SIXTH DIVISION
March 6, 2015

No. 1-14-3175

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re JOHNNY C., a Minor,	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Cook County
	)	
Petitioner-Appellant,	)	
	)	No. 14 JD 139
v.	)	
	)	
Johnny C.,	)	Honorable
	)	Lana Charise Johnson,
Respondent-Appellee).	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: Order granting respondent's motion to suppress is reversed, where search of respondent followed consensual encounter and was supported by probable cause.

¶ 2 A petition seeking a finding of delinquency and adjudication of wardship was brought against respondent-appellee, Johnny C., after he was arrested for being in possession of a firearm and cannabis. Respondent filed a motion to quash his arrest and suppress evidence, contending that the firearm and cannabis were recovered following an improper, unconstitutional seizure. The circuit court granted respondent's motion, and subsequently denied the State's motion to reconsider. The State appeals and, for the following reasons, we reverse.

¶ 3 I. BACKGROUND

¶ 4 In January of 2014, the State filed a petition for adjudication of wardship with respect to respondent. That petition alleged respondent was a minor, and that he should be found delinquent and adjudicated a ward of the court because—on or about January 10, 2014—respondent had been found to be in possession of both a firearm and between 2.5 and 10 grams of cannabis.

¶ 5 Respondent filed a motion to quash arrest and suppress evidence, contending that the stop and search that preceded his arrest were unsupported by either probable cause or a reasonable suspicion of criminal activity. A hearing on that motion was held on March 17, 2014.

¶ 6 Officer Sowell testified that, on January 10, 2014, he was in plain clothes and on routine patrol when he received two calls over his radio stating that there was a person with a gun near the intersection of 71st Street and Martin Luther King Drive. Officer Sowell drove to that location and spoke with some other officers at the scene, but did not find anyone matching the description provided over the radio; *i.e.*, a black male wearing a white jacket with blue stripes. While continuing to search the area, Officer Sowell entered a nearby restaurant. Officer Sowell was alone at the time he entered the restaurant.

¶ 7 Inside, Officer Sowell observed respondent wearing a white track jacket with blue stripes. Officer Sowell approached respondent, announced that he was a police officer, and asked respondent "if he had anything on him he shouldn't have." When respondent answered "no," Officer Sowell said: "I'm going to ask you again, do you have anything on [you] you shouldn't have?" At that point, respondent admitted that he was in possession of cannabis. Respondent was thereafter placed into custody, searched, and handcuffed. Officer Sowell recovered a firearm and cannabis from respondent before transporting him to a police station.

¶ 8 Respondent testified that he was inside a restaurant located at 71st Street and Martin Luther King Drive when he was approached by a single police officer. That officer asked respondent if he "had a gun" and respondent answered: "No." When the officer then asked respondent "if [he] had anything [he] wasn't supposed to have," respondent said: "Yeah, three bags of weed." Respondent was then searched, with the officer recovering a handgun and three bags of cannabis. The officer then placed respondent under arrest and took respondent to a police station.

¶ 9 Respondent rested following this testimony, and the State made a request for a directed verdict on respondent's motion. The parties presented arguments, and the circuit court concluded:

> "THE COURT: The Court has heard the testimony in this case. The Court finds Officer Sowell to be credible. ***
>
> ***
>
> The Court does—The Court is hard press[ed] to believe that [respondent] with a gun on him and three bags of weed would voluntarily answer that he had marijuana on him knowing that he would be arrested for that and that he also had a gun on him.
>
> The Court is thankful that Officer Sowell removed this gun from the streets but I do not believe that at the time he approached [respondent], he had probable cause to search [respondent]. He didn't have any warrants; he did [not] actually view [respondent] committing any crimes; [respondent] wasn't doing anything illegal at the time the officer first saw him.

> Again, so I believe that the marijuana and the gun that were recovered from his person were the fruit of the illegal search and I am suppressing it. And [respondent] is very lucky."

¶ 10 The State indicated that it would file a motion to reconsider, noting specifically that respondent himself testified that he admitted to being in possession of cannabis. The circuit court indicated that the State would be given time to file its motion, with the circuit court further noting that respondent only made that admission "in response to a question posed to him by the officer." The State, thereafter, filed its written motion to reconsider, which was denied on September 23, 2014.

¶ 11 On October 22, 2014, the State filed a certificate of substantial impairment alleging that the circuit court's order denying its motion to reconsider the order granting respondent's motion to suppress evidence substantially impaired the State's ability to prosecute this case. The State also filed a timely appeal.

¶ 12 II. ANALYSIS

¶ 13 On appeal, the State contends that the circuit court erred in granting respondent's motion to suppress evidence.

¶ 14 The ruling of a circuit court on a motion to suppress evidence frequently presents mixed questions of law and fact. While we review *de novo* the ultimate legal ruling as to whether suppression of evidence is warranted, we accord great deference to the circuit court's factual findings and will reverse such findings only if they are against the manifest weight of the evidence. *People v. Hackett*, 2012 IL 111781, ¶ 18. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is

unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

¶ 15 The United States and Illinois constitutions prohibit the government from subjecting citizens to unreasonable searches and seizures. U.S. Const., Amends. IV, XIV; Ill. Const. 1970, art. I, § 6. For purposes of the fourth amendment, an individual is "seized" when an officer "'by means of physical force or show of authority, has in some way restrained the liberty of a citizen.'" *People v. Luedemann*, 222 Ill. 2d 530, 550 (2006) (quoting *Florida v. Bostick*, 501 U.S. 429, 434 (1991)). "However, not every encounter between the police and a private citizen results in a seizure." *People v. McDonough*, 239 Ill. 2d 260, 268 (2010). As our supreme court has recognized:

> "Courts have recognized three theoretical tiers of police-citizen encounters. The first tier involves an arrest of a citizen, which must be supported by probable cause. [Citations.] The second tier involves a temporary investigative seizure conducted pursuant to *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). In a '*Terry* stop,' an officer may 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.' [Citations.] The third tier of police-citizen encounters involves those encounters that are consensual. An encounter in this tier involves no coercion or detention and, therefore, does not implicate any fourth amendment interests. [Citations.]" *McDonough*, 239 Ill. 2d 268.

¶ 16 We first consider the circuit court's conclusion that it was "hard press[ed] to believe that [respondent] with a gun on him and three bags of weed would voluntarily answer that he had marijuana on him knowing that he would be arrested for that and that he also had a gun on him."

The State contends that this conclusion constituted an improper factual finding that respondent did not actually inform Officer Sowell that he was in possession of cannabis.

¶ 17 To the extent that the circuit court's comment could be read as such, we agree with the State that any such factual finding would be against the manifest weight of the evidence. The circuit court specifically found Officer Sowell to be a credible witness, and Officer Sowell clearly testified that respondent answered his second question by admitting to being in possession of cannabis. Respondent himself testified that he told Officer Sowell that he possessed "three bags of weed." There was no other evidence presented to challenge this rendition of events. On this record, any possible conclusion that respondent did not make this admission to Officer Sowell would be against the manifest weight of the evidence

¶ 18 However, we do not believe that this is actually a correct interpretation of the circuit court's comment. Instead, we agree with respondent that—rather than a factual finding—the circuit court's comments more clearly indicate a *legal* conclusion that respondent was already illegally seized at the time he made that admission and that it was therefore not made *voluntarily*. This interpretation of the circuit court's comment is further supported by the circuit court's subsequent statement that respondent only made this admission "in response to a question posed to him by the officer." By indicating its understanding that respondent only made this admission in response to police questioning, the circuit court also made it clear that it was not rejecting that the comment had ever been made.

¶ 19 Nevertheless, while we agree with respondent that the circuit court did not make any improper factual findings, we do not agree with respondent's contention that the circuit court's ultimate legal conclusion was also correct. The circuit court appears to have concluded that respondent was illegally searched because Officer Sowell did not have a warrant or probable

cause, did not actually observe respondent doing an illegal act, and because respondent only admitted to being in possession of cannabis after improper, post-seizure questioning. We disagree.

¶ 20 Again, "not every encounter between the police and a private citizen results in a seizure," and consensual encounters involve no coercion or detention and therefore do not implicate any fourth amendment interests. *Id.* Thus, "the law clearly provides that a police officer does not violate the fourth amendment merely by approaching a person in public to ask questions if the person is willing to listen." *Luedemann,* 222 Ill. 2d at 549. Such questioning does not turn an encounter into a seizure, and during the course of such a consensual encounter "the police have the right to *** ask potentially incriminating questions." *Id.* Moreover, such questioning is appropriate regardless of whether the police officer has any reasonable suspicions regarding the person to be questioned. *Id.* (quoting *Bostick,* 501 U.S. at 434). Here, Officer Sowell did nothing but approach respondent and ask him two questions. There was simply nothing improper about this conduct—regardless of the reasonableness of Officer Sowell's suspicions—and this questioning did not transform this encounter from a consensual one to a seizure.

¶ 21 Indeed, it is only if Officer Sowell's actions prior to respondent's admission could be characterized as an improper seizure that the circuit court's order would have been correct. However, an individual is "seized" for purposes of the fourth amendment only when an officer " 'by means of physical force or show of authority, has in some way restrained the liberty of a citizen.' " *Id.* Put another way, "[a] person is seized when, in view of all the facts and circumstances, he would not feel free to leave." *People v. Roa*, 398 Ill. App. 3d 158, 164 (2010). In making this determination, a court may consider the following non-exhaustive list of factors: "(1) whether there was a threatening presence by several officers; (2) whether the officer

displayed a weapon; (3) whether there was some physical touching by the officer; and (4) whether the language or tone of voice used by the officer indicated that compliance with the officer's request was compelled." *Id.* The absence any of these factors, while "not necessarily conclusive, is highly instructive" as to whether a seizure has occurred. *Luedemann*, 222 Ill. 2d at 554. Indeed, our supreme court has repeatedly indicated that in the absence of any of these factors, otherwise inoffensive contact between a member of the public and the police will not amount to a seizure. *Id*. at 553-54; *People v. Cosby*, 231 Ill. 2d 262, 282 (2008).

¶ 22 None of these factors were present here prior to respondent's admission that he possessed cannabis. Officer Sowell was alone, he did not display a weapon, he did not physically touch respondent in any way, and there was no evidence that he used any tone of voice indicating compliance was compelled. As to whether Officer Sowell used any language indicating compliance was required, respondent cites to the fact that Officer Sowell asked respondent two questions, with one question coming after respondent had denied possessing a gun. However, Officer Sowell clearly *asked* only *questions*; he made no commands to or demands of respondent. On this record, we decline to conclude that respondent was seized prior to his admission that he was in possession of cannabis.

¶ 23 Once respondent made that admission Officer Sowell had probable cause to make an arrest. "Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *People v. Grant*, 2013 IL 112734, ¶ 11. Respondent's explicit admission that he was in possession of cannabis obviously satisfied this standard. Moreover, having probable cause to arrest respondent, Officer Sowell was also fully justified in conducting a

search of respondent's person incident to that arrest. *People v. Cregan*, 2014 IL 113600, ¶ 28 (recognizing that a search incident to arrest requires no additional justification).

¶ 24 In sum, we conclude that Officer Sowell and respondent engaged in a consensual encounter, during which respondent made an admission that provided Officer Sowell with sufficient probable cause to support both the arrest and search of respondent. Because the firearm and cannabis were recovered during the valid arrest and search of respondent, we conclude that the circuit court improperly granted respondent's motion to suppress that evidence. Furthermore, because we come to this conclusion, we need not further consider the parties' debate as to whether Officer Sowell initiated an improper *Terry* stop of respondent, based solely upon the anonymous tip of an informant. See *People v. Almond*, 2015 IL 113817, ¶ 65 (coming to similar conclusion under similar circumstances).

¶ 25 III. CONCLUSION

¶ 26 For the foregoing reasons, the circuit court's order granting respondent's motion to suppress evidence is reversed, and this case is remanded for further proceedings consistent with this order.

¶ 27 Reversed and remanded.