

No. 1-12-3582

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 11 C4 40058
)	
LUCHARIA BEALS,)	Honorable
)	Thomas M. Tucker,
Defendant-Appellee.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Connors and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in granting defendant's motion to quash arrest and suppress evidence when the detention of defendant was valid pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), and did not constitute an arrest.

¶ 2 Defendant Lucharia Beals was detained and subsequently arrested after police stopped a vehicle in which she was a passenger due to a traffic violation. She was subsequently charged with three counts of bribery. Defendant then filed a motion to quash arrest and suppress evidence, which the trial court granted. The State appeals, contending that the trial court erred in granting the motion to suppress when the police conducted a valid stop pursuant to *Terry v.*

Ohio, 392 U.S. 1 (1968), after the car in which defendant was a passenger was stopped for a traffic violation and defendant was observed making furtive movements under her seat and admitted to having smoked cannabis. In the alternative, the State contends that the trial court erred in granting the motion to suppress when defendant, while being detained, committed the new and separate criminal offense of bribery. We reverse and remand the judgment of the circuit court of Cook County.

¶ 3 Defendant was arrested and charged via information with bribery after a December 28, 2010, incident during which a car in which she was a passenger was pulled over for a traffic violation. Defendant then filed a motion to quash arrest and suppress evidence and the matter proceeded to a hearing on the motion.

¶ 4 At the hearing, trooper Kenneth Smith testified that he stopped a silver Pontiac after it failed to signal. This vehicle was driven by Charles Williams and defendant was a passenger. As Smith, who was alone, approached the driver's side of the vehicle he smelled a "strong odor" of burnt cannabis coming from the vehicle. When Williams could not produce his driver's license, Smith requested that he exit the vehicle and placed him in handcuffs. The men then walked back toward Smith's squad car. En route, Williams urinated on himself, so Smith instructed him to stand next to the squad car. Smith then walked back toward the Pontiac.

¶ 5 As he approached, Smith saw defendant reaching underneath the passenger seat and concluded that she might be hiding cannabis, which prompted him to ask her "where the weed was." When defendant stated that she had smoked all the cannabis, Smith handcuffed her and placed her in the back of the squad car. Smith then got into the front seat of the squad car and

asked defendant whether there was anything in the Pontiac that he needed to know about.

Defendant responded that she had approximately \$9,500 in the car. She then stated that she was willing to work with Smith and would leave \$2,000 on the seat for him. When Smith asked defendant to repeat herself, she again indicated that she would leave \$2,000 on the seat for him. Smith considered this statement to be an attempt to bribe him.

¶ 6 At the hearing, Smith acknowledged that his report indicated that he asked defendant to exit the car and asked where the cannabis was located. Defendant did not admit that she possessed any cannabis and Smith did not see any cannabis before he placed defendant in the squad car. He did not give defendant the *Miranda* warnings when he placed her in the squad car because he was only "detaining" her. Smith testified that he detained defendant by handcuffing her for safety reasons because he was alone and defendant should not be standing on the side of a busy road.

¶ 7 In granting defendant's motion to suppress, the court stated that it did not believe that Smith had the right to put defendant in the squad car and ask her questions when he had not given her the *Miranda* warnings.

¶ 8 On appeal, the State contends that the trial court erred in granting defendant's motion to quash arrest and suppress evidence when Smith conducted a valid *Terry* stop based upon defendant's "furtive" movements in the Pontiac and her admission that she had used cannabis.

¶ 9 Although defendant has not filed an appellee's brief, we reach the merits of the case because the record is simple, the case is not complex, and we can easily decide the matter

without the aid of an appellee's brief. See *People v. Dovgan*, 2011 IL App (3d) 100664, ¶ 10, citing *First Capitol Mortgage Corp., v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

¶ 10 This court reviews the circuit court's ruling on a motion to suppress evidence under a two-part test. *People v. Hackett*, 2012 IL 111781, ¶ 18. The trial court's factual findings are entitled to deference and will be reversed only if they are against the manifest weight of the evidence. *Id.* ¶ 18. However, the ultimate ruling on whether to grant the motion to suppress is a question of law reviewed *de novo*. *Id.*

¶ 11 The fourth amendment to the United States Constitution guarantees the right of the people to be secure against unreasonable searches and seizures. U.S. Const., amend. IV. "Reasonableness under the fourth amendment generally requires a warrant supported by probable cause." *People v. Johnson*, 237 Ill. 2d 81, 89 (2010). However, in *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court recognized an exception to the warrant requirement. Our supreme court has explained that "[i]n *Terry*, the Supreme Court held that an officer may, within the parameters of the fourth amendment, conduct a brief, investigatory stop of a citizen when the officer has a reasonable, articulable suspicion of criminal activity, and such suspicion amounts to more than a mere 'hunch.'" *People v. Gherna*, 203 Ill. 2d 165, 177 (2003), citing *Terry*, 392 U.S. at 27; see also *People v. Arnold*, 394 Ill. App. 3d 63, 70 (2009) (pursuant to *Terry*, an officer may briefly detain a person, whom the officer reasonably suspects to be recently or currently engaged in criminal activity, so as to verify or dispel those suspicions).

¶ 12 To justify a *Terry* stop, a police officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [an]

intrusion." *Terry*, 392 U.S. at 21. When reviewing the officer's actions, a court applies an objective standard to decide whether the facts available to the officer at the time would lead an individual of reasonable caution to believe that the actions taken were appropriate. *People v. Close*, 238 Ill. 2d 497, 505 (2010). The validity of such a stop rests upon the totality of the facts and circumstances known to the officer at the time of the stop. *People v. Adams*, 225 Ill. App. 3d 815, 818 (1992).

¶ 13 Vehicle stops are subject to the fourth amendment's reasonableness requirement, and, as a general matter, the decision to stop a vehicle is reasonable when an officer has probable cause to believe that a traffic violation has occurred. *Hackett*, 2012 IL 111781, ¶ 20. Because "a traffic stop may be justified on something less than probable cause," it is unnecessary for the officer making the stop to believe that each element of a particular offense is satisfied by the defendant's acts. *Hackett*, 2012 IL 111781, ¶ 28. Rather, it is sufficient if the officer's observations justify a reasonable belief that a violation probably occurred; the officer may properly use the ensuing investigation either to confirm or to dispel the suspicion of illegality. *Id.*

¶ 14 Turning to the circumstances of this case, Smith testified that he stopped the Pontiac after he observed a traffic violation—that is, the driver failed to signal. Thus, the investigatory traffic stop of the Pontiac was warranted at its inception because Smith observed a traffic violation. *Close*, 238 Ill. 2d at 505-06; see also *People v. Jones*, 215 Ill. 2d 261, 271 (2005) (the initial stop of the defendant's vehicle was justified at its inception when the car had inoperable tail-lights). After stopping the vehicle, Smith smelled the odor of burnt cannabis and observed defendant making movements under her seat which made him believe that she was hiding cannabis. These

facts created the reasonable and articulable suspicion that defendant had committed or was committing a crime—the possession of cannabis—sufficient to justify a continued investigation under *Terry*. See *Hackett*, 2012 IL 111781, ¶¶ 20, 28.

¶ 15 Having determined that a continued investigation was warranted, we must determine whether Smith's actions of handcuffing defendant and placing her in the back of the squad car were justified as part of the continuing *Terry* investigation or whether those actions escalated the encounter into a full custodial arrest.

¶ 16 This court has previously held there is no "brightline test" which distinguishes a lawful *Terry* stop from an illegal arrest. *Arnold*, 394 Ill. App. 3d at 70, quoting *United States v. Glenna*, 878 F.2d 967, 971 (7th Cir. 1989). The difference between an arrest and a *Terry* stop is not the restraint on a person's movement, but rather depends on the length of time the person is detained and the scope of the investigation which follows the initial encounter. *People v. Paskins*, 154 Ill. App. 3d 417, 422 (1987); see *People v. Calderon*, 336 Ill. App. 3d 182, 191-92 (2002) (the totality of the circumstances, including the length of detention and the scope of investigation, must be considered when determining whether the detention of a suspect is an arrest or a stop). The mere act of handcuffing a person does not transform a *Terry* stop into an illegal arrest. See *People v. Colyar*, 2013 IL 111835, ¶ 46. Rather, the propriety of handcuffing a person during a *Terry* stop depends on the circumstances of the case. *Id.* ¶ 46; see also *Arnold*, 394 Ill. App. 3d at 72 (whether handcuffs or another form of restraint were reasonable and necessary is based on the totality of the circumstances confronting the officer).

¶ 17 Here, the record reveals that Smith was alone when he stopped the Pontiac on the side of the road. After smelling the odor of burnt cannabis and removing Williams from the vehicle, Smith observed defendant making movements under her seat and she admitted to smoking cannabis. He handcuffed defendant and placed her in the squad car for his own and her safety. It was at this point that he asked defendant whether there was anything in the car that he should know about, presumably as an additional safety measure before searching the car, and defendant offered to leave \$2,000 on the seat. The mere fact that defendant was handcuffed and placed in the squad car did not change the *Terry* stop into an arrest when the restraint was performed in furtherance of Smith and defendant's safety. See *Colyar*, 2013 IL 111835, ¶ 46 (“handcuffing does not automatically transform a *Terry* stop into an illegal arrest”). Accordingly, the *Terry* stop in the instant case was never transformed into an arrest. See *People v. Starks*, 190 Ill. App. 3d 503, 508-10 (1989) (a 10-minute *Terry* stop of a defendant suspected of committing armed robbery was not converted into an arrest where officers stopped defendant's vehicle, handcuffed defendant and the other occupants, and searched the passenger compartment of the vehicle for weapons).

¶ 18 Ultimately, considering the totality of the circumstances known to Smith at the time of the stop, his actions were justified pursuant to *Terry*, when, after stopping the Pontiac for a traffic violation he smelled the odor of burnt cannabis and observed defendant making furtive movements. See *Close*, 238 Ill. 2d at 505. Although defendant was handcuffed and placed in the squad car, her detention was not transformed into an arrest when Smith restrained defendant due to safety concerns. See *Colyar*, 2013 IL 111835, ¶46. Because the detention of defendant in

this case was performed as part of a continuing *Terry* investigation, the trial court erred when it granted defendant's motion to quash arrest and suppress evidence, and the cause must be remanded. See *Hackett*, 2012 IL 111781, ¶ 18.

¶ 19 Because we remand the cause to the trial court for further proceedings, we need not address the State's alternative argument on appeal.

¶ 20 For the foregoing reasons, the judgment of the circuit court of Cook County is reversed and this cause is remanded for further proceedings.

¶ 21 Reversed and remanded.