2019 IL App (1st) 162437-U

No. 1-16-2437

Order filed May 28, 2019

Second 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. 16 CR 3447
	)	
TRAVIS THOMPSON,	)	Honorable
	)	Timothy Joseph Joyce,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justice Mason concurred in the judgment.
Justice Hyman specially concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err when it denied defendant's motion to quash arrest and suppress evidence.

¶ 2 Following a bench trial, defendant Travis Thompson was found guilty of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (3)(A-5), (3)(C) (West 2016)) based on carrying an uncased loaded weapon when he had not been issued a license under the Firearm Concealed Carry Act (430 ILCS 66/1 *et seq.* (West 2016)) or a Firearm Owners

Identification card (FOID card). The trial court sentenced defendant to one year of imprisonment. On appeal, defendant contends that the trial court erred when it denied his pretrial motion to quash arrest and suppress evidence. Defendant argues that the police officers lacked probable cause to arrest him or the reasonable suspicion necessary to support a *Terry* stop (See *Terry v. Ohio*, 392 U.S. 1 (1968)). We affirm.

¶ 3 Defendant was charged in an eight-count indictment with multiple variations of AUUW based on, *inter alia*, no concealed carry license, no FOID card, and being under the age of 21. Prior to trial, defendant moved to quash his arrest and suppress evidence of a handgun recovered from his person. The motion alleged that the police officers who stopped and arrested defendant lacked the reasonable suspicion necessary for a *Terry* stop and lacked probable cause to arrest him, and that any evidence obtained as a result was the "fruit of the poisonous tree." The trial court conducted a hearing on defendant's motion.

¶ 4 At the hearing, Chicago police officer Carlos De La Torre testified that he had been a police officer for seven years. On February 13, 2016, he went to the 7800 block of South Wabash Avenue in Chicago in response to an Office of Emergency Management & Communications (OEMC) call of a "person with a gun." A caller, whose identity De La Torre did not know, had provided the information to OEMC. OEMC described the person with gun as a black man in a dark gray quilted jacket and gray skull cap near 79th Street and Wabash. De La Torre and two partners, police officers Mendez and Rangel, drove to the area in an unmarked police car.[1] They stopped near 79th and State Street, where De La Torre got out of the car to speak to a person they thought was involved in the call, but turned out to be "unrelated to the matter." While De La

[1] Officers Mendez and Rangel's first names do not appear in the record.

Torre was out of the car, a person flagged down the car and his partners went to talk to the person. De La Torre testified he learned from his partners:

> "The citizen related to my partners that the individual with the gun, gave a description of him as a male black with a gray quilted coat. Said he displayed a silver gun and he was walking northbound in the alley between Wabash [Avenue] and Michigan [Avenue]."

De La Torre's partners did not learn the name of the citizen.

¶ 5 After the conversation, De La Torre got back into the car and the officers relocated to an alley between the 7800 block of Michigan and South Wabash. There, they observed "an individual matching a description of a person with a gun given by the citizen, as well as matching the description given by OEMC dispatch." The man, defendant, walked from the mouth of the alley into a parking lot. De La Torre did not observe a gun at this time. He testified that: "I got out of the car, I drew my weapon, I asked him to step towards me. He did not follow verbal commands. He started to walk away while keeping his hands [*sic*] in his right coat pocket." Rangel also had his gun drawn.

¶ 6 Defendant eventually complied with De La Torre's commands and got on the ground. De La Torre stood over defendant and holstered his weapon. Defendant stated that he had a gun in his right coat pocket. De La Torre recovered the gun, and placed defendant in handcuffs. Defendant was taken to a police station and a "name check" was done. At that point, De La Torre learned whether defendant had a concealed carry license or FOID card. De La Torre acknowledged that, prior to recovering defendant's weapon, he had not seen him violate any law and was not aware of a warrant for his arrest.

¶ 7 On cross-examination by the State, De La Torre testified that the OEMC dispatch indicated that the suspect was wearing a gray quilted coat and a skull cap. After De La Torre's partners talked to a person on the street, he learned that the suspect was still wearing a gray quilted coat, and a black skull cap. He also learned that the suspect was "brandishing" a silver handgun. When the police officers reached the entrance to the alley, De La Torre's attention was drawn to defendant because he was wearing a gray quilted coat and skull cap. De La Torre then gave a verbal command to stop. Defendant looked in his direction and continued to walk away. De La Torre had to repeat his command three to five times before defendant stopped. Defendant continuously kept his right hand in his pocket. At this point, based on the OEMC call and his observations, De La Torre believed that defendant had a weapon on his person.

¶ 8 De La Torre ordered defendant to the ground. After defendant was on the ground, De La Torre asked whether he had a gun. Defendant replied that he had a gun in his right coat pocket, and De La Torre retrieved the weapon. Defendant did not tell De La Torre that he had FOID card or concealed carry license. Defendant told De La Torre that he found the gun in a garbage can.

¶ 9 On redirect examination, De La Torre testified that defendant made the statement about the garbage can after he was placed in handcuffs and was in police custody. The statement was not made while De La Torre was standing over defendant prior to recovering the gun.

¶ 10 Following argument, the trial court denied defendant's motion. The court found that De La Torre was credible. It held that De La Torre had reasonable suspicion to stop defendant, and the reasonable suspicion grew into probable cause to believe that defendant had a gun and did not have a FOID card or concealed carry license given defendant's failure to tell the officers he had a FOID card or concealed carry license.

¶ 11 At trial, the parties stipulated to the use of De La Torre's testimony from the suppression hearing, excluding any inadmissible hearsay. The parties also stipulated that De La Torre would further testify that the gun he recovered from defendant was a .32 caliber revolver loaded with six live rounds. The parties stipulated that defendant was 19 years old on February 13, 2016. Finally, the parties stipulated that, if called to testify, an employee of the Illinois State Police would testify that a diligent search revealed that defendant had never been issued a FOID card or concealed carry license.

¶ 12 The trial court found defendant guilty on all eight counts of AUUW. After hearing arguments on sentencing, the trial court sentenced defendant to one year of imprisonment on count I (720 ILCS 5/24-1.6(a)(1), (3)(A-5), (3)(C) (West 2016)) and merged the remaining counts. Defendant filed a motion for a new trial, arguing, *inter alia*, that the court erred when it denied his motion to quash arrest. The trial court denied defendant's motion, and defendant appealed.

¶ 13 Defendant contends that his fourth amendment rights were violated when the police stopped him based on "uncorroborated, generic tips," detained him without reasonable suspicion that he was involved in criminal activity, and arrested him without probable cause. Defendant also contends that, even after the police discovered he was in possession of a firearm, they did not have probable cause to arrest him until they discovered at the police station that he lacked a FOID card or concealed carry licence. The State responds that defendant's detention was merely a *Terry* stop, the police had sufficient reasonable suspicion to conduct a *Terry* stop, and they could properly perform a protective patdown of defendant for weapons. It further contends that,

then, based on recovery of the gun and defendant's failure to present a FOID card or concealed carry license, the police had sufficient probable cause to arrest him.

¶ 14 On a motion to suppress evidence, the defendant has the burden of producing evidence and proving the search and seizure were unlawful. *People v. Martin*, 2017 IL App (1st) 143255, ¶ 18. Once a defendant makes a *prima facie* showing that the search and seizure were illegal, the burden shifts to the State to produce evidence to justify the intrusion. *Id.* Reviewing courts apply a two-part standard of review to a trial court ruling on a motion to quash arrest and suppress evidence. *People v. Holmes*, 2017 IL 120407, ¶ 9. Deference is accorded to the trial court's findings of fact and they will be reversed only if they are against the manifest weight of the evidence. *Id.* The court's ultimate legal ruling as to whether the evidence should be suppressed, however, is reviewed *de novo*. *Id.* Here, the parties do not dispute the facts. Therefore, our review is *de novo*. See *People v. Chapman*, 194 Ill. 2d 186, 217 (2000).

¶ 15 There are three tiers of police-citizen encounters: (1) arrests, which must be supported by probable cause; (2) *Terry* stops, brief investigative detentions, which must be supported by reasonable suspicion; and (3) consensual encounters, which do not involve coercion or detention and thus do not implicate fourth amendment rights. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006).

¶ 16 Initially, the parties disagree on what tier this encounter falls. Defendant argues that he was seized for fourth amendment purposes when he submitted to the police order to get on the ground. He contends the seizure was no brief detention because the police officers approached him with their weapons drawn, ordered him to the ground, handcuffed him, and transported him to the police station; this was an arrest and the officers were required to have probable cause. The

State argues that the initial encounter was a *Terry* stop and the police officers' display of their weapons was only relevant to the question of whether there was a seizure of defendant, not to whether that seizure was a *Terry* stop.

¶ 17 " 'A person has been arrested when his freedom of movement has been restrained by means of physical force or a show of authority.' " *People v. Gutierrez*, 2016 IL App (3d) 130619, ¶ 54 (quoting *People v. Melock*, 149 Ill. 2d 423, 436 (1992)). The test is whether, under the circumstances, a reasonable person would conclude that he was not free to leave. *Melock*, 149 Ill. 2d at 437. A person subject to a *Terry* stop is no more free to leave than if he were under full arrest. *People v. Johnson*, 408 Ill. App. 3d 107, 113 (2010). A *Terry* stop is distinguished from an arrest because it is an investigatory detention, which must be temporary and last no longer than necessary to effectuate the purpose of the stop. *Id.* In *Terry*, the Supreme Court held that, under appropriate circumstances, a police officer may briefly stop a person for temporary questioning when the officer reasonably believes that the person has committed or is about to commit a crime. *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 13 (citing *Terry*, 392 U.S. at 21-22).

¶ 18 The distinctions between the three tiers of police-citizen encounters do not represent immutable barriers and there is no legal or logical impediment to a consensual encounter changing into a *Terry* stop and ultimately into an arrest as a police officer's investigation reveals additional information establishing reasonable suspicion or probable cause. See, *e.g.*, *People v. Allen*, 409 Ill. App. 3d 1058, 1075 (2011) (Police officers developed probable cause to arrest during the course of a *Terry* investigation.) Even the use of handcuffs does not automatically transform a *Terry* stop into an arrest. *People v. Colyar*, 2013 IL 111835, ¶ 46.

¶ 19 Here, we find that this was a *Terry* stop that transformed into an arrest. Although there were several officers present and their guns were drawn when Officer De La Torre ordered defendant to stop, we do not believe that the simple command to stop constituted an arrest. Nor was De La Torre's command that defendant lie on the ground an arrest where defendant had repeatedly refuse to obey De La Torre's commands to stop and De La Torre was investigating a report of a man with a gun. Although the initial seizure was initiated with a show of force, it was limited in duration, lasting only until the weapon was discovered in defendant's pocket. Even if the use of handcuffs alone was indicative of an arrest, which it is not (see *Colyar*, 2013 IL 111835, ¶ 46), defendant was not handcuffed until after De La Torre recovered a handgun. Defendant was clearly under arrest at the point he was placed in a squad car and taken to a police station, because at that point no reasonable person would feel free to leave. See *Gutierrez*, 2016 IL App (3d) 130619, ¶ 54. However, we find that the initial encounter was a *Terry* stop, and it did not develop into an arrest until sometime after the weapon was recovered from defendant.

¶ 20 Having determined that this was a *Terry* stop that transformed into an arrest after the weapon was recovered, we must determine whether the police had reasonable suspicion to support the brief seizure or *Terry* stop at the time of their initial encounter with defendant. Reasonable suspicion is an objective standard, and asks: "would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Terry*, 392 U.S. at 21-22; see also *Colyar*, 2013 IL 111835, ¶¶ 36-37. A *Terry* stop is justified when the officer can point to specific and articulable facts which, combined with the rational inferences from those facts, reasonably warrant the intrusion. *Sanders*, 2013 IL App (1st) 102696, ¶ 14. While these facts need not rise to the level of probable

cause to believe a crime has been or is being committed, a mere hunch is not sufficient. *Id.* When multiple police officers are working together to investigate a crime, the knowledge of each constitutes the knowledge of all, and probable cause or reasonable suspicion can be established from all the information collectively received by the officers. See *People v. Wallace*, 2015 IL App (3d) 130489, ¶ 38; *People v. Maxey*, 2011 IL App (1st) 100011, ¶ 54.

¶ 21 Here, there were more than sufficient facts to give De La Torre a reasonable suspicion that defendant was illegally in possession of a firearm warranting an investigatory stop. First, there were not one but two tips implicating defendant as carrying a firearm. The unknown caller indicated that a man was in possession of a gun and described the suspect's location and clothing. Then a "concerned citizen" approached the officers on the street with similar description and location information. Crucially, the second tipster told the officers the suspect was "displaying" a firearm in the alley. Second, after De La Torre encountered defendant in the area indicated and wearing a jacket and skull cap matching the descriptions given of the person with the gun, he independently observed behavior which suggested defendant was in possession of a weapon. Specifically, defendant did not follow multiple verbal commands to stop, walked away, and kept one hand in his right coat pocket.

¶ 22 As defendant argues, it is not unusual for someone to put his hands in his pockets in the winter in Chicago. However, De La Torre, an experienced officer, who the trial court found credible, observed defendant with only one hand in his pocket, and we must give some deference to the experienced police officer's belief that this was indicative of an attempt to hide a firearm given two tips stating the suspect was armed with a firearm. See *People v. Jackson*, 2012 IL App

(1st) 103300, ¶ 49 (giving deference to the trial court's finding accepting a police officer's description of a suspect's behavior as "erratic").

¶ 23 Given defendant's attempt to avoid police and hide the firearm, De La Torre had a reasonable suspicion that defendant was unlawfully in possession of a weapon. See *People v. Gomez*, 2018 IL App (1st) 150605, ¶ 30 (the "defendant's furtive behavior and repeated efforts to conceal the weapon provided the officers with reasonable suspicion that defendant was not in lawful possession of the firearm"). This reasonable suspicion entitled De La Torre to briefly detain and question defendant, and because De La Torre reasonably believed defendant was armed, to "frisk" him for weapons. See *Colyar*, 2013 IL 111835, ¶¶ 34, 35.

¶ 24 Defendant argues that, even if De La Torre was correct in his conclusion that defendant was in possession of a gun, after *People v. Aguilar*, 2013 IL 112116, "knowing that someone has a firearm is no longer the same as knowing they are committing a crime." Defendant is correct that mere possession of a firearm outside the home is not inherently criminal. In *Aguilar*, our supreme court struck down a comprehensive ban "on carrying ready-to-use guns outside the home," holding that the right to bear arms outside the home for self-defense is protected by the second amendment. *Id.* ¶¶ 19, 21. The court, however, noted that this right was subject to meaningful regulation. *Id.* ¶ 21.

¶ 25 To that end, the legislature made openly carrying a firearm in a public street or alley, as the citizen stated defendant did here, an offense unless the firearm is carried or possessed in accordance with the Firearm Concealed Carry Act. See 720 ILCS 5/24-1(10)(iv)(West 2016). The Firearm Concealed Carry Act permits a licensee to possess or carry on his or her person a firearm "fully concealed or partially concealed." 430 ILCS 66/10(c)(1) (West 2016). Based on

the second tip, defendant did neither. Thus, De La Torre may not have known that defendant lacked a FOID card or concealed carry license, or that he was under the age of 21 (all of which are violations of weapons regulations (see 720 ILCS 5/24-1.6(a)(3)(A-5), (C), (I) (West 2016))), but he did know that a suspect was reported "displaying" or "brandishing" a handgun. Further, even if the police are unaware of information, such as the lack of FOID card or concealed carry license, which forms the basis for a weapons charge, a defendant's actions including furtive behavior and efforts to conceal a firearm can still provide reasonable suspicion that a suspect is not in lawful possession of a weapon. See *Gomez*, 2018 IL App (1st) 150605, ¶ 30. As we observed in *Gomez*, "[a]ny other result leaves police officers totally at the mercy of the citizens they encounter on a daily basis whose behavior raises concerns that they are armed." *Id.*

¶ 26 Citing the Supreme Court's decision in *Florida v. J.L.*, 529 U.S. 266 (2000), defendant asserts that he was seized and searched on nothing more than an uncorroborated tip. A *Terry* stop may be initiated on the basis of information received in a tip from the public. *Sanders*, 2013 IL App (1st) 102696, ¶ 15. A tip from an anonymous person may support a *Terry* stop, but the information provided must bear some indicia of reliability. *People v. Henderson*, 2013 IL 114040, ¶ 26. One indication of reliability is the willingness of an unidentified person to place his or her anonymity at risk by speaking to police officers face to face. See *Sanders*, 2013 IL App (1st) 102696, ¶ 20. Other indications of reliability include whether: (1) the person providing the tip can be held responsible if the allegations turn out to be fabricated; (2) the tip contains information that would not be available to anyone; (3) the person providing the tip recently witnessed the alleged criminal activity; and (4) the tip is predictive. *Id.*

¶ 27 In *J.L.*, the juvenile defendant was arrested and charged with weapons offenses after he was stopped and frisked on the basis of an anonymous tip. 529 U.S. at 268-69. The tip was received by telephone and indicated that a "young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." *Id.* at 268. Florida argued the tip was reliable because the police officers were able to corroborate the suspect's location and appearance; that is, they found J.L., a young black male in a plaid shirt, at the bus stop described. The Supreme Court held that this was insufficient to give rise to reasonable suspicion to support a *Terry* stop. *Id.* at 272. The officers' suspicion that J.L. carried a gun arose not from the officers' observations but solely from the tip from the unknown caller. *Id.* at 270. The Court reasoned an anonymous tip must be reliable both in its ability to identify a suspect and its ability to demonstrate that the tipster has knowledge of concealed criminality. *Id.* at 272. ("The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.") The court did note that its decision that an anonymous tip bear "standard indicia of reliability in order to justify a stop" applied only in cases where the police officer's authority to make the initial stop was at issue, and did not diminish an officer's prerogative to conduct a protective search of a person already "legitimately stopped." *Id.* at 274.

¶ 28 In contrast to *J.L.*, the tip here was corroborated. Admittedly, the case before us began much like *J.L.* with an anonymous phone tip that varied from *J.L.* only in that the clothing described was a gray jacket instead of a red shirt and the place described was an alley rather than a bus stop. The telephone tip, however, did not remain uncorroborated, as police officers received a nearly identical (differing only in the color of the suspect's skull cap) tip from a citizen on the street. The concerned citizen described a suspect who was "displaying" or

"brandishing" a weapon. Unlike the anonymous caller in *J.L.*, the concerned citizen here was willing to place his or her anonymity at risk by approaching the officers face to face. Further, unlike in *J.L.*, the officers here observed furtive conduct corroborating the tips regarding the gun. When De La Torre arrived in the alley, defendant matched the description of the suspect, was standing with just his right hand in his coat pocket and refused to stop when instructed by the officers. De La Torre testified that, taken together, these facts led him to believe that defendant was in possession of a weapon. We have concluded that his conclusion was not unreasonable, and therefore, unlike in *J.L.*, the initial stop of defendant was justified..

¶ 29 Defendant also argues that the police did not have the probable cause necessary to arrest him without a warrant. Defendant argues that the police did not have probable cause to believe he lacked a FOID card or concealed carry license until they ran a "name check" at the police station well after defendant's arrest. The trial court held that the police officers had probable cause to believe that defendant did not have a FOID card or concealed carry license because defendant did not volunteer that information when he was initially detained. However, we find it unnecessary to reach the question of whether the simple failure of a weapons suspect to volunteer his or her FOID or concealed carry license status creates probable cause to believe that the suspect does not have the necessary permits. Here, the police officers were presented with significantly more relevant facts to support probable cause. The second tip, made face-to-face, indicated that the suspect was not only in possession of a firearm, but was in fact displaying or brandishing it. When confronted by the police, defendant attempted to conceal the weapon and attempted to walk away ignoring commands to stop. Taken together with defendant's failure to indicate that he was in possession of a concealed carry license, these would lead a reasonable

person in the position of the police officers to believe that defendant was not lawfully in possession of the weapon, thus there was probable cause to arrest defendant. See *People v. Jackson*, 232 Ill. 2d 246, 275 (2009) (defining probable cause).

¶ 30 For the foregoing reasons, we find that the trial court did not err when it denied defendant's motion to quash arrest and suppress evidence. The judgment of the circuit court of Cook County is affirmed.

¶ 31 Affirmed.

¶ 32 JUSTICE HYMAN, specially concurring:

¶ 33 Individual liberty and valid exercise of police power breathe the same air in a limited space—the more one consumes, the less there is for the other. So it is, as Thompson alludes, "at the intersection of the Second and Fourth Amendments." In 2008 and 2010, the United States Supreme Court broke new constitutional ground finding that the Second Amendment protected the individual right to bear arms, *District of Columbia v. Heller*, 554 U.S. 570 (2008), and incorporating that right against the States. *McDonald v. City of Chicago*, 561 U.S. 742 (2010). A few years later the Illinois Supreme Court, following the Seventh Circuit's lead, expanded that individual right to the possession of guns outside the home. *People v. Aguilar*, 2013 IL 112116 (relying, in part, on *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012)); see also *People v. Burns*, 2015 IL 117387.

¶ 34 The effects of this expansive interpretation of the Second Amendment on the implementation of the Fourth Amendment were predicted from the outset. See *Moore*, 702 F.3d at 951-52 (Williams, J. dissenting) ("The ability to use stops and arrests upon reasonably suspecting a gun as a law enforcement tactic to ultimately protect more citizens does not work if

guns can be freely carried."). Indeed this result was predicted more than a decade earlier, in the event Illinois were to ever change its gun laws in the way it now has. *United States v. DeBerry*, 76 F.3d 884, 887 (7th Cir. 1996) (Wood, J. concurring) ("The only fact that saves the officer's stop of DeBerry, in my opinion, is the fact that it is unlawful in Illinois to carry a concealed weapon *** I do not agree that this case would necessarily come out the same way if Illinois law, like the law of many other states, authorized the carrying of concealed weapons.").

¶ 35 Questions about the interaction between the second and fourth amendments remain unanswered in Illinois. Following *Aguilar* and *Burns*, our courts began to hold that officers lacked reasonable suspicion to support a *Terry* stop where the basis for the stop rests entirely on suspicion of simple gun possession. See *People v. Thomas*, 2016 IL App (1st) 141040, ¶ 31 (finding insufficient reasonable suspicion to support *Terry* stop where only information in tip was that defendant seen possessing gun), *appeal denied, judgment vacated in light of People v. Holmes*, 2017 IL 120407. In *Holmes*, however, our supreme court held that pre-*Aguilar* detentions and arrests could not be retroactively invalidated even where they are entirely based on suspicion of simple gun possession. *Holmes*, 2017 IL 120407, ¶ 39. But, in cases where an arrest post-dates *Aguilar*, the tension remains between broadly interpreted gun rights and the ability of police to detain a person lawfully.

¶ 36 I agree with the majority that we need not fully examine the issue, (*supra*, ¶¶ 24-5), but I want to emphasize that it just barely escapes our review. De La Torre testified that the tip included information that the suspect "displayed" or was "brandishing" a gun. The majority correctly points out that this behavior, if it occurs, is a criminal violation since it violates the Concealed Carry Act. See 720 ILCS 5/24-1(a) (10) (iv); 430 ILCS 66/10(c) (1) (requiring

firearm "fully concealed or partially concealed"). We must remain mindful, however, that the original tip (the anonymous one) was simply a call about a "person with a gun" and the officers did not see Thompson actively "display[ing]" a gun when they arrived in the alley. I agree that Thompson's suspicious behavior, coupled with the in-person tip that alleged criminal activity, suffices to detain him; but, the facts bring the delicate Fourth Amendment/Second Amendment balancing act into sharp relief.

¶ 37 Indeed, the tip itself passes scrutiny by only a bare margin. We recently found a tip insufficient where the testimony did not establish the identity of the ultimate source of the information the tip relayed. See *People v. Holmes*, 2019 IL App (1st) 160987, ¶¶ 30-32 (distinguishing *People v. Miller*, 355 Ill. App. 3d 898 (2005) and *In re A.V.*, 336 Ill. App. 3d 140 (2002)). The tip that led to Thompson's arrest inches across that threshold because of a second tip, corroborating the first, by someone who saw a man with the gun and spoke directly to officers. See, *e.g.*, *Miller*, 355 Ill. App. 3d at 899 (tipster observed the person with the gun); *A.V.*, 336 Ill. App. 3d at 141 (tip corroborated by five or six other tipsters).

¶ 38 Accepting the sufficiency of the tip, only one of two words made Thompson's detention unlawful: "displayed" or "brandish[ed]." I have doubts that the civilian tipster actually used either of these words, which seem more like police jargon. But we have no evidence that the tipster said anything else and so must defer to the record. The anonymous tipster used the phrase, "person with a gun." That is how people usually speak, but it raises concerns about the impact that words like "person with a gun" have on the policing of minority communities.

¶ 39 The Supreme Court made sidelong mention of this problem in *McDonald*, where it assured us that "the Second Amendment right protects the rights of minorities and other residents

of high-crime areas whose needs are not being met by elected public officials." *McDonald*, 561 U.S. at 790. Historically, this has been demonstrably untrue. In the early 20th Century, "[a]cross the South *** public campaigns were under way to ban the possession of firearms by any African American. In an era when great numbers of southern men carried sidearms, the crime of carrying a concealed weapon—enforced almost solely against black men—would by the turn of the century become the most consistent instruments of black incarceration." Nicholas J. Johnson, *Firearms Policy and the Black Community: An Assessment of the Modern Orthodoxy*, 45 Conn. L. Rev. 1491, 1502 (2013) (quoting Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*, at 81-2 (2009)). Even scholars who are skeptical of the importation of discriminatory motives into modern firearms laws acknowledge this history. See Michael B. de Leeuw, Dale E. Ho, Jennifer K. Kim & Daniel S. Kotler, *Ready, Aim, Fire? District of Columbia v. Heller and Communities of Color*, 25 Harv. BlackLetter L.J. 133, 158-61 (2009).

¶ 40 These trends persist in the modern era. In 2009, 61% of all arrests for weapons offenses in this country's 75 largest counties were of African American suspects. U.S. Dept. of Just., Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties, 2009-Statistical Tables*, at 7 (Dec. 2013) (available at https://www.bjs.gov/content/pub/pdf/fdluc09.pdf). Only 15% of arrests in the same category involved white suspects. *Id.* These numbers are stark even if it turns out that white defendants commit fewer gun-related crimes. Remember, to stop a person suspected of committing a crime, an officer must have *individualized* suspicion of wrongdoing. *People v. Ray*, 327 Ill. App. 3d 904, 911 (2002). So that a particular group commits gun crimes at a higher rate says nothing about whether an officer has reasonable suspicion to believe a

particular member of that group is or is not committing a crime at a particular moment. We have not been presented with facts that suggest discrimination against Thompson, and his possession did turn out to be unlawful, but this history forms an important backdrop against which we should consider enforcement of gun laws going forward.

¶ 41 Thompson's arrest also raises questions about the manner in which gun crimes are investigated in minority communities. The officers pulled up to the alley, saw Thompson, and immediately got out of their car with weapons drawn ordering him to "step towards [the officers]"—all before confirming whether Thompson actually had a gun at all. Thompson ignored the police orders and continued walking, an action which has ambiguous consequences under current appellate court precedent. See *People v. Qurash*, 2017 IL App (1st) 143412, ¶ 75 (Ellis, J. dissenting) ("Under the majority's reasoning, the best way for citizens to protect their fourth amendment rights is to ignore the police [when they receive an order] *** If a citizen is not sure whether a police officer's request to 'come here' is an optional request or an order, the citizen is incentivized to presume the former and keep walking, lest that citizen waive the protection of the fourth amendment."). Then the officers arrested Thompson without attempting to learn whether he had a FOID card or concealed carry permit; they learned that he did not only after Thompson was already at the police station.

¶ 42 The officers' actions—from the immediate drawing of weapons to the delay in checking for a FOID card—reveal apparent presumptions about possession of guns, which can lead to any number of adverse consequences, especially in minority communities. Before 2013, officers could reasonably presume that *any* possession of a gun outside the home was illegal. Although that presumption no longer holds, solicitousness to the second amendment must never lose sight

of the all-important interest that society has in protecting police officers in investigatory encounters.

¶ 43 In conversations about gun possession, we have to consider that we are dealing with an act that is more than potentially legal; we are dealing with an act that is constitutionally protected. I too worry "this case reflects a distressing trend: the treatment of the Second Amendment as a disfavored right." See *Peruta v. California*, 582 U.S. __, No. 16-894, slip op. at 7 (June 26, 2017) (Thomas, J. dissenting from denial of certiorari, joined by Gorsuch, J.). Or, at least, it reflects such a trend for some. We will undoubtedly have to confront this vexing problem in future cases. Bearing these thoughts in mind, I agree with the majority's decision to affirm, and I join its opinion in full.