

Defendant pleaded not guilty.

¶ 5 On July 29, 2009, defendant filed a motion to suppress evidence, alleging he was unconstitutionally seized when the arresting officer asked him for consent to search his vehicle. On September 2, 2009, the trial court held an evidentiary hearing on the motion.

¶ 6 On cross-examination, Illinois State Police Trooper Steven Ent testified he initiated a traffic stop of defendant's vehicle on April 25, 2009, because the vehicle was less than one vehicle length behind a semi truck.

¶ 7 Ent approached the vehicle and spoke to the two occupants. He asked the men for their identification and noticed that their hands shook as they handed him various documents. Ent advised defendant he was going to issue him a written warning for following too closely and defendant accompanied Ent back to his squad car while he wrote the warning. As defendant exited his vehicle, Ent noticed a knife in one of his pockets. He instructed defendant to leave the knife in the vehicle, and after defendant complied, Ent felt the outside of defendant's pants pockets. Ent confirmed defendant's driver information.

¶ 8 Ent advised defendant that he needed to view the vehicle identification number (VIN) on defendant's vehicle. He instructed defendant to "sit tight." Ent approached defendant's vehicle again and opened the driver's door in order to view the VIN number located on the door frame. Ent spoke with defendant's passenger. The passenger's story was not consistent with defendant's.

¶ 9 Ent returned to his vehicle and completed the warning ticket. He then handed defendant his driver's license, the written warning, and asked whether defendant had any additional questions. Approximately two seconds later, Ent asked defendant if he could ask him

"some other questions before you take off today." Defendant agreed to answer Ent's questions. Ent explained that Interstate 55 was being used to transport guns, narcotics, and money from the sale of those items. He asked defendant whether any of those items were in his car. Defendant denied possessing those items. Ent also asked whether he could search the car and defendant consented to a search. Ent found several bundles of plant material in the car's trunk that turned out to be cannabis.

¶ 10 Defense counsel played a videotape of the traffic stop taken from Trooper Ent's squad car. Ent testified he was trained in criminal interdiction. Defendant and his passenger exhibited characteristics that were consistent with possible criminal activity.

¶ 11 On September 18, 2008, the trial court denied defendant's motion to suppress. After noting that a tape of the traffic stop was entered into evidence and played at the hearing, the court concluded that the stop was not prolonged under the circumstances, and that the consent to search was given voluntarily and free from any seizure.

¶ 12 A jury convicted defendant of cannabis trafficking (count I) and possession of cannabis with the intent to deliver (count II). The trial court denied defendant's posttrial motion. The court merged counts I and II, and sentenced defendant to 12 years in prison for cannabis trafficking and this appeal followed.

¶ 13 We will discuss additional relevant facts in the context of the issues raised on appeal.

¶ 14 On appeal, defendant argues the trial court erred in denying his motion to suppress evidence. We disagree.

¶ 15 In reviewing a motion to suppress on appeal, we are presented with mixed

questions of law and fact. *People v. McQuown*, 407 Ill. App. 3d 1138, 1143, 943 N.E.2d 1242, 1246 (2011).

"When reviewing a trial court's ruling on a motion to suppress, we will accord great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence; but we will review *de novo* the court's ultimate decision to grant or deny the motion." *People v. Close*, 238 Ill. 2d 497, 504, 939 N.E.2d 463, 467 (2010).

¶ 16 On a motion to suppress evidence, the defendant has the burden of proving the search and seizure were unlawful (725 ILCS 5/114-12(b) (West 2002)). " 'However, once the defendant makes a *prima facie* showing of an illegal search and seizure, the burden shifts to the State to produce evidence justifying the intrusion.' " *People v. Reatherford*, 345 Ill. App. 3d 327, 334, 802 N.E.2d 340, 347–48 (2003) (quoting *People v. Ortiz*, 317 Ill. App. 3d 212, 220, 738 N.E.2d 1011, 1018 (2000)).

¶ 17 The fourth amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. Similarly, the Illinois Constitution affords citizens with "the right to be secure in their persons, houses, papers[,] and other possessions against unreasonable searches[][and] seizures." Ill. Const. 1970, art. I, §6. Our supreme court has interpreted the search and seizure clause of section 6 in a manner consistent with the United States Supreme Court's fourth-amendment jurisprudence. See *People v. Caballes*, 221 Ill .2d 282, 335-36, 851 N.E.2d 26, 57 (2006).

¶ 18 "When a police officer observes a driver commit a traffic violation, the officer is justified in briefly detaining the driver to investigate the violation." *People v. Ramsey*, 362 Ill. App. 3d 610, 614, 839 N.E.2d 1093, 1097 (2005). A stop of a vehicle and the detention of its occupants constitutes a "seizure" under the fourth amendment. *People v. Jones*, 215 Ill. 2d 261, 270, 830 N.E.2d 541, 549 (2005). To be constitutionally permissible, a vehicle stop must be reasonable under the circumstances, and the stop will be deemed reasonable " 'where the police have probable cause to believe that a traffic violation has occurred.' " *Ramsey*, 362 Ill. App. 3d at 615, 839 N.E.2d at 1098 (quoting *Whren v. United States*, 517 U.S. 806, 810, 135 L. Ed. 2d 89, 95, 116 S. Ct. 1769, 1772 (1996)).

¶ 19 In analyzing the conduct of police officers during a lawful traffic stop, our supreme court has looked to the United States Supreme Court's decision in *Illinois v. Caballes*, 543 U.S. 405, 160 L. Ed. 2d 842, 125 S. Ct. 834 (2005). *People v. Harris*, 228 Ill. 2d 222, 239, 886 N.E.2d 947, 958 (2008).

"First, a seizure that is lawful at its inception can become unlawful 'if it is prolonged beyond the time reasonably required' to complete the purpose of the stop. *Caballes*, 543 U.S. at 407, 160 L. Ed. 2d at 846, 125 S. Ct. at 837. Second, so long as the traffic stop is 'otherwise executed in a reasonable manner,' police conduct does 'not change the character' of the stop unless the conduct itself infringes upon the seized individual's 'constitutionally protected interest in privacy.' *Caballes*, 543 U.S. at 408, 160 L. Ed. 2d at 847, 125 S. Ct. at 837." *Harris*, 228 Ill. 2d at 239, 886 N.E.2d at

958-59.

"Thus, police conduct occurring during an otherwise lawful seizure does not render the seizure unlawful unless it either unreasonably prolongs the duration of the detention or independently triggers the fourth amendment." *People v. Baldwin*, 388 Ill. App. 3d 1028, 1033, 904 N.E.2d 1193, 1198 (2009).

¶ 20 In this case, Trooper Ent returned to defendant his documents, issued a warning citation for the following too closely violation, and asked whether defendant had any additional questions. Approximately two seconds later, Ent asked defendant if he could ask him "some other questions before you take off today." Defendant agreed to answer Ent's questions. Trooper Ent asked defendant whether he had guns or narcotics in the car and requested permission to search the vehicle. Here, no evidence indicated defendant would have believed he was not free to leave. Trooper Ent returned the documents and asked whether defendant had any additional questions. The trooper's actions here did not constitute a show of authority such that a reasonable person would not feel free to leave.

¶ 21 With respect to defendant's passenger, Trooper Ent's request for identification, by itself, did not amount to a seizure of defendant's passenger. See *Florida v. Bostick*, 501 U.S. 429, 437, 115 L. Ed. 2d 389, 396, 111 S. Ct. 2382, 2388 (1991) (stating that a seizure does not occur "when police *** ask to examine the individual's identification *** so long as the officers do not convey a message that compliance with their requests is required"); see also *Immigration & Naturalization Service v. Delgado*, 466 U.S. 210, 216, 80 L. Ed. 2d 247, 255, 104 S. Ct. 1758, 1764 (1984); and *People v. Luedemann*, 222 Ill.2d 530, 544, 857 N.E.2d 187, 196 (2006).

¶ 22 In *People v. Brownlee*, 186 Ill. 2d 501, 506, 713 N.E.2d 556, 559 (1999), police

officers stopped a vehicle and approached the car on both sides. *Brownlee*, 186 Ill. 2d at 506, 713 N.E.2d at 559. The officers obtained the identities of the occupants and checked for and found no outstanding warrants. *Brownlee*, 186 Ill. 2d at 506, 713 N.E.2d at 559. The officers decided not to issue any citations, but they did agree to ask the driver for permission to search the car. *Brownlee*, 186 Ill. 2d at 506, 713 N.E.2d at 559. One officer returned to the driver his license and insurance card and explained that no citations would be issued. *Brownlee*, 186 Ill. 2d at 506, 713 N.E.2d at 559. Thereafter, the officers stood near the car's doors for about two minutes and said nothing. *Brownlee*, 186 Ill. 2d at 520, 713 N.E.2d at 565–66. After the pause, the officer asked the driver to search the vehicle, and the subsequent search revealed controlled substances. *Brownlee*, 186 Ill.2d at 506-07, 713 N.E.2d at 559-60.

¶ 23 The supreme court found the traffic stop had concluded when one officer returned the license and insurance card to the driver and explained that no citations would be issued. *Brownlee*, 186 Ill. 2d at 520, 713 N.E.2d at 565. However, the officer's two-minute pause without saying anything to the driver constituted a show of authority that would lead a reasonable person to conclude he or she was not free to leave without the officers "soon be[ing] in hot pursuit." *Brownlee*, 186 Ill. 2d at 520, 713 N.E.2d at 566.

¶ 24 The supreme court found the problem was not that the officers requested permission to search the car, but "that the officers unconstitutionally detained the car and its occupants *before* requesting permission to search the car, and after the conclusion of the traffic stop."

¶ 25 In this case, defendant was not seized. The stop by a single officer occurred on a public roadway during the daytime. No weapon was displayed by Trooper Ent during the

encounter. Ent did briefly touch defendant by patting the outside of his pockets after Ent observed a knife in defendant's pocket. Further, Ent did not use forceful language or a tone of voice that would indicate defendant's compliance was mandatory. Thus, the encounter did not amount to an unlawful seizure.

¶ 26 Moreover, the questions posed by Trooper Ent amounted to a consensual encounter. "[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions." *Royer*, 460 U.S. at 497, 75 L. Ed. 2d at 236, 103 S. Ct. at 1324. Further, the person to whom the questions are asked may refuse to answer and may proceed on his way. *Royer*, 460 U.S. at 497-98, , 75 L. Ed. 2d at 236, 103 S. Ct. at 1324.

"While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response. [Citation.] Unless the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded, one cannot say that the questioning resulted in a detention under the Fourth Amendment." *Delgado*, 466 U.S. at 216, 80 L. Ed. 2d at 255, 104 S. Ct. at 1762-63.

¶ 27 In *Ohio v. Robinette*, 519 U.S. 33, 35, 136 L. Ed. 2d 347, 352, 117 S. Ct. 417, 419

(1996), the Supreme Court found the fourth amendment does not require a police officer to advise a lawfully seized defendant that he is free to go before a consent to search will be deemed voluntary. *Robinette*, 519 U.S. at 39-40, 136 L. Ed. 2d at 355, 117 S. Ct. at 421. Instead, a valid consent will be found when it is voluntarily given, and "[v]oluntariness is a question of fact to be determined from all the circumstances." *Robinette*, 519 U.S. at 40, 136 L. Ed. 2d at 355, 117 S. Ct. at 421 (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49, 36 L. Ed. 2d 854, 875, 93 S. Ct. 2041, 2059 (1973)).

¶ 28 When Trooper Ent asked defendant whether he had anything illegal in the vehicle, he could have refused to answer and proceeded on his way. Instead, defendant chose to answer in the negative. Then, Trooper Ent asked for consent to search the vehicle. Again, defendant could have declined the request and driven away. The questions here were not of a nature that a person would feel his answer was required based on a show of authority. See *People v. Gherna*, 203 Ill. 2d 165, 179, 784 N.E.2d 799, 807 (2003) ("[A] consensual encounter will lose its consensual nature if law[-]enforcement officers convey a message, by means of physical force or show of authority, that induces the individual to cooperate").

¶ 29 Unless the totality of the circumstances indicate a reasonable person would not have felt free to leave, no seizure has occurred and the defendant's consent to search the vehicle is not constitutionally prohibited. In this case, there was no show of force, no brandishing of weapons, no blocking of the vehicle's path, no threat or command, and no authoritative tone of voice. Trooper Ent did not exhibit his authority in an intimidating fashion. Instead, he simply asked defendant for consent to search his vehicle. The actions of and questions posed by Trooper Ent were not of such a nature that defendant was forced to cooperate. "Police officers act in full

accord with the law when they ask citizens for consent." *United States v. Drayton*, 536 U.S. 194, 207, 153 L. Ed. 2d 242, 255, 122 S. Ct. 2105, 2114 (2002). Here, the evidence demonstrates defendant's consent was voluntarily given. Thus, Ent's questions did not violate defendant's fourth-amendment rights, and the trial court did not err in denying the motion to suppress.

¶ 30 Defendant next argues the State's evidence was insufficient to convict him beyond a reasonable doubt where the State failed to prove defendant possessed 5,000 grams or more of "actual cannabis." We disagree.

¶ 31 "When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006). This standard of review applies when reviewing the sufficiency of evidence in all criminal cases, including cases based on direct or circumstantial evidence. *People v. Pollock*, 202 Ill. 2d 189, 217, 780 N.E.2d 669, 685 (2002). "Circumstantial evidence alone is sufficient to sustain a conviction where it satisfies proof beyond a reasonable doubt of the elements of the crime charged." *Pollock*, 202 Ill. 2d at 217, 780 N.E.2d at 685.

¶ 32 The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). "[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable[,] or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98, 890 N.E.2d 487, 496-97 (2008).

¶ 33 Random testing of a controlled substance is permissible when the seized samples are sufficiently homogenous so that one may infer beyond a reasonable doubt that the untested samples contain the same substance as those that are conclusively tested. *People v. Jones*, 174 Ill. 2d 427, 429, 675 N.E.2d 99, 100 (1996). Under such circumstances, the question of whether or not the entire substance contains a controlled substance is a question of fact for the trier of fact. *People v. Schmidt*, 38 Ill. App. 3d 207, 209, 347 N.E.2d 289, 292 (1976). The fact that only a part of the material is positively identified as containing the contraband only goes to the weight of the evidence rather than its admissibility. *People v. Hering*, 27 Ill. App. 3d 936, 943, 327 N.E.2d 583, 590 (1975).

¶ 34 In this case, Illinois State Police forensic scientist Mark Pava testified as an expert in the area of forensic chemistry, specifically drug and cannabis chemistry. Pava testified that the plant material he received to test for this case weighed 8,978 grams. Pava performed two types of tests on the plant material to determine its nature. He took several samples of plant material and used a knife to check whether it was the same plant material all the way through. Pava looked at the samples of the plant under a stereo microscope, checking for characteristics that are present in cannabis. Pava found two different types of hairs on opposite sides of the leaves in the samples. The combination of these two types of hairs is found only in cannabis.

¶ 35 Pava also performed a chemical test. Using the samples, he extracted the plant material by putting it into petroleum ether, a chemical liquid. After letting the plant samples soak, he poured the liquid into a test tube, evaporated the liquid, and added reagents. Pava observed a purple color, indicating the presence of cannabis. Pava then added chloroform to the test tube. The purple color went into the chloroform layer, which is determined to be a positive

test for cannabis.

¶ 36 Pava cut through the plant material with a knife to ensure that there was nothing hidden inside of the plant material. All of the plant material was consistent with the samples Pava removed. Pava stated that all of the plant material was the same as the samples he tested and examined. Pava stated that the 8,978 grams of plant material taken from defendant's car was cannabis. Pava also performed the same tests to plant material found in three other bundles in defendant's car, which weighed 2,309 grams collectively. Based on his analysis, Pava stated that "the three bundles contained plant material having a gross weight of 2,309 grams containing cannabis."

¶ 37 The evidence in this case proved defendant guilty of the crime of cannabis trafficking. Pava stated that Exhibit 3, which was the plant material weighing 8,978 grams, was cannabis. Pava stated that the samples he used from the plant material were consistent with the rest of the plant material, and the samples were the same substance as the whole. Pava performed the same tests on Exhibit 4, the plant material from the three bundles weighting a total of 2,309 grams. These tests also returned positive indications that the plant material was cannabis. Viewing the evidence in the light most favorable to the prosecution, we find the jury could reasonably have found defendant guilty of cannabis trafficking beyond a reasonable doubt.

¶ 38 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 39 Affirmed.