2015 IL App (5th) 140512-U

NO. 5-14-0512

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Massac County.
	)	
v.	)	No. 14-CM-57
	)	
ROSS M. DEVERS,	)	Honorable
	)	Joseph Jackson,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Cates concurred in the judgment.
Justice Moore dissented.

ORDER

¶ 1 *Held*: The trial court did not err in granting defendant's motion to suppress because defendant was illegally detained and "in custody" for purposes of *Miranda v. Arizona*, 384 U.S. 436 (1966), and was entitled to *Miranda* warnings, which the officer failed to give. The trial court correctly suppressed both the confession and the results of a preliminary breath test as fruit of the poisonous tree.

¶ 2 The State appeals from an order of the circuit court of Massac County granting a motion to suppress filed by defendant, Ross M. Devers. The sole issue raised in this appeal is whether the trial court erred in granting defendant's motion to suppress. The State insists: (1) the deputy sheriff was not required to give defendant *Miranda* warnings

prior to questioning him, and (2) the administration of a preliminary breath test to defendant did not violate defendant's constitutional rights. We affirm.

¶ 3 FACTS

¶ 4 On June 9, 2014, defendant was charged by information with one count of illegal consumption of alcohol by a minor (235 ILCS 5/6-20 (West 2012)). Thereafter, defendant filed a motion to quash arrest and suppress his confession and the results of a preliminary breath test. The trial court conducted a hearing on defendant's motion.

¶ 5 The only witness to testify at the hearing was Clayton Penrod, a deputy at the Massac County sheriff's department. He testified that at approximately 2:40 a.m. on June 1, 2014, he was dispatched to 5090 Midway Road after a burglar alarm sounded at the residence. As he approached the residence, he "observed a golf cart driving in front of the residence" where the alarm was sounding. Penrod activated his emergency lights to stop the cart. As he approached the cart, he observed two young males and asked them for their identification. The passenger produced an Illinois driver's license, but defendant, who was driving the cart, did not have his driver's license on his person, but provided Deputy Penrod with his name and date of birth. Deputy Penrod discerned that both defendant and the passenger were under 21 years of age. Penrod testified he "detected a strong odor of an alcoholic beverage from inside of the golf cart," which appeared to be emanating from both occupants. Penrod testified he stopped the cart "because of the relation to the vehicle and the burglary alarm," but also because it is unlawful in Illinois to operate a golf cart on a public highway. Penrod informed

defendant and the passenger he was going to detain them until he "found out whether or not they had anything to do with the burglary alarm and also because [he] detected an odor of alcoholic beverage and both individuals were under the age of 21."

¶ 6 Deputy Penrod placed both defendant and the passenger in the rear of his squad car and proceeded to the residence where the alarm was sounding. As he placed them in the car he "advised them that they were being detained, that they weren't under arrest at the time." Penrod further testified that neither defendant nor the passenger were free to leave as he investigated the alarm. After investigating the alarm, he found "nothing out of place." He believed the alarm was activated after the homeowner failed to properly secure a door on an outbuilding and the wind blew "it back enough to activate the alarm."

¶ 7 After making sure the residence had not been burglarized, Deputy Penrod spoke with the passenger and defendant individually. He told the passenger he could smell alcohol, and the passenger "admitted to having a couple of beers earlier." The passenger agreed to submit to a preliminary breath test, which indicated a blood-alcohol level of .067. Accordingly, Penrod placed the passenger in custody for illegal consumption.

¶ 8 Penrod then asked defendant to step out of the vehicle and advised him that he "could smell an odor of alcoholic beverage" and specifically asked defendant if he "consumed any alcohol." Defendant "admitted to having a couple of drinks." Penrod also asked him to submit to a preliminary breath test, and defendant complied. The result of the test showed defendant with a blood-alcohol level of .061. Penrod then took defendant into custody for illegal consumption.

¶ 9 On cross-examination, Deputy Penrod conceded that at the time he encountered the golf cart, he had not received any dispatch information about possible suspects related to the possible burglary, and he acknowledged there was a golf course near the residence in question. He testified that during previous patrols of the area he noticed golf carts on the course, but said he never saw a golf cart on the public roadway. Penrod said he talked to the homeowner while assessing the situation and walked around the property. While Penrod did not want to speculate about how long securing the residence took him, he doubted that it took 30 minutes, but when asked whether it took "five minutes," he replied it was "a longer period than that." Deputy Penrod said he did not administer *Miranda* warnings to defendant or the passenger before questioning them about their alcohol consumption because he did not believe they were in custody. On redirect, Deputy Penrod agreed with the prosecutor that "nobody was playing golf at 2:40 a.m." and that there were no other subjects or vehicles near the house where the alarm sounded.

¶ 10 Following argument, the trial court ruled from the bench in favor of defendant, finding that while Deputy Penrod's actions were "reasonable," once Penrod "told [defendant] that he was detaining him and he put him in the police car, he in fact effectuated a seizure at that point." The trial court ordered "any evidence obtained from that point forward would be suppressed," including defendant's confession and the results of the preliminary breath test. He did not suppress the arrest, however, finding it "eminently reasonable." A written order was later entered reflecting the oral order.

¶ 11 The State filed a motion to reconsider. During a hearing on the motion to reconsider, the State sought to question Deputy Penrod. Defense counsel objected,

noting the motion was one to reconsider, not for rehearing, and defendant did not anticipate any live testimony. The trial court stated it would consider Deputy Penrod's testimony as "an offer of proof," but it was "not reopening the evidence." The gist of Deputy Penrod's testimony was that his request for defendant to submit to a preliminary breath test was not the result of defendant's admission that he consumed alcohol, but rather the result of Penrod's direct observation of "an alcoholic beverage emitting from his person." Deputy Penrod said it is standard practice for him in situations involving minors to ask them to submit to a preliminary breath test if he detects alcohol on their breath, "regardless of whether they admit to having alcohol."

¶ 12 After the hearing, the trial judge reiterated his opinion that once defendant was placed in the squad car and was not free to leave, defendant was "seized" and defendant was entitled to *Miranda* warnings before he was questioned because he was in custody. The trial court found that the State failed to meet its burden of showing that the giving of the breath test was a voluntary act and found the results of the preliminary breath test to be "fruit of the poisonous tree." Accordingly, the trial court denied the State's motion and ruled the prior judgment would stand. The State then filed a certificate of impairment and appeal pursuant to Illinois Supreme Court Rule 604(a)(1) (eff. Feb. 6, 2013).

¶ 13 ANALYSIS

¶ 14 The issue raised by the State in this appeal is whether the trial court erred in granting defendant's motion to suppress. The State contends Deputy Penrod formed a reasonable suspicion defendant was committing or had committed a crime and the

detention of defendant was a proper *Terry* stop, and, therefore, the deputy was not required to give *Miranda* warnings prior to questioning defendant during the *Terry* stop or prior to administering a preliminary breath test. Defendant replies his detention in the squad car was not a proper *Terry* investigation, but was an unlawful seizure because the facts did not provide Deputy Penrod with a reasonable suspicion that defendant committed or was about to commit a burglary. Moreover, even assuming *arguendo* Deputy Penrod had a reasonable suspicion to effect a *Terry* investigation of the burglary, the investigation exceeded its proper scope and length and ripened into an unlawful seizure. We agree with defendant.

¶ 15 Review of a trial court's ruling on a motion to suppress presents a mixed question of law and fact. *People v. Jones*, 215 Ill. 2d 261, 267, 830 N.E.2d 541, 548 (2005). The appropriate standard of review requires us to give great deference to the trial court's factual findings and reverse those findings only if they are against the manifest weight of the evidence; however, we review *de novo* the ultimate question posed by the State's legal challenge to the trial court's ruling on the motion to suppress. *People v. Sorenson*, 196 Ill. 2d 425, 431, 752 N.E.2d 1078, 1083 (2001).

¶ 16 *Miranda* holds "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of [a] defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Miranda*, 384 U.S. at 444. The Supreme Court defined a custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant

way." *Miranda*, 384 U.S. at 444. Vehicle stops must be reasonable seizures that comport with the fourth amendment's call for reasonableness. U.S. Const., amend. IV.

¶ 17 The reasonableness of a traffic stop is measured by the criteria set forth in *Terry v.* Ohio, 392 U.S. 1 (1968). In Illinois, a police officer with reasonable suspicion that a person has committed an offense may lawfully stop and question that person for a reasonable period of time and may demand his or her name and address and an explanation of his or her actions. This form of temporary detention and questioning is conducted in the vicinity of where the person was stopped (725 ILCS 5/107-14 (West 2012), and constitutes a lawful detention or "*Terry* stop", which is different from being "in custody". See, *e.g.*, *People v. White*, 331 Ill. App. 3d 22, 27, 770 N.E.2d 261, 265-66 (2002) (noting difference between being in custody for purposes of *Miranda* and being "merely detained" for purposes of *Terry*); *People v. Jeffers*, 365 Ill. App. 3d 422, 429, 849 N.E.2d 441, 447 (2006). The question "is whether 'at any time between the initial stop and the arrest, [defendant] was subjected to restraints comparable to those associated with a formal arrest.' " *Jeffers*, 365 Ill. App. 3d at 429, 849 N.E.2d at 447 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 441 (1984)).

¶ 18 In determining whether a valid *Terry* stop has occurred, a two-part analysis is used. First, we must determine whether the officer's actions were justified at their inception. If so, we must further examine whether subsequent actions were reasonably related in scope to the circumstances that justified official interference in the first place. *People v. Bunch*, 207 Ill. 2d 7, 796 N.E.2d 1024 (2003); *People v. Gonzalez*, 204 Ill. 2d 220, 230, 789 N.E.2d 260, 270 (2003). A detention occurs when a reasonable, innocent

person in the circumstances would believe that he or she is not free to leave. *People v. Schronski*, 2014 IL App (3d) 120574, ¶ 22, 15 N.E.3d 506. The State bears the burden of showing that a seizure based upon reasonable suspicion was sufficiently limited in scope and duration. *People v. Ross*, 317 Ill. App. 3d 26, 31, 739 N.E.2d 50, 55 (2000).

¶ 19 Here, we disagree with defendant that the initial stop of the golf cart was illegal. Under the first prong of *Terry*, we agree with the trial court that Deputy Penrod was justified in stopping the golf cart because it was in front of the residence where he had been dispatched to investigate an activated burglar alarm. However, in considering the second prong of the *Terry* analysis, the length of the detention and the manner in which it was carried out, we agree with defendant that the investigation exceeded its proper scope and became an illegal seizure.

¶ 20 The Supreme Court has specifically stated "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500 (1983). Thus, the scope of the permissible "seizure" of defendant was limited to the investigation of the burglary. While Deputy Penrod said he also stopped the golf cart because it is illegal to drive a golf cart on a public roadway, it is clear from the record before us that Deputy Penrod was not concerned with this alleged offense. He was dispatched to investigate a possible burglary in a neighborhood adjacent to a golf course where one would normally see golf carts. Once Deputy Penrod determined no burglary occurred, defendant should have been free to leave and should not have been questioned about alcohol intake or asked to take a preliminary breath test without the benefit of hearing his *Miranda* rights.

¶ 21 We disagree with the State's assertion that defendant's detention was not so long as to transform his *Terry* detention into an unlawful seizure. According to Deputy Penrod's testimony, defendant spent more than 5 minutes, but not 30 minutes in the back of the deputy's vehicle while the deputy checked the residence where the burglar alarm had been activated. Deputy Penrod spoke to the homeowner, checked doors and windows, walked around the property, and ultimately determined that the reason the alarm activated was because a door on an outbuilding was unlatched. After determining that no burglary occurred, Deputy Penrod then talked to the passenger outside of the police car and outside of defendant's presence. After talking to the passenger, Deputy Penrod then questioned defendant separately and asked him whether or not he had anything to drink and asked him to submit to a preliminary breath test. Under these circumstances, a reasonable person would not have felt free to leave, but would have felt he was required to talk to the deputy and submit to the breath test. In support of our determination, we rely on *People v. Brownlee*, 186 Ill. 2d 501, 713 N.E.2d 556 (1999).

¶ 22 In *Brownlee*, the police completed all that was necessary for their traffic stop, but instead of allowing the vehicle to leave, they delayed the process and then asked the driver for permission to search the vehicle. *Brownlee*, 186 Ill. 2d at 520, 713 N.E.2d at 565-66. Our supreme court agreed with defendant that during the delay, a reasonable person in the driver's situation would not believe he was free to leave and would be unsure as to whether or not he was required to submit to the officer's request to search his car. *Brownlee*, 186 Ill. 2d at 521, 713 N.E.2d at 566. Similarly, in the instant case defendant, after sitting in a police car while the deputy investigated a potential burglary,

would have been unsure whether he was required to answer the officer's questions or submit to the officer's request that he take a preliminary breath test. Under the circumstances presented here, we find that the State failed to show that the detention was sufficiently limited in scope and duration to satisfy the conditions of a *Terry* investigative seizure.

¶ 23 In support of its contention that the investigation was proper in scope and time, the State relies on *People v. Ross*, 317 Ill. App. 3d 26, 739 N.E.2d 50 (2000). In that case, the court upheld a *Terry* stop where the evidence showed the defendant, a black male wearing a blue shirt, was stopped eight minutes after the victim called the police and told them that a black man "wearing a blue shirt had just invaded his home, choked and robbed him, and fled on foot." *Ross*, 317 Ill. App. 3d at 30, 739 N.E.2d at 54. The defendant was only about half a block from the victim's house when spotted by the police. *Ross*, 317 Ill. App. 3d at 30, 739 N.E.2d at 54-55. The defendant was handcuffed at gunpoint, placed in a squad car, and transported to the victim's home for identification. *Ross*, 317 Ill. App. 3d at 30, 739 N.E.2d at 55.

¶ 24 The instant case is distinguishable because here the police were not even sure if a crime occurred and Deputy Penrod was without any description of a potential suspect. Despite this, Penrod detained defendant for nearly half an hour in the back of a squad car during which defendant was not free to leave. Even after learning no burglary occurred, Deputy Penrod did not tell defendant he was free to leave, but detained defendant even longer in the back of the squad car while he interviewed the passenger, thereby exceeding the bounds of a *Terry* stop. We agree with the trial court that when defendant made his

statement admitting to having a couple of drinks he was in custody for purposes of *Miranda*.

¶ 25 Here, the prolonged detention after which there was a finding that no burglary occurred changed the fundamental nature of the stop. Defendant was illegally detained at the time he gave a statement admitting to drinking alcohol and consenting to take a preliminary breath test. Defendant's admission and the resulting preliminary breath test were both tainted, and the fruits thereof were properly suppressed. *Brownlee*, 186 Ill. 2d at 521, 713 N.E.2d at 566 (citing *Wong Sun v. United States*, 371 U.S. 471 (1963)).

¶ 26 Finally, we address the State's assertion that "the preliminary breath test was not even fruits of an allegedly poisonous confession tree." While the State is correct that the fruit of the poisonous tree doctrine is inapplicable to *Miranda* violations (*Oregon v. Elstad*, 470 U.S. 298 (1985)), here the trial court did not suppress the preliminary breath test because of a *Miranda* violation, but rather because when defendant confessed he had been drinking he was being illegally detained and was in unlawful custody in violation of the fourth amendment. "The fruit of the poisonous tree doctrine is an outgrowth or extension of the *fourth amendment* exclusionary rule." (Emphasis in original.) *People v. Winsett*, 153 Ill. 2d 335, 351, 606 N.E.2d 1186, 1195 (1992). The fourth amendment exclusionary rule is a judicially created device designed to safeguard fourth amendment rights through its deterrent effect by removing the incentive to disregard it. *Winsett*, 153 Ill. 2d at 351, 606 N.E.2d at 1195. The State also contends even under a fourth amendment exclusionary rule analysis, no fourth amendment violation is found because evidence is not fruit of the poisonous tree if the evidence is discovered by an independent

source and here the independent source is Deputy Penrod who smelled alcohol on defendant. During the motion to reconsider, Deputy Penrod testified he would have asked defendant to submit to a preliminary breath test regardless of whether defendant admitted to drinking. However, the trial court rejected this testimony when it denied the motion to reconsider.

¶ 27 As previously set forth, we are to give deference to a trial court's finding of fact and should only reverse when against the manifest weight of the evidence. Here, we cannot say the trial court's finding is against the manifest weight of the evidence. We agree with the trial court that the preliminary breath test should be suppressed because it was obtained in violation of defendant's fourth amendment right against unreasonable search and seizures and it was the fruit of an unlawful custodial interrogation.

¶ 28 CONCLUSION

¶ 29 The trial court correctly suppressed both defendant's confession and the results of the preliminary breath test because they are fruit of an unlawful seizure and illegal custodial confession. Moreover, the trial court correctly suppressed defendant's confession because the deputy failed to give *Miranda* warnings prior to questioning defendant.

¶ 30 For the foregoing reasons, we hereby affirm the order of the circuit court of Massac County granting defendant's motion to suppress.

¶ 31 Affirmed.

¶ 32 JUSTICE MOORE, dissenting.

¶ 33 I respectfully dissent. For the reasons that follow, I would reverse the order of the trial court and remand for further proceedings. As my colleagues in the majority correctly note, only one witness testified at the hearing on the motions to suppress and quash, and the facts in this case are not disputed, nor has the credibility of that sole witness been questioned. Indeed, there is no doubt that the defendant was detained, or seized, when he was placed in the squad car by Deputy Penrod, as the unrebutted testimony was that from that point forward, the defendant was not free to leave. The question before us is therefore not a factual one, it is a legal one: whether the seizure of the defendant was reasonable and permissible, or was unreasonable and not permissible. "Where no dispute exists as to the facts or witness credibility, the trial court's ruling on a motion to suppress will be reviewed *de novo*." *People v. Gilbert*, 347 Ill. App. 3d 1034, 1038, 808 N.E.2d 1173, 1177 (2004).

¶ 34 With regard to the seizure of the defendant, Deputy Penrod's testimony demonstrates that at the time he placed the defendant in the rear of his squad car, and thus detained or seized the defendant, he suspected the defendant of involvement in up to three distinct offenses, each of which required further investigation: (1) that the defendant was involved in the burglary alarm activation that Deputy Penrod had been dispatched to investigate; (2) that the defendant was unlawfully operating a golf cart on a public highway; and (3) that the defendant had committed illegal consumption of alcohol by a minor.

¶ 35 Deputy Penrod testified that his suspicion with regard to the first possible offense was the "primary purpose" for his initial stop of the defendant, and resulted from the fact that although at the time he encountered the defendant and the other individual he had received no dispatch information about any possible suspects related to the possible burglary, and although there was a golf course near the residence in question, it was 2:40 a.m., "nobody was playing golf" on the nearby course, and in fact the golf cart was in front of−"just south of the driveway" of−the house wherein the burglary alarm activation to which Deputy Penrod was responding had occurred. Moreover, Deputy Penrod testified that there were no other subjects or vehicles near the house that had the burglary alarm. These facts constitute articulable facts that would warrant a reasonably prudent officer to investigate further. See *People v. Lampitok*, 207 Ill. 2d 231, 255, 798 N.E.2d 91, 106 (2003) (citing *Maryland v. Buie*, 494 U.S. 325, 334 (1990)). Indeed, when one objectively considers the facts available to Deputy Penrod at the time of the stop (see *People v. Taylor*, 253 Ill. App. 3d 768, 772, 625 N.E.2d 785, 789 (1993) (quoting *Illinois v. Gates*, 462 U.S. 213, 232 (1983))), one cannot but conclude that they were sufficient to create a reasonable suspicion that the defendant was involved in a burglary, and that they therefore justified the initial stop of the defendant. In fact, as the State notes, one would have to question the competence of any police officer who, under the same facts and circumstances, did not attempt to stop and question the occupants of the golf cart.

¶ 36 Moreover, Deputy Penrod's suspicion with regard to the defendant's second possible offense resulted from Deputy Penrod witnessing, with his own eyes, the defendant operating a golf cart on a public highway. Deputy Penrod specifically testified

that this was a secondary reason for his initial stop of the defendant. Articulable facts sufficient to create a reasonable suspicion that the defendant had committed the offense of operating a golf cart on a public highway existed, and independently justified the initial stop of the defendant. Accordingly, I agree with my colleagues in the majority that there is no merit to the defendant's claim that the initial stop of him was not supported by a reasonable suspicion that he had committed or was committing a crime.

¶ 37 I note as well that Deputy Penrod's suspicion with regard to the defendant's third possible offense resulted from the odor of alcohol Deputy Penrod detected upon approaching the defendant and the passenger in the golf cart once he had justifiably stopped them, and the information about the defendant's age given to Deputy Penrod by the defendant, which, if true, would have meant the defendant was under 21 years of age.

¶ 38 The defendant contends on appeal that even if this court finds, as we have, that the initial stop of the defendant was supported by a reasonable suspicion that the defendant was committing or had committed a crime, we should nevertheless find that Deputy Penrod's ensuing investigation of the suspected offenses "unreasonably" detained the defendant longer than was necessary. The defendant claims the detention was unreasonable because, according to the defendant, Deputy Penrod "had other more limited and reasonable means available to confirm or dispel his suspicions about a possible burglary," and suggests three alternative courses of action Deputy Penrod could have taken instead of detaining the defendant while he investigated: (1) called his dispatcher to see if there was any new information about the possible burglary; (2) questioned the defendant and the other individual about what they had been doing in the

area and why they were there; and/or (3) let them go, as he knew their names and dates of birth. The defendant cites no authority in support of these propositions, nor am I aware of any cases that would place such requirements on a police officer actively investigating one or more suspected offenses. It is not the function of the courts to micromanage the means by which a police officer investigates suspected offenses, so long as those means are reasonable. Moreover, the defendant overlooks the fact that although he provided Deputy Penrod with a name and date of birth, he did not provide a picture ID or any other information by which Deputy Penrod could have verified that the defendant was who he claimed to be. In such a situation, one would again have to question the competence of any police officer who merrily sent the defendant on his way without conducting further investigation.

¶ 39 I certainly agree with the defendant, and with the majority, that "brevity is an important factor in determining whether a detention was reasonable." However, " '[t]he Fourth Amendment does not require a police [officer] who lacks the precise level of information necessary for probable cause to arrest to simply shrug his [or her] shoulders and allow a crime to occur or a criminal to escape.' " *People v. O'Dell*, 392 Ill. App. 3d 979, 986, 913 N.E.2d 107, 113 (2009) (quoting *Adams v. Williams*, 407 U.S. 143, 145 (1972)). On review, this court must consider the totality of the circumstances surrounding a detention, mindful of the fact that the factors that distinguish a valid investigatory detention from an arrest are the length of the stop and detention, and the scope of the investigation conducted during the stop and detention. *Id*. at 985-86. The key question we must ask as we determine whether the State has met its burden of

demonstrating " 'that a seizure based on reasonable suspicion was sufficiently limited in scope and duration' " (*id*. (quoting *People v. Staley*, 334 Ill. App. 3d 358, 366, 778 N.E.2d 362, 368 (2002))) is " 'whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.' " *Id*. (quoting *People v. Dyer*, 141 Ill. App. 3d 326, 332-33, 490 N.E.2d 237, 242 (1986)). We "must also consider 'the law enforcement purposes to be served by the stop as well as the time reasonably needed to effectuate those purposes.' " *Id*. (quoting *United States v. Sharpe*, 470 U.S. 675, 685 (1985)). No *per se* bright-line time limitation on *Terry* stops has been formulated, because " 'in evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria.' " *Id*.

¶ 40 With these legal principles in mind, I must disagree with the conclusion of my colleagues in the majority that the detention of up to 30 minutes[1] was unreasonable under the facts and circumstances of the case at bar. Deputy Penrod's testimony indicates that

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[1]Citing the testimony of Deputy Penrod, in its opening brief the State claims the detention was "no more than 25 minutes." In response, the defendant claims it was "up to 25 minutes long." However, Deputy Penrod testified that the detention was "a longer period than" five minutes, but that he doubted it was half an hour. It is not clear why the parties wish to subtract the 5 minutes that constitute the minimum length of the detention from the 30 minutes that constitute the maximum length of the detention, but in accordance with the testimony in the record, I will analyze the detention as if it was between 5 and 30 minutes in length.

once he stopped the defendant and decided to detain him, he began by investigating the most serious of the defendant's three suspected offenses: his possible involvement in a burglary. In terms of where he drove once he placed the defendant and the other individual in the back of his squad car, Deputy Penrod testified that he "basically turned around and pulled into the driveway of the residence," then "cleared the residence, ensuring that there was no damage and no property missing." He testified that he spoke to the homeowner, and described the process of "clearing the residence" as follows: "I found the door that appeared to be open, and then I cleared the building that it was attached to. I also walked around the rest of the property." Once he had "ensured that the property was safe," he began his questioning of the young men about their alcohol consumption. In other words, once he had dispelled his suspicion related to the most serious possible offense, he immediately moved on to an investigation of the next most serious possible offense−illegal consumption of alcohol by a minor−which is the offense for which the defendant was ultimately charged. Deputy Penrod specifically testified that were it not for his suspicions related to the first possible offense (*i.e.*, if there had been no burglary alarm activation), he would have immediately investigated the possible underage drinking, and would have done so without placing the defendant in his squad car.

¶ 41 Deputy Penrod was never asked, by either the State or the defendant, if he could have somehow expedited the process of investigating the burglary, or if he was delayed in any way during his investigation, nor has any argument been made, in the trial court or

on appeal, that he did not pursue the investigation with proper diligence.[2] Accordingly, I cannot conclude that he did not diligently pursue a means of investigation that was likely to confirm or dispel his suspicions about the defendant's first possible offense, as there is simply no evidence in the record to support such a conclusion. Moreover, common sense and ordinary human experience (see *People v. O'Dell*, 392 Ill. App. 3d 979, 986, 913 N.E.2d 107, 113 (2009) (quoting *United States v. Sharpe*, 470 U.S. 675, 685 (1985))) dictate that one of the law enforcement purposes served by the stop and detention−the investigation of a possible burglary, with its attendant potential loss of articles of both monetary and sentimental value to the homeowner involved−was an important one, and therefore I would decline, on the record before us, to conclude that a detention of between 5 and 30 minutes was not reasonably needed to effectuate that purpose. See *id*. In sum, I would conclude that the detention of the defendant did not last any longer than it had to for Deputy Penrod to reasonably investigate the first offense he suspected the defendant of committing, and just as this court has previously held that a 90-minute stop and detention of an individual "was not too long in duration to be justified as an investigatory stop," and was therefore not unreasonable, under the circumstances that surrounded it (see *id*. at 987, 913 N.E.2d at 113-14), I would conclude the same to be true

[2]As noted above, the defendant argues that Deputy Penrod did not have to detain him while he conducted his investigation, but of course this is a separate argument from one attacking the process by which Deputy Penrod conducted the actual investigation, the detention of the defendant in the interim notwithstanding.

in this case, because the stop and detention at issue did not " 'involve any delay unnecessary to the legitimate investigation of the law enforcement officers.' " *Id*. at 987, 913 N.E.2d at 114 (quoting *Sharpe*, 470 U.S. at 687).

¶ 42 Because the stop and detention of the defendant were both reasonable and appropriate pursuant to *Terry*, there was no "illegal custodial interrogation" or "illegal seizure" as the defendant alleges. Moreover, the United States Supreme Court has repeatedly held that the detention involved with a legitimate investigatory stop does not constitute *Miranda* custody and does not invoke the requirement of *Miranda* warnings. See, *e.g.*, *Howes v. Fields*, __ U.S. __, __, 132 S. Ct. 1181, 1190 (2012) (citing *Berkemer v. McCarty*, 468 U.S. 420, 423 (1984)). See also *Maryland v. Shatzer*, 559 U.S. 98, 112-13 (2010).

¶ 43 Therefore, after he completed his investigation of the possible burglary and removed the defendant and the other individual from the back of his squad car so that he could investigate the next most serious offense of which he suspected the defendant, Deputy Penrod had every right to ask the defendant if he had been drinking and to submit to a preliminary breath test, and the defendant had every right to decline to answer his question and to decline the invitation to submit to the test. However, the defendant admitted he had been drinking and consented to the test; he was arrested when the test resulted in a reading of ".061." Because I would reject the defendant's claim that the stop of the defendant was prolonged to the extent that it became an "illegal seizure" that rendered the defendant in custody for *Miranda* purposes or rendered the defendant's "confession" about consuming alcohol the result of an "unlawful custodial interrogation,"

I would necessarily also reject the defendant's concomitant argument that the trial court "correctly" suppressed the preliminary breath test results "under the fruit of the poisonous tree doctrine because it was the direct consequence of [the defendant's] confession, and the confession was elicited while [the defendant] was unlawfully in custody in violation of the Fourth Amendment."

¶ 44 Nevertheless, as a subpart of his larger argument, the defendant claims that we should uphold the suppression of the defendant's confession and the results of the preliminary breath test because, according to the defendant, "the trial court found that [the defendant] *** 'submitted to the law enforcement officer's authority' " and therefore did not knowingly, intelligently, and voluntarily agree to take the test. However, that finding of the trial court was expressly predicated on the trial court's erroneous legal conclusion that the defendant had been seized to the extent that he was entitled to *Miranda* warnings. Indeed, at the conclusion of the October 8, 2014, hearing on the State's motion to reconsider, the trial judge ruled as follows: "[G]o through the *Miranda* warnings. And they're entitled to that when they're in custody. That was not given. And I don't find–I don't find that the State's met its burden of showing that the giving of the breath test was a voluntary act. It's–I think it's fruit of the poisonous tree. They had been seized, and they were submitting to law enforcement authority. And the prior [j]udgment of the [c]ourt will stand." As explained above, I believe Deputy Penrod's questioning was pursuant to a legitimate *Terry* stop and detention, not an illegal seizure, and I therefore reiterate that I find no basis in the record to conclude that either the defendant's statement about consuming alcohol or his subsequent consent to a preliminary breath test

was involuntary. Accordingly, I can find no valid basis for the trial court's granting of the defendant's motion to suppress his confession. Therefore, I would reverse the trial court's order and remand for further proceedings. Because my colleagues in the majority choose to do otherwise, I respectfully dissent.