SIXTH DIVISION
March 16, 2015

No. 1-14-3155

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF: MIGUEL P., a minor, (The People of the State of Illinois Petitioner-Appellee, v. MIGUEL P., a minor, Respondent-Appellant).	)))))))))))	Appeal from the Circuit Court of Cook County, Illinois No. 14 JD 01545 Honorable Patricia Mendoza, Judge Presiding

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

ORDER

HELD: Police officer had a reasonable, articulable suspicion to conduct an investigative stop and frisk of respondent pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968).

¶ 1 Following an adjudication hearing, respondent Miguel P. was found guilty of unlawful possession of a firearm (720 ILCS 5/24-3.1(a)(1) (West 2012)), and was adjudicated a delinquent

minor pursuant to the Juvenile Court Act of 1987(Act) (705 ILCS 405/5 *et seq.* (West 2012)). At sentencing, the trial court ordered the finding of guilt to stand and closed the case.

¶ 2 On appeal, respondent argues the trial court erred in failing to grant his motion to suppress the handgun recovered from his waistband during a police patdown search. Respondent maintains that his detention and the subsequent patdown search of his person were unconstitutional under *Terry v. Ohio*, 392 U.S. 1 (1968). Respondent contends the court should have suppressed the handgun because Officer Velazquez, the officer who conducted the patdown search, lacked a reasonable suspicion to conduct an investigatory stop of him pursuant to the reasonable suspicion standards of *Terry*. Alternatively, respondent contends that even if the investigatory stop was proper, the officer did not have a reasonable fear for his safety to justify the patdown search.

¶ 3 Upon review of the evidence, we find that Officer Velazquez did have a reasonable suspicion to detain and patdown respondent. Therefore, we find the trial court properly denied his motion to suppress.

¶ 4 ANALYSIS

¶ 5 In reviewing a trial court's ruling on a motion to suppress evidence, we apply the two-part standard of review adopted by the United States Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Under this standard of review, findings of fact made by the trial court are given great deference and will be upheld unless they are against the manifest weight of the evidence since the trial court is in a superior position to observe the witnesses' demeanor, weigh their credibility, and resolve conflicts in their testimony. *People v. Jones*, 215 Ill. 2d 261, 268 (2005). However, reviewing courts remain free to undertake their own assessment of the facts in relation to the issues and may draw their own

conclusions when deciding what relief should be granted. *Luedemann*, 222 Ill. 2d at 542; *Jones*, 215 Ill. 2d at 268. Therefore, we review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Luedemann*, 222 Ill. 2d at 542; *Jones*, 215 Ill. 2d at 268.

¶ 6 The fourth amendment of the United States Constitution protects individuals from unreasonable searches and seizures. U.S. Const., amend. IV. The central requirement of the fourth amendment is reasonableness. *Illinois v. McArthur*, 531 U.S. 326, 330 (2001). The general rule is that searches and seizures are unreasonable unless conducted pursuant to a judicial warrant issued by a neutral magistrate after a finding of probable cause. *McArthur*, 531 U.S. at 330. However, courts have established certain limited exceptions to the warrant requirement. One such exception is an investigatory stop recognized in *Terry v. Ohio*, 392 U.S. 1 (1968). In *Terry*, the Supreme Court applied a balancing test, weighing the individual's right to be free from arbitrary intrusions by law enforcement against the government's interest in effective crime prevention and detection and in the officers' need to protect themselves. See *People v. Long*, 99 Ill. 2d 219, 227-28 (1983).

¶ 7 *Terry* holds that a police officer may detain and conduct a brief investigatory stop of a person without probable cause to arrest, known as a *Terry* stop, if the officer has a reasonable suspicion supported by articulable facts, that the person has committed or is about to commit a crime. See *Terry*, 392 U.S. at 21-22; *People v. Close*, 238 Ill. 2d 497, 505 (2010)[1]. In addition,

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[1] *Terry's* stop rule is codified in section 107-14 of the Code of Criminal Procedure of 1963 (Code), which provides as follows:

> "A peace officer, after having identified himself as 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

Terry permits a limited pat-down search for weapons, commonly called a frisk, if the officer reasonably believes the person questioned may be armed and dangerous. See *Terry*, 392 U.S. at 30-31; *People v. Love*, 199 Ill. 2d 269, 275-76 (2002)[2]. The question of whether a stop is valid is a distinct and separate inquiry from whether a subsequent frisk is valid. *People v. Galvin*, 127 Ill. 2d 153, 163 (1989). In this appeal, respondent challenges the validity of both the initial stop and the subsequent frisk.

¶ 8 Respondent first contends there were no articulable facts which could lead Officer Velazquez to have a reasonable suspicion that he had committed or was about to commit a crime as required to initiate an investigatory stop under *Terry*. We disagree.

¶ 9 To justify an investigatory stop, a police officer must be able to point to specific, articulable facts which, when taken together with rational inferences from those facts, reasonably warrant the stop. *Terry*, 392 U.S. at 21-22; *People v. Thomas*, 198 Ill. 2d 103, 109 (2001). Although these facts need not rise to the level of probable cause, a mere hunch is not sufficient. *Thomas*, 198 Ill. 2d at 109. In assessing whether an investigatory stop was supported by reasonable suspicion, we consider the totality of the circumstances. *People v. Sanders*, 2013 IL

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offense *** and may demand the name and address of the person and an explanation of his actions. Such detention and temporary questioning will be conducted in the vicinity of where the person was stopped." 725 ILCS 5/107-14 (West 2010).

[2] *Terry's* frisk rule is codified in section 108-1.01 of the Code, which provides in part as follows:

"When a peace officer has stopped a person for temporary questioning pursuant to Section 107-14 of this Code and reasonably suspects that he or another is in danger of attack, he may search the person for weapons." 725 ILCS 5/108-1.01 (West 2010).

App (1st) 102696, ¶ 14. In this case we find that the totality of the circumstances provided Officer Velazquez with reasonable suspicion sufficient to conduct an investigatory stop of respondent.

¶ 10 At the suppression hearing, Officer Velazquez testified that on April 3, 2014, at approximately 5:45 p.m., he and his partner were in uniform on patrol in a marked squad car when they received a call regarding suspicious people loitering in the area of 24th Street and Marshfield Boulevard. In response to the call, the officers proceeded to the area and observed several individuals. The officers were circling the block in order to approach the group when they received another call advising them that there were several male Hispanic juveniles loitering in the area and that one of the juveniles had a gun. As the officers turned onto 24th Street, the group of Hispanic juveniles broke up and fled on foot in different directions. Flight from police officers may be considered along with other factors in determining whether officers had a reasonable suspicion of criminal activity. *People v. Harris*, 2011 IL App (1st) 103382, ¶ 12.

¶ 11 Officer Velazquez exited the squad car and gave chase on foot while his partner drove up an alley and pursued in the squad car. Officer Velazquez was entering an alley when he saw respondent exit the rear of a building leading to the alley. Respondent walked toward the alley, looking northbound down the alley. Respondent made eye contact with Officer Velazquez and the officer asked him to stop. They were about 10 feet away from each other. Respondent turned around and started walking back toward the rear of the building. Officer Velazquez ran toward respondent while asking him to stop in a raised voice, but he did not comply. While refusing to cooperate with officers, without more, does not justify an investigatory stop under *Terry*, evasive behavior is a pertinent factor in determining reasonable suspicion. *Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000). When Officer Velazquez caught up with respondent, he

grabbed him by the arm and conducted what he referred to as a "protective" patdown search. The officer acknowledged that he conducted the "protective" patdown search due to the nature of the call. During the patdown search of respondent, the officer felt what he believed to be the handle of a firearm and retrieved a gun from respondent's waistband. Respondent was taken into custody. We find that based upon the totality of theses circumstances, Officer Velazquez, an 11-year veteran of the Chicago Police Department, had the minimal articulable suspicion required to stop respondent for questioning.

¶ 12 We also believe that Officer Velazquez's *Terry* frisk of respondent was proper in light of respondent's evasive behavior and the fact that the officers received a call informing them that one of the Hispanic juveniles loitering in the area was armed with a gun. Under *Terry*, a police officer may conduct a protective patdown search of a detainee's person for concealed weapons when the officer has a reasonable suspicion that the suspect is armed. *People v. Flowers*, 179 Ill. 2d 257, 262 (1997). "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Terry*, 392 U.S. at 27. Based on the totality of the circumstances in this case, we find that Officer Velazquez had a reasonable, articulable suspicion that the respondent was armed when he initiated the patdown search. In sum, the record in this case provides no basis for overturning the trial court's ruling granting the State's motion for a directed finding and denying the motion to suppress the gun recovered from respondent's person during the lawful stop and frisk.

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

¶ 14 Affirmed.