young was required to have reasonable suspicion in order to ask Cortilius questions or ask him to remove his hands from his pockets. Cortilius argues that Officer Young "had no more authority to order Cortilius to take his hands out of his pockets than he had to order

Cortilius to empty his pockets." In other words, Cortilius' argument equates Officer Young's initial questioning of him, as well as the request to remove his hands from his pockets, as equivalent to a *Terry* stop. From that premise, he argues that Officer Young's action was unjustified due to a lack of reasonable suspicion that Cortilius was personally committing any crime or was armed.

¶ 31 Cortilius emphasizes that the report leading the police to the building did not provide any description of the youths allegedly smoking marijuana, and that Officer Young did not observe Cortilius to be engaging in any criminal activity when he encountered him in the stairwell. We acknowledge that a person's mere proximity to the area of a reported crime will not, in itself, give rise to reasonable suspicion warranting a *Terry* stop or a pat-down search. *People v. Shipp*, 2015 IL App (2d) 130587, ¶¶ 35-39 (defendant's presence in area where 911 call reported a fight did not provide reasonable suspicion to justify *Terry* stop where there "were no facts to tie defendant to the report of criminal activity"); *In re Mario T.*, 376 Ill. App. 3d 468, 475 (2007) ("As the radio call did not contain any information to suggest that the individuals allegedly involved in the attempted break-in posed a threat *** the radio call, itself, does not provide any basis to reasonably suspect that [the police officer] *** was in danger of attack so as to warrant the search of the respondent's person for weapons").

¶ 32 However, Cortilius' argument presumes that an officer's request to remove one's hands from his pockets necessarily indicates a seizure akin to a *Terry* stop, requiring a reasonable articulable suspicion of the person to whom the request is made. We disagree, as "not every encounter between the police and a citizen results in a seizure." *People v. White*, 221 Ill. 2d 1, 21 (2006). "Under the fourth amendment, a person is seized when an officer, by means of physical force or show of authority, restrains a citizen's liberty. [Citations.] To determine

whether a seizure occurred, we look to the totality of the circumstances to determine whether a reasonable person would feel free to leave under the circumstances." (Internal quotation marks omitted.) *Shipp*, 2015 IL App (2d) 130587, ¶ 32. "[T]his analysis requires an objective evaluation of the police conduct in question and does not hinge upon the subjective perception of the person involved." *White*, 221 Ill. 2d at 21-22.

¶ 33 The encounter between Officer Young and Cortilius, *prior* to the pat-down, "involve[d] no coercion or detention and thus do[es] not implicate fourth amendment interests." *Leudemann*, 222 Ill. 2d at 544. In this sense, the case is analogous to *In re Mario T.*, 376 Ill. App. 3d 468 (2007), in which police responded to a radio call reporting that three males were breaking into a second-story unit at an apartment building. Upon finding the respondent and others "loitering" on the second floor, the arresting officer had conducted a "field interview" of the respondent to determine if he lived in the vicinity of the building, before conducting the pat-down search that led to the discovery of cocaine. *Id.* at 471. Although our court ultimately held that the pat-down search was improper, we noted that "the initial encounter between the respondent and the officers was lawful *** because it was not a 'stop' under *Terry v. Ohio* [citation]. Rather it was a 'third tier' encounter between officers and citizens involving no coercion or detention and hence no implication of fourth amendment interests." *Id.* (explaining that "it does not appear that the purpose in conducting the field interview was to conduct a forceful stop"). Instead, we held that the consensual encounter only transformed "into a full-blown *Terry* stop" once the arresting officer began a protective pat-down search of the respondent. *Id.*

¶ 34 As in the case of the field interview at issue in *Mario T.*, we decline to find that Officer Young's initial brief questioning of Cortilius prior to the pat-down search (including his request to remove his hands from his pockets) constituted a forceful detention under *Terry*. Rather, our

evaluation of the encounter between Officer Young and Cortilius, leads us to conclude that this was a non-invasive, non-coercive safety measure, rather than a forceful stop or seizure requiring a particularized articulable suspicion.

¶ 35 We agree with the trial court that Officer Young's request was entirely reasonable under the circumstances, even in the absence of any specific indication that Cortilius was committing a crime. We cannot blind ourselves to the fact that police routinely face situations where they may come into contact with individuals possessing handguns. We also give due consideration to Officer Young's uncontradicted testimony about his experiences of persons concealing guns in pockets and the obvious safety issue presented by such a scenario. In this case, the potential danger posed by an individual possessing a gun was heightened by the fact that the individuals were in a confined space, and that Officer Young's partner, as well as three minors, were in close proximity to the encounter. We decline to find that a mere request to remove his hands from his pockets (without more), involves coercion or detention. Under these circumstances, Officer Young's request for Cortilius to remove his hands from his pockets was entirely reasonable, even without reasonable, articulable suspicion of criminal activity.

¶ 36 Having found that the initial questioning and request to remove his hands from his pockets did not violate the fourth amendment, we turn to the propriety of Officer Young's pat-down search of Cortilius' jacket. Pursuant to *Terry*, an officer is permitted to conduct a protective search of a person's outer clothing where he has "reason to believe that he is dealing with an armed and dangerous individual ***. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Terry*, 392 U.S. at 27. "[I]n determining whether the officer acted reasonably *** due weight must be given *** to the

specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Id.*

¶ 37 Given Officer Young's uncontroverted testimony about Cortilius' behavior and the other circumstances of the encounter, we find that a reasonably prudent officer under the circumstances would believe that his safety was in danger, warranting a pat-down search. Specifically, we note that Cortilius responded to the officer's request to remove his hands from his pockets by turning away as though to head back upstairs (from which it can reasonably be inferred that he considered fleeing the scene), and then quickly turning back to the officer, all while keeping his hands hidden in his jacket pockets. Cortilius' evasive behavior in response to Officer Young's simple request could inspire a reasonable fear that Cortilius was armed, particularly considering Officer Young's experience with individuals concealing firearms in jacket pockets. Also, we note that the close quarters of the stairwell encounter could also contribute to a reasonable belief that Cortilius -- after briefly considering fleeing upstairs in response to Officer Young's request -- was preparing to confront Officer Young, potentially with a gun. Under these circumstances, we cannot say that a reasonably prudent officer would have refrained from approaching Cortilius and grabbing his pockets in which he continued to conceal his hands.

¶ 38 Cortilius argues that his refusal to remove his hands from his pockets was insufficient to justify a pat-down search, but we find that the authorities he relies upon are distinguishable. He cites case law supporting the proposition that a mere refusal to consent to an encounter with police, or to consent to a search, cannot justify a *Terry* stop. See *People v. Linley*, 388 Ill. App. 3d 747, 753 (2009) ("Obviously, one's unwillingness to consent to an encounter with police

cannot, *ipso facto*, create a level of suspicion that would justify a *Terry* stop; were it otherwise, the consensual element of the encounter would be meaningless.")

¶ 39 He thus argues that his "delay in removing his hands from his pockets" was "consistent with his right *** to ignore the police request [] and go on his way." *People v. Smith*, 331 Ill. App. 3d 1049, 1054 (2002) (where defendant was questioned by officer on patrol while standing in front of a "known drug house," holding that "defendant's behavior in backing away from the officers and refusing to remove his hands from his pockets" was "consistent with his right, in the context of a consensual police-citizen encounter, to ignore the police requests and go on his way.")

¶ 40 We find Cortilius' argument unavailing in light of the particular circumstances of this case – the confined circumstances of the stairwell encounter. As described by Officer Young, this was not a situation such as that in *Smith* where Cortilius could simply "go on his way" after being questioned on a public street. See *id*. Rather, the testimony in this case described a scenario in which Officer Young (who was properly in the building to investigate a report) found himself face to face with Cortilius in a stairway, while Officer Young's partner and three other detained minors were in a nearby hallway. Officer Young asked Cortilius to remove his hands from his pockets. Rather than indicating that he wished to "go on his way," Cortilius responded by turning back toward the stairs, as if to flee, before quickly turning back to face the officer. Officer Young – out of concern for the safety of himself and nearby persons, and based on his prior experience with persons concealing firearms — made a split-second decision to grab Cortilius' jacket. We find that "the facts available to the officer at the time of the incident would lead an individual of reasonable caution to believe that the action was appropriate." *Colyar*, 2013 IL 111835, ¶ 40. In other words, a "reasonably prudent man in the circumstances would be

warranted in the belief that his safety or that of others was in danger," justifying the pat-down search. *Terry*, 392 U.S. at 27.

¶ 41 We also acknowledge Cortilius' reliance on case law holding that the action of putting hands into one's pockets does not, without more, justify a *Terry* stop or pat-down search. See, *e.g*., *Shipp*, 2015 IL App (2d) 130587, ¶ 46 ("That defendant placed his hands in his pockets was, standing alone, insufficient" to justify frisk); *In re Rafael E.*, 2014 IL App (1st) 133027, ¶ 31 ("There is nothing criminally suspicious about walking down the street with one's hands in one's pockets"); *People v. F.J.*, 315 Ill. App. 3d 1053, 1058 (2000) ("the fact that someone puts something in his or her pocket does not justify the inference that the person is involved in criminal activity"); *People v. Anderson*, 304 Ill. App. 3d 454, 463 (1999) ("We do not believe that the mere fact that a person put something into his pocket would cause a reasonable person to fear for his safety").

¶ 42 We find that these cases are distinguishable. First, the cited cases involved individuals observed in open spaces of public places by officers on patrol. However, in this case Officer Young was already in a building in a confined space (based on a reported crime) in close proximity to other detained minors when Cortilius approached him while descending a stairwell. A reasonably prudent officer could certainly take into account that confined space, as well as the presence of other individuals nearby, as supporting the need to reduce the risk of armed confrontation.

¶ 43 Further, Officer Young testified that his decision to grab Cortilius' pocket was based not merely upon the fact that Cortilius had his hands in his pockets, but also upon Cortilius' suspicious behavior following the officer's request, including turning as if to flee before turning back to confront the officer. We find that it was reasonable for Officer Young to believe that a

pat-down frisk was justified in order to reduce the risk of harm to him or other nearby individuals.

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

¶ 45 Affirmed.