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).

2020 IL App (4th) 190396-U

NO. 4-19-0396

FILED
March 19, 2020
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Vermilion County
NATHAN E. LYMON,	)	No. 18CF593
Defendant-Appellee.	)	
	)	Honorable
	)	Charles C. Hall,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Steigmann and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err by granting defendant's motion to suppress where the totality of the circumstances established the police lacked reasonable suspicion to stop defendant and the evidence seized was not admissible on other grounds.

¶ 2 In October 2018, a grand jury indicted defendant, Nathan E. Lymon, with one count of armed violence with a category I weapon (720 ILCS 5/33A-2(a) (West 2018)) and two counts of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2018)). In March 2019, defendant filed a motion to suppress, seeking to suppress evidence discovered as a result of an alleged illegal seizure. After an evidentiary hearing, the Vermilion County circuit court granted defendant's motion and suppressed the State's evidence. The State then filed a certificate of impairment and an appeal under Illinois Supreme Court Rule 604(a) (eff. July 1, 2017).

¶ 3 On appeal, the State contends (1) the police's seizure of defendant was lawful and

(2) even if the search was unlawful, the circuit court erred by suppressing (a) the gun found in defendant's jacket and (b) the cocaine found on defendant's person. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In this case, the charges stem from defendant's alleged actions on September 30, 2018. In his March 2019 motion to suppress evidence, defendant argued the police seized him without probable cause or reasonable suspicion he was committing, committed, or would commit a criminal offense, and thus his seizure was unreasonable. Defendant further contended any fruit of the seizure was inadmissible and should be suppressed. On March 26, 2019, the circuit court held the hearing on defendant's suppression motion. Defendant presented the testimony of Danville police officers Troy Wasson and Seth Talbott. The parties presented a recording of the 911 call that led to the officers' actions in this case. The recording was admitted as defendant's exhibit No. 1. The State played the entire recording from the 911 call to the officers taking defendant into custody, which was admitted as State's exhibit No. 1. The State also presented the testimony of Detective Patrick Carley, who interviewed defendant the day after his arrest. The circuit court sustained defendant's irrelevancy objection to the recording of defendant's statements during Detective Carley's interview.

¶ 6 The 911 recording began with the voices of the dispatcher and a woman who wished to remain anonymous. The woman reported a suspicious black male walking down Cleveland Avenue. The woman said she saw a gun in the man's back pocket. Furthermore, the woman stated the man was wearing blue jeans, a white shirt, and a blue jacket. The dispatcher then relayed the woman's description of the suspicious black male to the police officers in the area. The recording continued, and an officer indicated defendant was in custody at the baseball field about 3½ minutes after the initial call came in.

¶ 7 Officer Wasson testified he and Officer Talbott were on patrol and responded to the 911 dispatch in their marked squad car. Both officers were in their standard police uniforms at the time. Based on the dispatch, they turned onto Cleveland Street heading westbound. Officer Wasson testified he did not hear what the anonymous caller said to the dispatcher on the day of the arrest. The dispatcher gave the officers a description of the individual and the area to go to. Officer Wasson described the area as desolate. He explained a baseball field was located on one side of Cleveland Street and a bus garage was on the other side of the street. As they were driving westbound, they observed a black male, which Officer Wasson identified as defendant. Defendant was the only person in the area and his clothing matched the description they received from the 911 dispatcher. When they saw defendant, he was carrying a jacket and was swinging the jacket "like a pendulum." Officer Wasson interpreted the pendulum effect to mean the jacket probably had a heavy object in it.

¶ 8 Officer Wasson further testified Officer Talbott stopped the squad car about 15 to 20 feet away from defendant and activated the overhead emergency lights on top of the squad car. Both officers exited the car, and Officer Wasson explained to defendant they were investigating a report of an individual with a gun. Officer Wasson told defendant to stop walking, face the officers, and only do what he was instructed to do. Defendant complied. Officer Wasson then asked defendant to put his jacket on the ground. Defendant maintained eye contact with Officer Wasson while setting the jacket on the ground, and then defendant stepped away from the jacket. Officer Wasson next asked defendant to lift his shirt up a few inches. Defendant did so, and Officer Wasson did not notice any bulges in defendant's pockets. Officer Wasson then asked defendant to turn around and face away from the officers. Defendant did so and then started running towards the baseball park. Officer Wasson did not think he had his duty

weapon unholstered and pointed at defendant during the encounter. During this initial encounter with defendant, Officer Wasson did not ask defendant to identify himself.

¶ 9 After defendant took off running, Officer Talbott pursued defendant, and Officer Wasson went directly to the jacket. He picked up the jacket and took it to the squad car. There, Officer Wasson found a gun in the outer pocket of the jacket. Officer Wasson secured the gun and drove the patrol car to where Officer Talbott had defendant lying on the ground. Officer Wasson joined Officer Talbott and assisted him in walking defendant back to the squad car.

¶ 10 While they were walking, Officer Wasson did a quick search of defendant's waistband area and felt a bulge in the front of defendant's pants. Officer Wasson pulled a Baggie out of the front of defendant's pants. He testified he could see the Baggie protruding from the top of defendant's waistband. A warrant check revealed defendant had an outstanding warrant in Cook County.

¶ 11 Officer Talbott gave testimony similar to Officer Wasson's. He too identified defendant as the person he saw on Cleveland Street. Officer Talbott further testified he ran after defendant and ordered him to stop multiple times. He also advised defendant he would deploy the Taser if defendant did not stop. Defendant did not stop, and Officer Talbott deployed the Taser. Defendant went down, and Officer Talbott held defendant down. Officer Talbott estimated defendant ran about 100 yards before he went down. Officer Talbott asked defendant why he ran, and defendant responded he had a warrant. Officer Talbott then handcuffed defendant. Officer Talbott did not ask defendant for his name until after defendant was handcuffed. After the police had secured defendant, defendant was searched, and it was learned defendant had an outstanding warrant.

¶ 12 At the conclusion of the evidence, the parties gave their closing argument, and the

circuit court allowed the parties to also file written memoranda supporting their respective arguments. The State's memorandum of law contended the police did have reasonable suspicion to stop defendant. It further asserted that, even if the police lacked reasonable suspicion, defendant's flight abrogated any seizure and the subsequent events were no longer connected to the initial stop. The State also alleged defendant's outstanding warrant should result in the admissibility of the seized evidence under the attenuation doctrine. Defendant filed both a memorandum in support of its motion and a responsive document, again asserting the initial seizure was unreasonable and the attenuation doctrine did not apply.

¶ 13 On May 14, 2019, the circuit court entered a 17-page written order granting defendant's motion to suppress. The court suppressed the gun, the Baggies with the substances contained therein, and all statements made by defendant during the unlawful stop, search, and arrest. The State filed a motion to reconsider, arguing (1) defendant failed to establish he had standing to challenge the admissibility of the gun since he claimed to not have any ownership interest in the gun, (2) the 911 call was not truly anonymous, and (3) the officers were engaged in community caretaking. Defendant filed a response to the State's motion, asserting the circuit court properly applied the law and arrived at the correct conclusion. He also contended the State forfeited its community caretaking and 911 arguments and its standing argument had been rejected by both the United States and Illinois Supreme Courts.

¶ 14 On June 7, 2019, the circuit court denied the State's motion to reconsider, and the State filed a certificate of impairment. On June 10, 2019, the State filed a notice of appeal from the circuit court's order granting defendant's motion to suppress. The notice of appeal was timely filed and in sufficient compliance with Illinois Supreme Court Rule 606 (eff. July 1, 2017). Thus, we have jurisdiction under Illinois Supreme Court Rule 604(a) (eff. July 1, 2017).

¶ 15 II. ANALYSIS

¶ 16 The State's sole contention on appeal is the circuit court erred by granting defendant's motion to suppress based on a finding the police lacked reasonable suspicion to stop defendant. Defendant disagrees, asserting the circuit court's judgment was proper.

¶ 17 A. Standard of Review

¶ 18 In reviewing a circuit court's ruling on a motion to suppress evidence, this court applies a two-part standard of review. *People v. Timmsen*, 2016 IL 118181, ¶ 11, 50 N.E.3d 1092. First, we uphold the circuit court's factual findings unless they are against the manifest weight of the evidence. *Timmsen*, 2016 IL 118181, ¶ 11. Second, this court reviews *de novo* the circuit court's ultimate legal conclusion regarding whether suppression is warranted. *Timmsen*, 2016 IL 118181, ¶ 11.

¶ 19 With a motion to suppress, the defendant bears the burden of proof. *People v. Cregan*, 2014 IL 113600, ¶ 23, 10 N.E.3d 1196. If the defendant makes a *prima facie* showing the State obtained the evidence from an illegal search or seizure, the burden shifts to the State to provide evidence to counter the defendant's *prima facie* case. *Cregan*, 2014 IL 113600, ¶ 23. However, the ultimate burden of proof remains with the defendant. *Cregan*, 2014 IL 113600, ¶ 23.

¶ 20 B. Seizure

¶ 21 The State asserts the police had reasonable suspicion to effectuate the ultimate stop of defendant following his flight. The crux of the State's argument is the police did not seize defendant until Officer Talbott took defendant down near the baseball field. Defendant contends he was seized when the police first made contact with him, and the State forfeited any argument challenging the circuit court's finding the seizure at that time was unlawful.

¶ 22 Both the fourth amendment to the United States Constitution (U.S. Const., amend. IV), which applies to the states under the fourteenth amendment (U.S. Const., amend. XIV), and article I, section 6, of the Illinois Constitution (Ill. Const. 1970, art. I, § 6) protect people against unreasonable searches and seizures. *Timmsen*, 2016 IL 118181, ¶ 9. However, not every encounter between the police and a private citizen involves a seizure or restraint of liberty implicating the fourth amendment. *People v. Almond*, 2015 IL 113817, ¶ 56, 32 N.E.3d 535. The issue in this appeal is at what point did the police officers seize defendant.

¶ 23 The United States Supreme Court declared a person is seized for purposes of the fourth amendment "only when, by means of physical force or a show of authority, his freedom of movement is restrained." *United States v. Mendenhall*, 446 U.S. 544, 553 (1980). Our supreme court has explained "a person has been seized when, considering the totality of the circumstances, a reasonable person would believe he is not free to leave." *Almond*, 2015 IL 113817, ¶ 57. The following *Mendenhall* factors generally indicate a seizure has occurred even though the person has not attempted to leave: "(1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person; or (4) using language or tone of voice compelling the individual to comply with the officer's requests." *Almond*, 2015 IL 113817, ¶ 57. The aforementioned factors are not designed to be an exhaustive list. *Almond*, 2015 IL 113817, ¶ 57.

¶ 24 In this case, two officers were present in their standard uniforms and with the emergency lights activated on a marked squad car. One of the officers ordered defendant to stop walking, face the officers, and only move as instructed. Defendant complied. The officer then asked defendant to put his jacket down, and defendant again complied. Next, the officer asked defendant to lift his shirt up so the officers could observe defendant's waistband. Defendant

again complied. Last, the officer asked defendant to face away from the officers. Defendant did so and then took off running. Here, the number of officers, the multiple commands compelling defendant's compliance, and the activation of the emergency lights are all indicative of a show of authority and defendant's inability to leave.

¶ 25 Citing three federal cases, the State contends a suspect's momentary compliance with a few commands does not necessarily result in a seizure. We find the cases the State cites are factually distinguishable. In *United States v. Valentine*, 232 F.3d 350, 353 (3d Cir. 2000), the police officer told the defendant, who was about 10 feet away, to come over and place his hands on the police car. The officer testified defendant responded, "Who, me?" and charged toward the officer. *Valentine*, 232 F.3d at 353. The defendant claimed that, when the officer ordered him to come over and place his hands on the police car, "he momentarily 'complied' with the order, stopped, and gave his name." *Valentine*, 232 F.3d at 359. The reviewing court found that, even if the defendant paused for a few moments and gave his name, the defendant did not submit in any realistic sense to the officer's show of authority, and therefore defendant was not seized until the officer grabbed him. *Valentine*, 232 F.3d at 359. In *United States v. Washington*, 12 F.3d 1128, 1132 (D.C. Cir. 1994), the court did not find a seizure where the defendant, who was driving a car, initially stopped the car in response to the police officer's activation of the sirens but drove off quickly before the officer even reached the car. Last, in *United States v. Hernandez*, 27 F.3d 1403, 1406-07 (9th Cir. 1994), the reviewing court rejected the defendant's argument he was seized when he hesitated for a moment, looked at the police officer, and fled in response to the police officer ordering him to stop. As stated, in this case, defendant stopped walking and complied with multiple commands given by Officer Wasson. Thus, defendant's compliance was significantly more than a fleeting moment of compliance. Moreover, the fact

the police officers were more than 20 feet from defendant when defendant was complying with the officer's commands does not render defendant's compliance momentary.

¶ 26 In support of its position, the State also cites *People v. Thomas*, 198 Ill. 2d 103, 759 N.E.2d 899 (2001), contending courts view the basis for a seizure at the point in time when the police officer is ultimately successful in effecting it. However, *Thomas* addressed the issue of how "[u]nprovoked flight in the face of a *potential* encounter with police may raise enough suspicion to justify the ensuing pursuit and investigatory stop." (Emphasis added.) *Thomas*, 198 Ill. 2d at 113, 759 N.E.2d at 904-05. Notably, in this case, the encounter with the police was actual, not potential. If defendant had fled upon seeing the two officers, rather than after the encounter started, the *Thomas* analysis might apply. Since defendant fled after initially complying with Officer Wasson's commands, *Thomas* is distinguishable. See *People v. Shipp*, 2015 IL App (2d) 130587, ¶ 55, 34 N.E.3d 204 (declining to apply *Thomas* because the defendant initially complied with police instructions to stop and was seized); *People v. Estrada*, 394 Ill. App. 3d 611, 620, 914 N.E.2d 679, 687-88 (2009) (declining to apply *Thomas* where defendant fled during his encounter with the police).

¶ 27 Accordingly, we disagree with the State and find defendant was seized when he initially complied with Officer Wasson's commands. On appeal, the State does not challenge the circuit court's findings the seizure of defendant when he was first stopped by the officers was not supported by reasonable suspicion and was unlawful. Thus, we do not disturb the circuit court's conclusion the seizure of defendant was unlawful.

¶ 28 C. Suppression of Evidence

¶ 29 The State further contends that, even if defendant's seizure was unlawful, the circuit court erred by suppressing the gun and cocaine.

¶ 30 1. *Gun*

¶ 31 As to the gun, the State first alleges defendant abandoned his jacket and its contents at the scene of the stop and thus defendant cannot challenge the search of the jacket and seizure of the gun. Defendant contends the circuit court's suppression of the gun was proper because he did not abandon it.

¶ 32 Unless a warrantless search falls within a recognized exception, the search is presumptively invalid and *per se* unreasonable. *People v. London*, 358 Ill. App. 3d 567, 572, 831 N.E.2d 1135, 1140 (2005). One recognized exception to the warrant requirement is the abandonment of property. *London*, 358 Ill. App. 3d at 572, 831 N.E.2d at 1140. The abandonment exception prevents individuals from "effectively contesting the search or seizure of property after they have relinquished possession or ownership of the property." *London*, 358 Ill. App. 3d at 572, 831 N.E.2d at 1140. Stated differently, abandoned property "is no longer protected by the fourth amendment and may be searched or seized without a warrant." *London*, 358 Ill. App. 3d at 573, 831 N.E.2d at 1140. Whether a person has abandoned the property is "primarily a question of intent, inferred from words, objective facts, and other conduct." *London*, 358 Ill. App. 3d at 573, 831 N.E.2d at 1140-41.

¶ 33 In support of its argument, the State cites the case of *People v. Hoskins*, 101 Ill. 2d 209, 219-20, 461 N.E.2d 941, 946 (1984), where the supreme court found the defendant had abandoned her purse. There, the defendant either dropped or threw her purse to the ground as she fled from the police officers. *Hoskins*, 101 Ill. 2d at 219, 461 N.E.2d at 946. Regardless of how the defendant's purse ended up on the ground, the court concluded her intent was to abandon the purse. *Hoskins*, 101 Ill. 2d at 219, 461 N.E.2d at 946. The court explained that, if the defendant dropped the purse unintentionally, she made no effort to pick it up and her fleeing

from police indicated she was not returning for the purse. *Hoskins*, 101 Ill. 2d at 219, 461 N.E.2d at 946. If the defendant deliberately threw the purse away to avoid being found in possession of the drugs, the purse would also be judged to have been abandoned. *Hoskins*, 101 Ill. 2d at 219, 461 N.E.2d at 946. The court noted the defendant could not have an expectation a purse lying in a public street would not be picked up and examined. *Hoskins*, 101 Ill. 2d at 220, 461 N.E.2d at 946.

¶ 34 Here, Officer Wasson ordered defendant to place his jacket on the ground and step away from it. Defendant complied with the officer's request and did just that. Unlike in *Hoskins*, he did not discard the jacket as he fled from officers. Here, Officer Wasson took the jacket away from defendant. Accordingly, the circuit court properly found the abandonment exception did not apply in this case.

¶ 35 The State also contends the gun would have inevitably been discovered as part of a routine station house inventory of defendant's possessions following an arrest on the valid warrant. Defendant contends the State forfeited the argument by failing to raise it in the circuit court. The State does not respond to defendant's assertion in its reply brief. A review of the record indicates the State did not raise the issue in the circuit court, and thus we agree with defendant it is forfeited. See *People v. Weber*, 98 Ill. App. 3d 631, 633, 424 N.E.2d 874, 875 (1981) (finding the State forfeited an argument on appeal by failing to raise it in the circuit court). Thus, we find the circuit court properly suppressed the gun.

¶ 36 2. *Cocaine*

¶ 37 Regarding the cocaine, the State first argues the attenuation doctrine applies to the cocaine because the police arrested defendant on a valid, outstanding warrant. Defendant contends the attenuation doctrine does not apply because the police officers did not learn of

defendant's active warrant until after the search of defendant's pants where the police officers found the cocaine.

¶ 38 As stated, "[s]earches conducted without a warrant are *per se* unreasonable under the fourth amendment subject only to a few exceptions." *People v. LeFlore*, 2015 IL 116799, ¶ 17, 32 N.E.3d 1043. The United States Supreme Court created the exclusionary rule as a general deterrent to fourth amendment violations. *LeFlore*, 2015 IL 116799, ¶ 17. The "fruit of the poisonous tree" doctrine is an outgrowth of that rule. *People v. Henderson*, 2013 IL 114040, ¶ 33, 989 N.E.2d 192. Under the fruit of the poisonous tree doctrine, "the fourth amendment violation is deemed the 'poisonous tree,' and any evidence obtained by exploiting that violation is subject to suppression as the 'fruit' of that poisonous tree." *Henderson*, 2013 IL 114040, ¶ 33. The test for determining whether evidence is the fruit of the poisonous tree requires us to consider " 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.' " *Henderson*, 2013 IL 114040, ¶ 33 (quoting *Wong Sun v. United States*, 371 U.S. 471, 488 (1963)). Stated differently, courts must consider " 'whether the chain of causation proceeding from the unlawful conduct has become so attenuated or has been interrupted by some intervening circumstance so as to remove the "taint" imposed upon that evidence by the original illegality.' " *Henderson*, 2013 IL 114040, ¶ 33 (quoting *United States v. Crews*, 445 U.S. 463, 471 (1980)). In analyzing attenuation, courts consider the relevant factors including (1) "the temporal proximity of the illegal police conduct and the discovery of the evidence," (2) "the presence of any intervening circumstances," and (3) "the purpose and flagrancy of the official misconduct." *Henderson*, 2013 IL 114040, ¶ 33.

¶ 39 In *Utah v. Strieff*, 579 U.S. ___, 136 S. Ct. 2056, 2061 (2016), cited by the State in support of its position, the United States Supreme Court considered "whether the discovery of a valid arrest warrant was a sufficient intervening event to break the causal chain between the unlawful stop and the discovery of drug-related evidence on [the defendant]'s person." There, as part of an illegal stop, the officer requested the defendant's identification and relayed the defendant's information to a police dispatcher, who reported the defendant had an outstanding arrest warrant for a traffic violation. *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2060. The officer arrested the defendant pursuant to the warrant and then searched the defendant incident to the arrest, which resulted in the discovery of a Baggie of methamphetamine and drug paraphernalia. *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2060.

¶ 40 In analyzing attenuation, the Supreme Court considered the three previously mentioned factors. *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2062-63. As to temporal proximity, the Supreme Court found it favored suppression of the evidence because the police officer discovered the drugs on the defendant's person only minutes after the illegal stop. *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2062. However, the presence of intervening circumstances strongly favored the State. *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2062. There, the warrant was valid, predated the police officer's investigation, and was unrelated to the stop. *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2062. Once the officer discovered the warrant, he was obligated to arrest the defendant and authorized to conduct a search of the defendant as an incident of his arrest for officer safety. *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2062-63. The third factor also strongly favored the State. *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2063. The Court noted the evidence did not indicate the unlawful stop was part of any systemic or recurrent police misconduct. *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2063. It also found that, while the officer's decision to initiate the

stop was mistaken, his conduct afterwards was lawful, including a lawful search of the defendant incident to his arrest. *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2063.

¶ 41 The Supreme Court held the evidence discovered on the defendant's person was "admissible because the unlawful stop was sufficiently attenuated by the pre-existing arrest warrant." *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2063. It explained that, while the illegal stop was close in time to the defendant's arrest, that factor was outweighed by the other two factors supporting the State. *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2063. The Supreme Court emphasized the outstanding arrest warrant was a critical intervening circumstance which was completely independent of the illegal stop and broke the causal chain between the unconstitutional stop and the discovery of evidence by compelling the officer to arrest the defendant. *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2063. The court also found especially significant no evidence was presented the officer's illegal stop reflected flagrantly unlawful police misconduct. *Strieff*, 579 U.S. at ___, 136 S. Ct. at 2063.

¶ 42 In this case, the circuit court found the officers did not learn about defendant's outstanding warrant until after defendant was in custody and Officer Wasson had seized the Baggie containing the cocaine from defendant's pants. The State argues the officers knew about defendant's warrant before the search of defendant's pants because defendant told Officer Talbott he ran away due to an outstanding warrant. As defendant notes, the State cites no authority an uncorroborated statement about the existence of a warrant constitutes a sufficient intervening event to break the causal chain as in *Strieff*. This court has held that, "[w]hen police officers rely on incorrect information contained in the criminal justice system records to arrest a defendant, any evidence obtained as a result of an inactive warrant is subject to suppression" because it violates the fourth amendment. *People v. Morgan*, 388 Ill. App. 3d 252, 260, 901

N.E.2d 1049, 1057 (2009). In other words, to comply with the fourth amendment for an arrest based on a warrant, the warrant must be valid. A person's statement about having a warrant alone does not provide the police with sufficient evidence the person has a valid warrant for his or her arrest. As defendant points out, the person could be lying, mistaken, or the warrant may no longer be valid. Thus, we find defendant's uncorroborated statement he had a warrant did not break the causal chain as in *Strieff*.

¶ 43 Here, the first two factors strongly favor the suppression of evidence as the discovery of the cocaine was close in time to the illegal stop and the mere mention by defendant of an outstanding warrant was not an intervening circumstance. While the evidence does not suggest official misconduct, we find the third factor does not outweigh the other two factors. Accordingly, the cocaine was fruit of the poisonous tree.

¶ 44 As with the gun, the State also contends the cocaine would have inevitably been discovered as part of a routine station house inventory of defendant's possessions following an arrest on the valid warrant. Defendant argues the State forfeited the argument by failing to raise it in the circuit court, and the State again did not respond to the forfeiture argument in its reply brief. A review of the record indicates the State did not raise the issue in the circuit court, and thus we agree with defendant it is forfeited. See *Weber*, 98 Ill. App. 3d at 633, 424 N.E.2d at 875 (finding the State forfeited an argument on appeal by failing to raise it in the circuit court). Accordingly, we find the circuit court properly suppressed the cocaine.

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we affirm the Vermilion County circuit court's judgment.

¶ 47 Affirmed.