2019 IL App (1st) 161682-U

FOURTH DIVISION
May 17, 2019

No. 1-16-1682

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JUAN VILLEGAS, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County No. 15 CR 7593 Honorable Vincent M. Gaughan, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justice Gordon concurred in the judgment.
Justice Gordon also specially concurred.
Justice Burke dissented.

ORDER

¶ 1 *Held*: Reversing defendant's conviction for aggravated unlawful use of a weapon where the trial court erred in denying defendant's motion to suppress because the officers lacked reasonable articulable suspicion to conduct the *Terry* stop.

¶ 2 Following a jury trial, defendant Juan Villegas was found guilty of one count of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (3)(A-5) (West 2014)) and sentenced to 13 months in the Illinois Department of Corrections. On appeal, defendant contends: (1) his motion to quash arrest and suppress evidence was erroneously denied because the police stopped him without reasonable articulable suspicion; and (2) his constitutional right to confrontation was violated when the State used a certified document to establish he did not have a Firearm Owner's Identification (FOID) card or a conceal carry license. Because we agree with defendant that the trial court erred in denying his motion to quash arrest and suppress evidence, we reverse.

¶ 3 BACKGROUND

¶ 4 On April 10, 2015, defendant was arrested for possessing a loaded, concealed firearm on a public street in Chicago and he did not have a valid FOID card or conceal carry license. Defendant was thereafter charged by indictment with six counts of AUUW (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5), (a)(1) (a)(3)(C) (West 2014); 720 ILCS 5/24-1.6(a)(2), (a)(3)(A), (a)(2) (a)(3)(C) (West 2014)).

¶ 5 Prior to trial, defendant moved to quash his arrest and suppress the evidence alleging he was arrested without any reasonable articulable suspicion or probable cause. At the hearing on the motion, Officer Richard Pruger, a 19-year veteran of the Chicago Police Department,[1] was the only witness to testify. Officer Pruger was on patrol at 2:13 a.m. on April 10, 2015, in the area of 26th Street and South Pulaski Road with his partner, Officer Guadalupe Sanchez. Officer Pruger was in the front passenger seat in a marked police vehicle and dressed in his police uniform. As Officer Sanchez drove southbound on Pulaski Road at approximately 10 miles per

[1] We note that at the time of the hearing Officer Pruger had 19 years of experience as a police officer. At the time of the offense, Officer Pruger had 17 years of experience.

hour, Officer Pruger noticed defendant seated on a bench underneath a glass bus stop enclosure. Another individual was seated with defendant. Right next to defendant was a black plastic bag. As their police vehicle continued to drive slowly down Pulaski, Officer Pruger made eye contact with defendant who then "attempted to secrete a black plastic bag behind him." Officer Pruger testified he suspected the black plastic bag contained alcoholic beverages, but he also testified that it is not illegal to possess alcoholic beverages on the streets of Chicago.

¶ 6 The officers exited their police vehicle to conduct an investigation. As they approached defendant, he attempted to secrete the bag further behind him. The officers inquired as to what was in the bag and defendant informed them that it contained beer. Officer Sanchez opened the bag and Officer Pruger observed a sealed beer. Officer Sanchez then asked defendant if he had any weapons on his person to which defendant replied he had a handgun "in his waistband" and that he "keeps it for protection against the bangers." Officer Pruger recovered a 9mm handgun from defendant's waistband and defendant was placed under arrest. The encounter prior to defendant admitting he had a weapon lasted ten seconds.

¶ 7 After hearing closing arguments, the trial court denied defendant's motion to quash and suppress evidence. The trial court found that when defendant looked in the officer's direction and attempted to secrete the black bag reasonable articulable suspicion existed. The trial court further found that the officer's question regarding whether defendant was in possession of a weapon on a public street at 2:13 a.m. was for officer safety and that the officer's question was less intrusive than a pat down. Therefore, there was no violation of the fourth amendment.

¶ 8 The matter proceeded to trial where the State presented the testimonies of Officer Pruger and Officer Sanchez. [2] The State's evidence was as follows. On April 10, 2015, at 2:13 a.m.

[2] We note that defendant is Spanish-speaking and utilized an interpreter during his trial;

officers Pruger and Sanchez were traveling 10 miles per hour southbound on Pulaski Road towards 26th Street when they observed defendant sitting on a bench inside a glass bus stop enclosure with a black plastic bag next to him. As they approached in their marked police vehicle defendant made eye contact with Officer Pruger and attempted to slide the black plastic bag behind him. Officer Pruger suspected that defendant had an alcoholic beverage concealed in the bag. Officer Sanchez curbed the vehicle in front of the bus stop and the officers exited. Officer Sanchez asked defendant in English what was in the bag and defendant responded in English that it was beer. Officer Sanchez confirmed that a sealed beer was in the bag and then inquired if defendant had a weapon on his person. Defendant responded in English, "I have a gun on me, Officer. It's in my waistband. You know how these bangers are around here." Defendant was placed in handcuffs and Officer Pruger searched defendant's person. He recovered a loaded 9mm handgun from defendant's front waistband. Defendant was then placed under arrest.

¶ 9 Also admitted into evidence was a notarized letter from Juan Tracy Schultz of the Illinois State Police dated May 20, 2015, which indicated that defendant had never been issued a FOID card or a conceal carry license card. The State then rested. Defendant renewed his motion to quash and suppress and also moved for a directed verdict. The trial court denied both motions. The defense then rested without presenting any evidence.

¶ 10 After hearing closing arguments and jury instructions, the jury deliberated and ultimately found defendant guilty of one count of AUUW. After his motion for a new trial was denied, a sentencing hearing commenced. Defendant was ultimately sentenced to 13-months imprisonment. This appeal followed.

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however, the record of the suppression hearing does not reflect an interpreter was employed.

¶ 11 ANALYSIS

¶ 12 Before addressing the merits, we first consider our standard of review.[3] When reviewing a trial court's ruling on a motion to quash an arrest and suppress the evidence seized, we accord great deference to the trial court's factual findings unless they are against the manifest weight of the evidence, but we review *de novo* the legal question of whether suppression is warranted under those facts. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009). In this case, defendant does not contest the credibility of the witnesses but challenges the trial court's ultimate legal conclusions based on undisputed facts; accordingly, our review is *de novo. People v. James*, 365 Ill. App. 3d 847, 850 (2006).

¶ 13 We first address whether the officers had a reasonable, articulable suspicion to conduct an investigatory stop as that determination is dispositive of the issue before this court. *People v. Johnson*, 387 Ill. App. 3d 780, 788 (2009). The fourth amendment to the United States Constitution guarantees the right of the people to be secure against unreasonable searches and seizures. U.S. Const., amend. IV. "Reasonableness under the fourth amendment generally requires a warrant supported by probable cause" (*People v. Johnson*, 237 Ill. 2d 81, 89 (2010)), but the Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968), recognized an exception to the warrant requirement. "Under *Terry*, a police officer may briefly stop a person for temporary questioning if the officer has knowledge of sufficient articulable facts at the time of the encounter to create a reasonable suspicion that the person in question has committed or is about to commit a crime." *People v. Lee*, 214 Ill. 2d 476, 487 (2005). This suspicion must amount to

[3] We also observe that defendant requests plain-error review of whether the trial court erred in denying his motion to suppress. Our review of the record reveals that this issue was preserved as defendant raised the question of whether there was reasonable articulable suspicion during the suppression hearing and in his posttrial motion. See *People v. Herron*, 215 Ill. 2d 167, 175 (2005).

more than a mere hunch. *People v. Gherna*, 203 Ill. 2d 165, 177 (2003). Illinois has codified the law of *Terry* in section 107-14 of the Code of Criminal Procedure of 1963: "[A] peace officer *** may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense *** and may demand the name and address of the person and an explanation of his actions." 725 ILCS 5/107-14 (West 2014).

¶ 14 When reviewing the officer's actions, a court applies an objective standard to decide whether the facts available to the officer at the time would lead an individual of reasonable caution to believe that the actions taken were appropriate. *People v. Close*, 238 Ill. 2d 497, 505 (2010). The validity of such a stop rests upon the totality of the facts and circumstances known to the officer at the time of the stop. *People v. Adams*, 225 Ill. App. 3d 815, 818 (1992).

¶ 15 Here, the parties do not dispute that the officers conducted a *Terry* stop of defendant and, in fact, during oral argument the State acknowledged defendant's liberty was restrained during this encounter. See Ill. S. Ct. R. 341(h)(7), (i) (eff. May 25, 2018) ("Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."); *People v. Chatman*, 2016 IL App (1st) 152395, ¶ 45 n. 19 ("This court has repeatedly held that a party forfeits a point by failing to argue it."). Rather the parties disagree about whether the officers had reasonable articulable suspicion of criminal activity to conduct the *Terry* stop. For the reasons that follow, we agree with defendant that the officers lacked reasonable articulable suspicion.

¶ 16 Of the cases relied on by defendant, we find *People v. Sims*, 2014 IL App (1st) 121306, to be most instructive. In that case, the defendant argued that the officer did not have sufficient reasonable suspicion of criminal activity when he observed the defendant sitting in front of a

building and " 'stuff an unknown object into his crotch area' and begin to walk away." *Id.* ¶ 1. The officer, who recognized the defendant and knew he had an arrest for unlawful use of a weapon, stopped and searched defendant on the grounds that his movements were indicative of someone that could be armed. *Id.* The search of the defendant revealed that he was not armed but he was in possession of 25 small bags of cocaine. *Id.* The defendant was charged with possession of a controlled substance with intent to deliver. *Id.* ¶ 2. After his motion to suppress the evidence was denied, a bench trial commenced and the defendant was found guilty. *Id.* ¶¶ 3, 5.

¶ 17 On appeal, the defendant maintained that the trial court erred when it denied his motion to suppress the evidence because the officer's actions were not supported by the reasonable suspicion required for a *Terry* stop. *Id.* ¶ 6. This court agreed, concluding that while the officer may have had a " 'gut feeling' that something might be afoot," such a feeling does not amount to reasonable suspicion. *Id.* ¶ 15. Reasonable suspicion "requires articulable facts which support the inference that a crime has been, or is about to be, committed." *Id.* "Hunches or assumptions by nature speak in possibilities, not reason or objective truths." *Id.* The *Sims* court observed that while the officer testified that he believed that the defendant's actions were consistent with secreting a weapon, he did not view the defendant engaging in any illegal activity. *Id.* ¶ 12. And, in fact, the officer admitted that, although suspicious, it is not a crime to place an object in one's pants. *Id.* The *Sims* court thus concluded that the suspicions the officer held were merely a hunch that did not rise to reasonable articulable suspicion to justify a *Terry* stop. *Id.* ¶ 15.

¶ 18 Here, Officer Pruger testified that prior to initiating the stop, he observed defendant sitting inside an enclosed bus shelter on a wooden bench with a black plastic bag next to him. Another individual was also seated on the bus bench. It was 2:13 a.m. and defendant made eye

contact with Officer Pruger as the police vehicle drove south on Pulaski Road at 10 miles per hour. Officer Pruger then observed defendant "attempt" to "secrete a plastic bag behind him." Officer Pruger testified he believed defendant had an alcoholic beverage in the bag. While he admitted that possession of an alcoholic beverage was not illegal, Officer Pruger decided to further investigate defendant based on these circumstances. Defendant did not flee as the uniformed officers approached but, according to Officer Sanchez, defendant did try to further conceal the bag from their view. Yet, upon the officers' approach, defendant informed them that there was beer in the bag, which Officer Sanchez confirmed to be true.

¶ 19 We find, like the court in *Sims*, that Officer Pruger's suspicions amount to nothing more than a hunch by a police officer with many years of experience; however, that is not enough. Stopping an individual because "it just looks suspicious," without more, is insufficient to establish reasonable suspicion. *People v. Croft*, 346 Ill. App. 3d 669, 676 (2004); *accord People v. F.J.*, 315 Ill. App. 3d 1053, 1059 (2000) (no basis for finding of reasonable suspicion when the officers describe seemingly innocent activity and merely assure the court that he "looked suspicious"). Although the training and experience of the officer are considered as part of the totality of circumstances, the basis of the officer's action must be such that it can be judicially reviewed by an objective standard. *People v. Leggions*, 382 Ill. App. 3d 1129, 1135 (2008). Thus, even though Officer Pruger testified based on his training and 17 years of experience that he believed defendant was in possession of an alcoholic beverage, the fact remains that citizens commonly carry bags as they wait for the bus and possession of an alcoholic beverage is not *per se* illegal. See *id.* at 1135; Chicago Municipal Code § 8-40-030 (amended May 8, 2013) ("It shall be unlawful for any person *to drink* any alcoholic liquor *** on any public way *** in the city." (Emphasis added.)). Citizens are also free to move their bags while waiting at a bus stop

and so, while the officers testified that they believed defendant was attempting to conceal the black plastic bag, this behavior could also have had an innocent explanation. Moreover, the record does not disclose that defendant made any quick or sudden movements so as to create a suggestion that he was hiding a weapon, or any contraband for that matter, within the plastic bag. See *cf. People v. Mills*, 98 Ill. App. 2d 248, 257 (1968) (the trier of fact could infer from the defendant's "sudden movement" that he was hiding contraband). Indeed, the officers did not inquire as to why defendant made the movements he did, but merely inquired as to what was contained in the bag.

¶ 20 Officer Pruger further relied on defendant's eye contact with him to justify the *Terry* stop, but the officers testified that they were traveling down Pulaski at a slow rate of speed. A police vehicle traveling at 10 miles per hour down a major thoroughfare at 2:13 a.m. is of such import that any citizen's eyes would be drawn to observe the vehicle. Such eye contact could cut the other way as well, for a guilty individual would seek to avoid eye contact with the police as they drove past. "Until a suspect's actions are sufficient to create more than a hunch of criminal activity, the fourth amendment protects both innocent and suspicious conduct with equal vigor." *Sims*, 2014 IL App (1st) 121306, ¶ 17. Thus, we find that the observations of defendant by the officers in their totality established nothing more than innocuous behavior on defendant's part that does not support a reasonable suspicion that he was committing a crime to warrant the intrusion. See *Sims*, 2014 IL App (1st) 121306, ¶ 15; *People v. Kipfer*, 356 Ill. App. 3d 132, 138 (2005).

¶ 21 To this end, we find the State's assertion that the facts of *Terry* and *Illinois v. Wardlow*, 528 U.S. 119 (2000), are similar and thus dispositive of this case to be incorrect. In *Terry*, the officer observed two men standing on a street corner at 2:30 in the afternoon and " 'they didn't

look right to [the officer] at the time.' " *Terry*, 392 U.S. at 5. The officer watched the two men walk back and forth in front of a store window in the same manner a dozen times. *Id.* at 6. A third man then appeared and engaged them in conversation. *Id.* The third man left and the two men then resumed their "measured pacing." *Id.* After observing their "elaborately causal and oft-repeated reconnaissance of the store window," the officer suspected the two men of " 'casing a job, a stick-up,' " and approached the men. *Id.* Upon asking them their names and receiving mumbled responses, the officer grabbed one of the men, frisked him, and felt a pistol in the man's overcoat pocket. *Id.* at 7. A .38-caliber revolver was recovered from the man. *Id.* Ultimately, the Supreme Court concluded that the officer had reasonable articulable suspicion to stop the men; "[the officer] had observed [the three men] go through a series of acts, each of them perhaps innocent in itself, but which taken together warranted further investigation." *Id.* at 22.

¶ 22 The State maintains that the facts of *Terry* are similar to those in this case because Officer Pruger, like the officer in *Terry*, drew on his extensive experience when forming his suspicions. The State further asserts that defendant behaved suspiciously when he twice attempted to conceal the bag and that this behavior augmented the officers' reasonable suspicions and provided them with further justification for the *Terry* stop. We disagree. In *Terry*, while the officer initially had suspicions about the two men, he did not act on them until after he observed them for an extended period of time. *Id.* at 23. During his observations, the men repeated the same conduct a dozen times over. *Id.* It could be said that the period of observation in *Terry* was particularly relevant because it allows the officer to perform a calculated assessment of the individual's actions. This is not what occurred here as the record discloses that the officers' observation of defendant was brief.

¶ 23 In *Wardlow*, the officer observed the defendant standing in front of a building holding an opaque bag in an area known for heavy narcotics trafficking. *Wardlow*, 528 U.S. at 121. The defendant then looked in the direction of a fleet of police vehicles responding to a call and fled. *Id.* Two officers caught up with him, stopped him, and conducted a protective patdown search for weapons. *Id.* Discovering a .38-caliber handgun, the officers arrested the defendant. *Id.*

¶ 24 In concluding that the officer had reasonable articulable suspicion to stop the defendant, the Supreme Court observed that the defendant was in an area of expected criminal activity, and while "an individual's presence in an area of expected criminal activity, standing alone, is not enough to support reasonable, particularized suspicion that the person is committing a crime," an officer is "not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation." *Id.* at 124. The Court further observed that the defendant's "[h]eadlong flight" was "a consummate action of evasion" and while it was not necessarily indicative of wrongdoing, it was "certainly suggestive of such." *Id.* Accordingly, based on these factors the officer was justified in suspecting that the defendant was involved in criminal activity that warranted further investigation. *Id.* at 125.

¶ 25 In this case, however, defendant did not flee the scene, but remained seated on the bus stop bench. Additionally, there was no evidence presented that this encounter occurred in a high crime area or that the officers were responding to any report of a crime. See *People v. Harris*, 2011 IL App (1st) 103382, ¶ 15 (similarly distinguishing *Wardlow*).

¶ 26 We further observe that in denying the motion to suppress the trial court suggested that after their initial inquiry into the bag was concluded the officers then inquired about a weapon due to safety concerns. The trial court supported this finding with references to the time of night (2:13 a.m.) and the location where the stop occurred (26th Street and Pulaski). There is no

evidence in the record which indicates that the area where defendant was stopped was a high-crime area nor was there any suggestion in the record that the trial court took judicial notice of such a fact. Regardless, our case law is clear that an individual's presence in a high-crime area in the middle of the night, while relevant, is not enough to create reasonable articulable suspicion. See *People v. Shipp*, 2015 IL App (2d) 130587, ¶ 35. Moreover, the lateness of the hour "contributes to suspicion of criminal activity only when there is no legitimate basis for an individual to be in the location at such an hour." (Internal quotation marks omitted.) *Id.* (quoting *People v. Kipfer*, 356 Ill. App. 3d 132, 138 (2005)). There is no dispute that defendant had a legitimate basis to be out at 2:13 a.m. where the uncontradicted evidence demonstrated defendant was merely waiting for the bus inside a bus shelter at the time of the encounter. While the safety of law enforcement personnel is a legitimate and valid concern, we can find nothing in the record that substantiates the trial court's finding that the officers' inquiry about a weapon was due to safety concerns.

¶ 27 As there was no reasonable, articulable suspicion to support the investigatory stop at its inception in this case, all that followed was tainted by that illegality. *People v. Estrada*, 394 Ill. App. 3d 611, 620 (2009), and cases cited therein. We therefore conclude that the trial court erred in denying defendant's motion to quash arrest and suppress evidence. See *Sims*, 2014 IL App (1st) 121306, ¶ 19. Without the suppressed evidence, the State cannot prove that defendant was in possession of the weapon, and we therefore reverse his conviction for that offense. *See id*; *Surles*, 2011 IL App (1st) 100068, ¶ 42.

¶ 28 Because we conclude the *Terry* stop was unlawful, we need not address defendant's further argument that the officers lacked probable cause because they did not inquire whether defendant had a valid FOID card or conceal carry license prior to the search of his person. It also

follows that we will also not address the State's arguments that go to that point. Furthermore, given our disposition, we need not address defendant's contention that his constitutional right to confrontation was violated when the State used a certified document to establish he did not have a FOID card or a conceal carry license.

¶ 29 CONCLUSION

¶ 30 For the reasons stated above, we reverse the trial court's denial of defendant's motion to quash arrest and suppress evidence, and we reverse defendant's conviction.

¶ 31 Reversed.

¶ 32 JUSTICE GORDON, specially concurring.

¶ 33 I agree with the majority but I must write separately to answer the dissent.

¶ 34 Our courts have the responsibility to guard against police conduct which is overbearing or harassing or which trenches upon personal security without objective evidentiary justification which our federal and state constitutions require, and when such conduct is identified, it must be condemned by the judiciary and its fruits must be excluded from evidence in criminal trials. *Terry v. Ohio*, 392 U.S. 1, 12-13 (1968).

¶ 35 The United States Supreme Court in its landmark decision in *Terry*, 392 U.S. at 21-22, found that, in justifying the particular intrusion, a police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion; facts must be judged against an objective standard of whether the facts available to the officer at the moment of the seizure or search would warrant a person of reasonable caution in a belief that the action taken was appropriate.

¶ 36 In other words, if a police officer has some objective reason to reasonably believe a crime has been committed or will be committed, he or she may approach a person in an appropriate

manner for the purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest. *Terry*, 392 U.S. at 23. In *Terry*, the police had watched the defendants walking up and down a street many times, which appeared to be in contemplation of a robbery as they appeared to be " 'casing' " a business. *Terry*, 392 U.S. at 6.

¶ 37 In the case at bar, the defendant was sitting on a C.T.A. bench and appeared to be waiting for a bus during a late hour of the evening, he made eye contact with the officer in a squad car while putting something in a black plastic bag next to him and then attempted to secrete the black plastic bag behind him. The officer thought the defendant was hiding an "alcoholic beverage." When the officer approached the defendant, he attempted to secrete the bag further behind him. There is no evidence of any crime that occurred near that time or location and the officer did not testify to any crime that he thought the defendant was going to commit. Those facts are not enough to warrant a reasonable belief that a person committed or will be committing a crime.

¶ 38 The dissent is not happy with this result and believes an experienced police officer has the "nose" to observe conduct by citizens such as the way the citizen behaves and looks at the officer or demonstrates that he is hiding something and that would be enough for a *Terry* stop. I disagree because under that scenario, the police can stop every citizen they want to on nothing more than a hunch, and a hunch is not enough to warrant a *Terry* stop. *Terry*, 392 U.S. at 27 (the Fourth Amendment requires that the police officer articulate something more than an "inchoate and unparticularized suspicion or 'hunch' ").

¶ 39 A police officer who has reason to believe that he or she is dealing with an armed and dangerous individual, regardless of whether the officer has the probable cause to arrest, may make a reasonable search for weapons, even though the officer is not absolutely certain that the

individual is armed; reasonableness of action depends not on an inchoate and unparticularized suspicion or hunch but on specific reasonable inferences which the officer is entitled to draw from facts in light of the officer's experience. *Terry*, 392 U.S. at 27. In the case at bar, the police officer had no reason to believe that he was dealing with an armed and dangerous individual from the facts of this case.

¶ 40 The dissent states that, "[u]nder the majority's interpretation of *Terry* and its progeny, an officer could have reasonable suspicion to conduct a *Terry* stop only where the officer observes a defendant committing an overt criminal act." *Infra* ¶ 42. Nowhere in the majority opinion or in this special concurrence is there such a statement or even an inference that we would require evidence of only "an overt criminal act." That is not true. Under the dissent's reasoning, veteran police officers can stop anyone that they believe could or might have a gun from any gesture they make. That is not the law and that is not what our congress or legislature intended when they gave each citizen of our state and country protected rights against intrusion. The dissent has cited no case law to support its views under the facts of this case.

¶ 41 JUSTICE BURKE, dissenting.

¶ 42 I write separately because the majority misinterprets the facts of this case and disregards binding precedent. Under the majority's interpretation of *Terry* and its progeny, an officer could have reasonable suspicion to conduct a *Terry* stop only where the officer observes a defendant committing an overt criminal act. This is not, and cannot be, the appropriate standard. Instead, the facts here show that the officer had a reasonable, articulable suspicion sufficient to warrant a *Terry* stop and the circuit court's ruling on defendant's motion to suppress should be affirmed.

¶ 43 The record shows that at the suppression hearing, Officer Pruger testified that he was a

19-year veteran of the Chicago Police Department.[4] At 2:13 a.m. in the area of 26th Street and Pulaski Road, Officer Pruger observed defendant sitting on a bench at a bus stop near a black plastic bag. Officer Pruger made eye contact with defendant and observed him "attempt[] to secrete a black plastic bag behind him." Officer Pruger and his partner exited their police vehicle and approached defendant. As the officers approached, defendant attempted to secrete the bag further behind him and out of the officers' view. The officers asked defendant about the contents of the bag, and defendant told them that it contained beer. After searching the bag and observing sealed beer, Officer Sanchez asked defendant if he had a gun, and defendant responded that he did, "for protection against the bangers." Officer Pruger then recovered a 9mm handgun from defendant and placed him under arrest. The court found that defendant's conduct in attempting to secrete the black bag was sufficient to create a reasonable articulable suspicion to support a *Terry* stop of defendant. I agree.

¶ 44 As the majority recognizes, in reviewing the officer's actions, we apply an objective standard to determine whether the facts available to the officer at the time of the incident would lead an individual to believe that the action taken was appropriate. *People v. Colyar*, 2013 IL 111835, ¶ 40 (citing *People v. Close*, 238 Ill. 2d 497, 505 (2010)). To justify a search, an officer's level of suspicion need not rise to the level of probable cause, but must be more than an inarticulate hunch. *Colyar*, 2013 IL App 111835, ¶ 40. In evaluating the validity of the stop, we consider "the totality of the circumstances—the whole picture." (Internal quotation marks omitted.) *People v. Timmsen*, 2016 IL 118181, ¶ 9. In considering the totality of the circumstances, a court may consider "the experience of the officer, the behavior and characteristics of a suspect, whether the location of the stop is a 'high crime' area, and an

[4] As the majority correctly notes, at the time of the arrest, Officer Pruger had 17 years of experience with the Chicago Police Department.

officer's prior dealings with the individual or knowledge of a criminal record." *Close*, 238 Ill. 2d at 514-15 (quoting *United States v. Jackson*, 300 F. 3d 740, 745-746 (7th Cir. 2002)).

¶ 45 Here, the totality of the circumstances supports a finding of reasonable suspicion sufficient to warrant a *Terry* stop. Officer Pruger was a 19-year veteran of the Chicago Police Department, the defendant's actions occurred in the early hours of the morning, and the defendant twice attempted to secrete the bag from the officer's view after making eye contact with them. Officer Pruger testified that he believed the bag contained alcohol. The majority makes much of the fact that it is not *per se* illegal to possess alcohol on the streets of Chicago or at a bus stop. Indeed, Officer Pruger recognized as much in his testimony, but he noted that is only the case if the alcohol is "sealed and closed." Officer Pruger's experience, combined with the time of day and defendant's furtive activity with regard to the bag when he saw the officers shows that Officer Pruger's suspicions were not based on mere "hunches" or "assumptions" as the majority suggests.

¶ 46 In addition, Officer Pruger testified that the interview with defendant lasted ten seconds. The officers did not physically search defendant or pat him down and, in fact, the circuit court recognized that based on the information available to the officers, they did not have the right to pat him down. Thus, the intrusion was minimal. As this court has recognized, "[a] *Terry* stop contemplates a brief intrusion, as minimal as possible, to verify information or to ascertain whether criminal activities have in fact taken place." *People v. Luna*, 322 Ill. App. 3d 855, 859 (2001) (citing *People v. Frazier*, 248 Ill. App. 3d 6, 14 (1993)). That is precisely what occurred in this case. The officers conducted a brief interview with defendant to ascertain whether criminal activities had taken place. The officers did not physically search defendant, draw their weapons, or otherwise indicate that the intrusion was anything more than a minimal intrusion so

that the officers could investigate defendant's suspicious behavior. Although the alcohol defendant possessed turned out to be sealed and closed, "*Terry* accepts the risk that officers may stop innocent people." *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000). Defendant then voluntarily offered the information about his weapon leading to his arrest.

¶ 47 In reversing the circuit court's ruling in this case, the majority recites the "totality of the circumstances" standard, but ignores the practicality of that mandate. Instead, the majority engages in the sort of "divide-and-conquer" analysis the Supreme Court admonished against in reviewing a *Terry* stop. *United States v. Arvizu*, 534 U.S. 266, 274 (2002). The majority notes the lateness of the hour, but asserts that fact standing alone is insufficient to establish a reasonable suspicion. The majority also recognizes defendant's behavior, but finds that activity standing alone is insufficient to establish a reasonable suspicion. The majority acknowledges Officer Pruger's considerable experience, but finds that fact standing alone is insufficient to establish a reasonable suspicion. The issue with the majority's analysis is that none of these factors stand alone. In considering whether the stop was reasonable, we must consider Officer Pruger's experience and the time of day and defendant's actions.

¶ 48 The majority makes several specious contentions such as that citizens commonly carry bags as they wait for public transportation and that there *could* be a reasonable explanation for defendant's actions with the bag. While true, it is also true that citizens do not commonly attempt to secrete those bags when they observe police officers as defendant twice did in this case and that there could be an unreasonable, *i.e.*, illicit, explanation for defendant's actions with the bag. In such situations, we should consider the experience of the police officers who "may be able to perceive and articulate meaning in conduct which would be wholly innocent to the untrained observer." *People v. DeHoyos*, 172 Ill. App. 3d 1087, 1092 (1988). Instead, the

majority considered defendant's actions independently from the other factors in this case in determining that the trial court erred in denying defendant's motion.

¶ 49 I also find the majority's reliance on *People v. Sims*, 2014 IL App (1st) 121306, misplaced. The majority contends that the officer in *Sims*, like Officer Pruger here, merely witnessed defendant engage in suspicions activity, but did not observe defendant committing any illegal activity. In finding that the officer lacked reasonable suspicion in *Sims*, this court found that:

> "[Defendant's] action in placing an object in the front of his pants and [the police officer's] recognition of [defendant] and knowledge of a prior arrest might create in the mind of a reasonable officer a 'gut feeling' that something might be afoot. But, reasonable suspicion requires more than a hunch or assumption that the suspect is up to no good; it requires articulable facts which support the inference that a crime has been, or is about to be, committed." *Id.* at ¶ 15.

The facts of this case are easily distinguishable from the circumstances in *Sims*. Here, Officer Pruger testified to several, articulable facts, such as that it was very late at night, that defendant made eye contact with the officers, that defendant attempted to secrete the bag behind him after making eye contact, that Officer Pruger believed defendant had alcohol in the bag, that defendant tried to secrete the bag further behind him after the officers got out their police vehicle. All of these circumstances together created more than a "hunch or assumption" that crime could have been committed and reasonably justified the officers' questioning of defendant. Accordingly, I respectfully dissent and find that the trial court did not err in denying defendant's motion to quash the arrest and suppress evidence.