

No. 1-16-2899

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> DESHAUN W., a Minor,)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Cook County
)	
Petitioner-Appellee,)	
)	
v.)	No. 16 JD 1376
)	
Deshaun W., a Minor)	Honorable
)	Stuart P. Katz,
Respondent-Appellant).)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* We found that the respondent had no reasonable expectation of privacy in the vehicle in which a gun was found and there was no causal nexus between his detention and the discovery of the gun. We, therefore, affirmed the trial court's denial of the respondent's motion to quash arrest and suppress evidence and affirm its finding of delinquency and sentence of 18 months' probation.

¶ 2 The respondent, Deshaun W., appeals from orders of the trial court finding him guilty of aggravated unlawful use of a weapon by a person under the age of 21, adjudicating him a delinquent, and sentencing him to 18 months probation. He argues that the trial court erred in denying his motion to quash arrest and suppress evidence, contending that the vehicle in which

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he was a passenger, and from which a gun was recovered, was searched by the police without either reasonable suspicion or probable cause to believe that a crime had been committed and that he was arrested without probable cause. For the reasons which follow, we affirm.

¶ 3 Deshaun, who was 17 years of age, was arrested on June 16, 2016. Subsequently, the State filed a petition for adjudication of wardship, charging Deshaun with one count of aggravated unlawful use of a weapon without a valid firearm owner's identification (FOID) card, one count of aggravated unlawful use of a weapon while under the age of 21, and one count of unlawful possession of a weapon while under the age of 18.

¶ 4 Prior to trial, Deshaun moved to suppress evidence of the gun which was recovered from the vehicle in which he was a passenger and quash his arrest, and he also moved to suppress his statements which were elicited without *Miranda* warnings (see *Miranda v. Arizona*, 384 U.S. 436 (1966)). At the hearing on his pre-trial motions, Deshaun testified that he was in a car on June 16, 2016, at approximately 2 p.m., along with his brother, Antonio Lynch, his sister, Desiree W., and his sister's boyfriend, Christopher. Deshaun testified that he and his companions had been sitting in their parked vehicle for about 5 minutes when the police arrived. He was seated in the rear seat of the vehicle with his brother. Deshaun stated that a marked Chicago police car stopped alongside and two uniformed officers exited and ordered him and the other occupants out of the vehicle with their hands up. After exiting the vehicle, he and the other occupants were searched. Deshaun testified that, after being searched, he was handcuffed and placed in the police car. Thereafter, the police searched the car in which he had been a passenger and found a backpack. Deshaun stated that one of the officers asked to whom the bag belonged, and he responded that the backpack was his; after which he was then arrested. According to Deshaun, he did not give the police permission to search his backpack. He stated that there was

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another police car on the opposite side of the same street, about five houses away. Deshaun testified that both he and his brother were wearing their hair in dreadlocks.

¶ 5 Desiree testified that, on June 16, 2016, she was seated in a car with her two brothers and her boyfriend when a police car pulled up. She stated that the officers had their guns out and ordered her and the other occupants out of the vehicle. When she and the other occupants exited the vehicle, the males were placed in handcuffs and searched. She was searched by a female police officer. One of the officers who ordered them out of the car went to talk to the officers in a police car on the opposite side of the street. When the officer returned, he asked if she was the owner of the car, and she responded that she was. Thereafter, the police searched the vehicle, including all compartments and the trunk. According to Desiree, the officers never asked permission to search the car. She stated that one of the officers opened a compartment in the vehicle, exposing a backpack. The officer opened the backpack while he was in the vehicle and then removed it and walked across the street to the other officers. Desiree stated that, when the officer returned, he placed her in handcuffs. The officer then addressed her and her companions and told them that he found a gun in the backpack. When Deshaun told the officers that the backpack was his, he was placed in the police car and was driven away.

¶ 6 Chicago police officer, Arturo Guzman, testified that, on June 16, 2016, at approximately 2 p.m., he and his partner, Officer Frankie Turner, responded to a radio alert of a person with a gun in a gray or black car in the area of 73rd Street and South Stewart Avenue. The dispatcher advised that the individual was a black male with braids. When he and his partner arrived at the intersection of 73rd Street and south Stewart Avenue, he observed two other officers near a black car. One of the other officers told him that a gun had been recovered from the black car. According to Officer Guzman, the officer also advised him that one of the individuals in the

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black car told him that a male with dreadlocks in the gray car across the street had a gun and that the occupants of the black car had been arguing with the individuals in the gray car. Officer Guzman stated that he and Officer Turner then approached the occupants of the gray car and asked them to exit the vehicle. Two of the passengers who had been in the back seat were black males with braids. According to Officer Guzman, the occupants of the car were not restrained. He stated that Officer Turner asked the female occupant if he could search the vehicle and she consented. Officer Guzman testified that Officer Turner searched the vehicle and found a backpack between the back seat and the trunk. When Officer Turner exited the vehicle he asked the occupants who it belonged to, and Deshaun stated that it was his.

¶ 7 Officer Turner testified that, on June 16, 2016, at about 2 p.m., he and his partner, Officer Guzman, received a radio message reporting a man with a gun in a gray or black car in the vicinity of 7300 South Stewart Street. When they arrived at the location, he observed that other officers had stopped a black car. One of the officers informed him that they had recovered a gun from the black car and that one of the individuals who they had detained told them that a man with dreadlocks in the gray car on the other side of the street had a gun. According to Officer Turner, he and Officer Guzman then approached the gray car and asked the occupants to step out. The three men, including Deshaun, were handcuffed and were not free to leave. A female occupant was also detained, but she was not handcuffed. The four individuals were searched. When asked who owned the vehicle, the female stated that it was her mother's car. He did not ask the female for permission to search the car. Turner stated that, when he looked into the car, he saw a partition between the rear seat and the trunk. He testified that upon investigation he observed a backpack partially sticking out from behind the rear seat and saw the barrel of a firearm sticking out. When he retrieved the bag and unzipped it, Officer Turner found a loaded

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Mac-10 submachine gun. After finding the weapon, he placed both the female and Deshaun into custody, and asked the group who the backpack belonged to. Deshaun responded: "You know what, its mine, I got into it with these guys."

¶ 8 Following arguments by counsel, the trial court denied both of Deshaun's pre-trial motions, finding that he had no standing to make the motion to suppress. The trial court also found that the officers had reasonable grounds to remove Deshaun and the other occupants from the vehicle and the fact that Deshaun and the other males were handcuffed did not constitute an arrest.

¶ 9 The trial immediately commenced after the trial court denied Deshaun's pre-trial motions. The parties stipulated to the evidence adduced at the hearing on the motions, and the State recalled Officer Turner as a witness.

¶ 10 After Officer Turner testified, the State rested, and Deshaun moved for a directed finding. The trial court granted the motion as to the charges of aggravated unlawful use of a weapon without a valid FOID card and unlawful possession of a weapon while under the age of 18. However, it denied the motion as to the charge of aggravated unlawful use of a weapon by a person under age 21.

¶ 11 Deshaun testified in his case-in-chief. He stated that the gun which was found in the backpack was not his and that he had never seen it before. According to Deshaun, he only told the officers that the backpack was his when they threatened to arrest his sister, but he never told the officers that the gun was his. He stated that his backpack had been in the trunk of the car since school had ended in May.

¶ 12 After Deshaun rested and the parties made their arguments, the trial court adjudged Deshaun guilty of aggravated unlawful use of a weapon by a person under the age of 21, found

him to be delinquent, adjudicated him a ward of the court, and placed him on probation for a period of 18 months. This appeal followed.

¶ 13 As a preliminary matter, we again note that Deshaun filed two pretrial motions; one to suppress statements elicited without *Miranda* warnings and one to suppress evidence and quash arrest. On appeal, however, Deshaun has not made an argument addressed to the trial court's denial of his motion to suppress statements. As a consequence, any issue as to the propriety of the denial of that motion has been forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 14 In urging reversal, Deshaun argues that the trial court erred in failing to grant his motion to suppress evidence and quash his arrest. He contends that he and his companions were detained on the basis of an anonymous tip of a man with a gun in a gray car, and that the officers had no reasonable suspicion or probable cause to believe that either he, or any of his companions, had committed a crime. The State argues that Deshaun had no legitimate expectation of privacy, or possessory interest, in the vehicle in which his backpack containing the gun was found, and as a consequence, his motion to suppress evidence of the gun was properly denied. We agree with the State.

¶ 15 In reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). We give deference to the factual findings of the trial court, and we will reject those findings only if they are against the manifest weight of the evidence. *Id.* However, we are free to undertake our own assessment of the facts in relation to the issues, and we review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Id.*

¶ 16 The fourth amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches

and seizures." U.S. Const., amend. IV. Although the trial court found that Deshaun had no standing to challenge the search of the vehicle in which the gun was found, we no longer use the rubric of standing when analyzing fourth amendment claims. *People v. Sutherland*, 223 Ill. 2d 187, 229-30 (2006). Rather, the relevant inquiry is whether the person claiming the protections of the fourth amendment had a legitimate expectation of privacy in the place searched. *Id.* at 230. In determining whether an individual had a legitimate expectation of privacy in the property searched, we consider: whether the individual had an ownership or possessory interest in the property searched; his prior use of the property; his ability to control or exclude others' use of the property; and his subjective expectation of privacy. *Id.* One who challenges a search on fourth amendment grounds has the burden of establishing a legitimate expectation of privacy. *People v. Johnson*, 237 Ill. 2d 81, 90 (2010).

¶ 17 In this case, there is no evidence in the record that Deshaun had an ownership, or possessory interest, in the car which was searched, and he produced no evidence that he had previously used the vehicle or could control its use. Further, he did not produce any evidence of a subjective expectation of privacy in the vehicle. The fact that Deshaun was a passenger in the vehicle, standing alone, does not give rise to a legitimate expectation of privacy. See *id.* On the record before us, we conclude that Deshaun had no legitimate expectation of privacy in the vehicle in which the gun was found and, therefore, may not challenge the search of the vehicle. We note that Deshaun has not challenged the search of his backpack from which the gun was recovered, and we will, therefore, not address the question other than to observe that Officer Turner testified that he saw the barrel of the gun sticking out from the backpack when he searched the vehicle.

¶ 18 Deshaun also argues that the officers had no reasonable suspicion that he committed a crime, or was about to commit a crime, when they ordered him and the other occupants out of the vehicle and that they lacked probable cause to arrest him at the time that they placed him in handcuffs. Deshaun concludes that the gun which was discovered after his unlawful detention and arrest was the "fruit of the poisonous tree" and should have been suppressed. The State argues that, under the circumstances, the police officers had a reasonable articulable suspicion that one of the occupants of the vehicle in which Deshaun was a passenger was in possession of a gun, justifying an investigatory stop, and the fact that Deshaun was handcuffed did not transform a valid investigatory stop into an arrest. Again, we agree with the State.

¶ 19 Reasonableness of a search or seizure in the context of the fourth amendment to the United States Constitution generally requires a warrant supported by probable cause. *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001). However, in *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968), the Supreme Court recognized a limited exception to the probable cause requirement, allowing police officers to briefly stop a person for temporary questioning when the officer reasonably believes that the person has committed, or is about to commit, a crime. Such a temporary detention has come to be known as a *Terry* stop. To justify a *Terry* stop, the officer must be able to point to specific and articulable facts which, combined with rational inferences therefrom, reasonably warrant the intrusion. *People v. Thomas*, 198 Ill. 2d 103, 109 (2001). Whether an investigatory stop is reasonable is judged on an objective standard (*People v. Nitz*, 371 Ill. App. 3d 747, 751 (2007)), viewed from the perspective of a reasonable police officer at the time of the stop (*Thomas*, 198 Ill. 2d at 110).

¶ 20 A *Terry* stop may be initiated based upon information received from a member of the general public. *Nitz*, 371 Ill. App. 3d at 751. However, an anonymous telephone call reporting

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that an individual at a specific location and wearing particular clothing is carrying a gun does not provide the police with the reasonable suspicion sufficient to support a *Terry* stop. *Florida v. J.L.*, 529 U.S. 266, 272-74 (2000).

¶ 21 Although the source of the radio alert which directed Officers Guzman and Turner to the area of 73rd Street and South Stewart Avenue was anonymous and did not contain the indicia of reliability sufficient to support a *Terry* stop, the information was independently corroborated by the statements of one of the individuals taken into custody by other officers after a gun was recovered from the black car. The radio alert advised that a male with braids in a gray or black car at a specific location had a gun. According to Officers Guzman and Turner, when they arrived at the location described in the radio alert, they saw other officers who had stopped a black car in the immediate vicinity. They testified that they spoke to those officers and were informed that a gun had been recovered from the black car and that one of the occupants had told them that a man with dreadlocks in the gray car on the other side of the street had a gun. The individual who relayed that information was not an anonymous tipster. He relayed the information face-to-face to the officers who detained him and provided additional facts supporting his assertions, namely: the fact that he and his companions had been arguing with the occupants of the gray car. The fact that the detainee from the black car related the information to officers other than Guzman and Torres is of little consequence, as the collective knowledge of all of the officers may be considered in determining whether reasonable suspicion existed to support an investigatory stop. *People v. Linley*, 388 Ill. App. 3d 747, 749 (2009); *People v. Ewing*, 377 Ill. App. 3d 585, 593 (2007).

¶ 22 Prior to conducting an investigatory stop of the vehicle in which Deshaun was a passenger, Officers Guzman and Turner had not only the information relayed in the radio alert,

but were also advised of the statements of the detainee from the black car. We believe, therefore, that the particular circumstances in this case support the trial court's conclusion that the police had a reasonable articulable suspicion that one of the occupants of the vehicle in which Deshaun was a passenger was in possession of a gun, justifying a *Terry* stop.

¶ 23 Deshaun also argues that he was placed under arrest without probable cause when he was handcuffed after exiting the vehicle. The State argues that Officers Guzman and Turner had information that the individuals in the car in which Deshaun was a passenger had a gun and, therefore, handcuffing Deshaun when he exited the vehicle for safety reasons did not transform the *Terry* stop into an arrest. Again, we agree with the State.

¶ 24 Handcuffing does not automatically transform a *Terry* stop into an arrest. *People v. Colyar*, 2013 IL 111835, ¶ 46. When, as in this case, police officers conducting a *Terry* stop have reasonable suspicion that the individual might be armed, the officer is permitted to take all measures, including handcuffing, to neutralize any threat of physical harm. *Id.* ¶¶ 45-47. We, therefore, find no error in the trial court's determination that the handcuffing of Deshaun did not escalate the *Terry* stop into an arrest.

¶ 25 As a final matter, we note that a determination that an individual has been illegally detained will not necessarily resolve the issue of whether subsequently obtained evidence is admissible. *Johnson*, 237 Ill. 2d at 92. The evidence sought to be suppressed must have been obtained as a result of the illegal detention. *Id.*

¶ 26 In the present case, even if Deshaun were correct that the actions of the officers in handcuffing him escalated a *Terry* stop into an illegal arrest, the gun at issue was not obtained from the vehicle as a result of that arrest. Stated otherwise, the alleged arrest did not lead to the

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search and, therefore, could not taint the search with illegality and render the gun "fruit of the poisonous tree."

¶ 27 Based upon the foregoing analysis, we affirm the orders of the trial court denying Deshaun's motion to suppress evidence and quash arrest, adjudging Deshaun guilty of aggravated unlawful use of a weapon by a person under the age of 21, finding him to be delinquent, adjudicating him a ward of the court, and placing him on probation for a period of 18 months.

¶ 28 Affirmed.