FIRST DIVISION
January 19, 2016

No. 1-13-1945
2016 IL App (1st) 131945-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | |
| | ) | |
| Plaintiff-Appellee, | ) | Appeal from the |
| | ) | Circuit Court of |
| v. | ) | Cook County |
| | ) | |
| RAUL MOLINA, | ) | No. 11 CR 15704 |
| | ) | |
| Defendant-Appellant. | ) | Honorable |
| | ) | Rosemary Grant-Higgins, |
| | ) | Judge Presiding. |

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Liu concurred in the judgment.
Justice Harris dissented.

**ORDER**

*Held:* Trial court did not err in denying defendant's motion to suppress evidence gathered at a traffic stop when the police officer was justified in reaching into the backseat pocket of the vehicle to make sure there was not a gun present, and when the police officer was justified in prolonging the traffic stop into a brief detention based upon a reasonable suspicion that a crime had been committed.

¶ 1 Following a jury trial, defendant Raul Molina was convicted of one count of armed robbery and two counts of aggravated battery, and sentenced to 8 years' imprisonment. On appeal, defendant contends that: (1) the trial court improperly denied his motion to quash and

suppress evidence obtained from a traffic stop; (2) the Illinois statutory scheme that required defendant, a juvenile at the time of the arrest, to be tried and sentenced as an adult is unconstitutional; (3) various fines and fees assessed against him should be reduced; and (4) the mittimus should be corrected to reflect only one conviction. For the following reasons, we affirm the judgment of the circuit court, and order the mittimus to be corrected and the assessment of fines and fees to be corrected according to this order.

¶ 2 BACKGROUND

¶ 3 Defendant was charged with armed robbery and aggravated battery of the victim, Armando Medina. Defendant was charged along with codefendant Eddie Rosado. Prior to trial, defendant's case was severed from Rosado's case. The codefendants were tried in a double jury trial, and represented by separate counsel.

¶ 4 Prior to trial, defendant filed a motion to quash arrest and suppress evidence. He alleged that other than a seatbelt violation, defendant and the other occupants of the car were not violating any laws. Defendant further argued that evidence sought to be suppressed in this matter was obtained without warrant or consent, and was not recovered until after the vehicle was searched. The State responded that the police officers reasonably feared for their safety, and thus were justified in searching the car, and that the police had probable cause after the search to arrest defendant and the other passengers. Codefendant Rosado also filed a motion to suppress. The hearings on the motions to suppress were held jointly.

¶ 5 At the hearing on defendant's motion to suppress, Officer Richard Pruger testified that at around midnight on August 25, 2011, he was working as a Chicago police officer in the 10th District on a robbery mission with his partner, Officer Davila. Officer Pruger described a "robbery mission" as the act of patrolling high-crime areas looking for on-view robberies. He

and his partner were wearing plain clothes on the night in question, working in an unmarked police vehicle.

¶ 6 Officer Pruger testified that as he and his partner were traveling westbound on 26th Street, he observed a blue Ford traveling eastbound. He testified that the front passengers were not wearing their seatbelts, and that he recognized one of the front passenger as Rosado. Officer Pruger knew Rosado to be a member of the Latin Kings gang, and had contact in the past with him "less than ten times." Officer Pruger testified that there was "a major gang conflict" happening in that area at the time between the Latin Kings and the Two-Six gang, and he wanted to investigate further. Officer Davila made a U-turn and activated the siren and emergency lights. The blue Ford stopped and the officers exited their vehicle.

¶ 7 Officer Pruger testified that as he approached the passenger side of the vehicle, he observed the back passenger, defendant, placing "what I thought was a handgun into the rear sleeve of the passenger front seat." Officer Pruger testified that defendant had a "black colored object which I believed to be a handgun in his hand, and he was stuffing it into this rear sleeve of the passenger's side front seat." Officer Pruger averred that he "kept ordering" defendant to show his hands, and then drew his weapon. He had to order defendant "at least three times" to show his hands, and that defendant eventually did "two or three seconds" later. Officer Pruger testified that he and his partner ordered the vehicle's occupants to get out of the vehicle. They handcuffed the occupants and put defendant in the back of the police vehicle.

¶ 8 Officer Pruger testified that he then went and looked down into the sleeve of the backseat of the vehicle. He could see a black cell phone and jewelry, which he recovered. Officer Pruger testified that after he pulled those objects out of the sleeve, he still feared for his safety because

he and his partner "were outnumbered four to two." Officer Pruger testified that before he put his hand in the backseat pocket he knew there was a cell phone and jewelry inside.

¶ 9 On cross-examination, Officer Pruger testified that he had been working in that area of the traffic stop for 13 years, and at the time of the incident, that area was Two-Six gang territory. Officer Pruger testified that he and his partner handcuffed the passengers of the vehicle for the officers' safety because he had observed one of the passengers with what he thought was a gun, and the officers were outnumbered four to two. Officer Pruger testified that it was a felony for someone to possess an "uncased weapon on city streets."

¶ 10 Officer Pruger testified that after he looked into the backseat pocket, he reached in to see if there was anything down at the bottom of the pocket that was not visible. He then pulled out a black cell phone, a broken chain, and a ring. Counsel submitted a picture into evidence which showed the backseat pocket in question. Officer Pruger testified that it was "pulled somewhat tight against that car seat." Officer Pruger testified that the ring was a "school ring with a name on it." The name was "Armando Medina." Officer Pruger testified that he asked the occupants of the car what their names were, and none of them were Armando Medina. He testified that based on the movements made by defendant, coupled with the nature of the objects, he believed the objects to be the proceeds of a robbery. Officer Pruger testified that he then asked defendant who the cell phone belonged to and defendant responded, "What cell phone?" Officer Pruger averred that he asked about the items of jewelry, and that the passengers also denied knowledge of those. Officer Pruger then asked the passengers where they had been coming from, and one of them answered that they had been coming from Cicero, Illinois prior to the traffic stop.

¶ 11 Officer Pruger further testified that he then placed a call on the police dispatch radio to make contact with the Cicero police department to see if any robberies had taken place with a

victim by the name of Armando Medina. After the radio inquiry, two officers, Officer Sanchez and Officer Castro, arrived on the scene and informed him that they were handling a battery of a victim named Armando Medina that had just occurred about eight blocks away. They also informed Officer Pruger that the victim was on his way to the hospital for medical treatment.

¶ 12 Officer Pruger testified that defendant and the other passengers were taken to the hospital. Officer Pruger testified that the victim, Armando Medina identified the recovered items as his belongings, and identified defendant and the other passengers as the people that robbed him.

¶ 13 On redirect examination, Officer Pruger testified that when he looked into the backseat pocket of the car, he could see a cell phone but could not see a gun.

¶ 14 On recrossexamination, Officer Pruger testified that when he looked into the backseat pocket he saw a cell phone, but that he did not know whether there was a gun in the pocket until he reached in and pulled out all the items.

¶ 15 After hearing oral arguments on the motion to suppress, the trial court noted that it had listened carefully to the evidence presented, took into consideration the exhibits, and looked at the photographs of the car, the backseat pocket of the vehicle, the cell phone, and the jewelry. It also took into consideration all of the arguments presented. The trial court noted that Officer Pruger had indicated that the backseat pocket was deep and that he had to reach into the sleeve to fully access the contents. The trial court noted that Officer Pruger inquired if the items belonged to any of the passengers of the vehicle, and none of them responded affirmatively; and that the ring had the name "Armando Medina" on it, but none of the passengers had that name.

¶ 16 The court found, looking at the totality of the circumstances, "in the light most favorable to the State," that the motion to quash and suppress should be denied. The trial court based this

finding on the fact that failure to wear a seat belt is a violation of Illinois law. It further found that where the police have probable cause to believe a traffic violation has occurred, the vehicle stop is deemed reasonable. The trial court further found that the officers were justified in briefly detaining defendant and the other passengers, and then searching the car pursuant to *Terry*. The court noted that defendant disregarded the officer's repeated request to show his hands after shoving an object the officers believed to be a handgun into the sleeve of the rear passenger seat. The court found that there was a significant safety consideration to justify Officer Pruger's reasonable suspicion that there was a handgun there. The trial court further found that it did not matter that Officer Pruger did not find a handgun in the sleeve pocket – the fact that his reasonable suspicion was not confirmed did not extinguish the reasonable suspicion. The court noted that once the officer recovered the contents of the sleeve pocket, he was "not obligated to ignore it when he saw immediately that it was not these individuals." The motion to suppress was denied.

¶ 17 At trial, Armando Medina described the incident and identified defendant as one of his attackers. He testified that his attackers stole his class ring, ripped a gold chain from his neck, and took his phone, all of which were identified as his property while he was at the hospital. Chicago police officer Michelle Sanchez described her investigation of the crime scene, including Medina's injuries. Chicago police officer Michael Fietko also provided testimony regarding the crime scene including his observation of the presence of a pool of blood, a ring, and a "medallion" that Medina later identified as his property. Officer Pruger testified consistently with his pretrial testimony. The jury convicted defendant of one count of armed robbery (720 ILCS 5/18-2 (a)(1) (West 2010)) and two counts of aggravated battery (720 ILCS

5/12-3.05 (c), (f)(1) (West 2010)). Defendant filed a motion to reconsider and set aside the verdict. The circuit court denied defendant's motion.

¶ 18 After a sentencing hearing, the circuit court sentenced defendant to a total of 8 years' imprisonment. The mittimus reflected that the circuit court sentenced defendant to 8 years' imprisonment for armed robbery, and 2 years' and 6 months' imprisonment for each count of aggravated battery. The mittimus further ordered that counts II and III, *i.e.*, the two aggravated battery counts, merged into count I, *i.e.*, the armed robbery conviction. The circuit court assessed a total of $680 in fines, fees, and costs. The circuit court denied defendant's motion to reconsider his sentence. Defendant now appeals.

¶ 19 ANALYSIS

¶ 20 On appeal, defendant contends that: (1) the trial court improperly denied his motion to quash and suppress evidence obtained from a traffic stop; (2) the Illinois statutory scheme that required defendant, a juvenile at the time of the arrest, to be tried and sentenced as an adult is unconstitutional; (3) various fines and fees assessed against him should be reduced; and (4) the mittimus should be corrected to reflect only one conviction.

¶ 21 Defendant first argues that the police officers' actions extended beyond constitutional limits and that his motion to quash should have been granted. Specifically, defendant contends that rather than issue him a ticket for a seatbelt violation, the police officers investigated a completely different crime, and that such investigation unreasonably prolonged the traffic stop in violation of his constitutional rights.

¶ 22 Both the Fourth Amendment of the United States Constitution and the Illinois Constitution of 1970 guarantee the right of individuals to be free from unreasonable searches and seizures. U.S. Const., amend IV; Ill. Const. 1970, art. I, §6. Our supreme court has explained

that "[t]he 'essential purpose' of the Fourth Amendment is to impose a standard of reasonableness upon the exercise of discretion by law enforcement officers to safeguard the privacy and security of individuals against arbitrary invasions." *People v. McDonough*, 239 Ill. 2d 260, 266 (2010) (quoting *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979)). The Fourth Amendment is implicated in this case because stopping a vehicle and detaining its occupants constitutes a "seizure" within the meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). Therefore, a vehicle stop is subject to the Fourth Amendment requirement of reasonableness in all circumstances. *Whren*, 517 U.S. at 810.

¶ 23 The United States Supreme Court has observed that the usual traffic stop is more analogous to a *Terry* investigative stop than to a formal arrest. *Knowles v. Iowa*, 525 U.S. 113, 117 (1998); *Terry v. Ohio*, 392 U.S. 1 (1968). Accordingly, courts generally analyze Fourth Amendment challenges to the reasonableness of traffic stops under *Terry* principles. See, *e.g.*, *United States v. Sharpe*, 470 U.S. 675, 682 (1985). Pursuant to *Terry*, a law enforcement officer may, under appropriate circumstances, briefly detain a person for questioning if the officer reasonably believes that the person has committed, or is about to commit, a crime. *Terry*, 392 U.S. at 21-22. "The initial stop may be broadened to an investigative detention if the officer discovers specific, articulable facts which give rise to a reasonable suspicion that the defendant has committed, or is about to commit, a crime." *People v. Ruffin*, 315 Ill. App. 3d 744, 748 (2000). However, the investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. *Florida v. Royers*, 460 U.S. 491, 500 (1983); *People v. Jones*, 215 Ill. 2d 261, 270 (2005).

¶ 24 We review a trial court's order on a motion to suppress using a two-part standard. *People v. Oliver*, 236 Ill. 2d 448, 454 (2010). We afford 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. *Oliver*, 236 Ill. 2d at 454. We review *de novo*, however, the trial court's ultimate legal ruling on whether suppression is warranted. *Oliver*, 236 Ill. 2d at 454.

¶ 25 Here, defendant contends that the search began as lawful, but "lost its justification" after Officer Pruger looked in the seat pocket and saw that there was not a gun inside. Defendant contends that at that moment, the officer's fear regarding a possible gun had disappeared, and therefore he was not permitted to conduct a further search of the car. Defendant alleges that at that point, the officers' task was to complete the original reason for the stop - ticketing the passengers for seatbelt violations - and to let them go. Defendant contends that the officers undertook improper investigative actions that unreasonably prolonged the stop by reaching into the seat pocket and removing the items, examining the items, asking defendant about the items, asking where the car had been coming from, asking police dispatch to contact the Cicero police department, putting Armando Medina's name over the radio, meeting with Officers Sanchez and Castro when they arrived on the scene, transporting the passengers to the hospital, and conducting a show-up outside the hospital.

¶ 26 The State, on the other hand, contends that Officer Pruger was justified in reaching into the seat pocket to ensure that there was not a gun inside, and that he was further justified in the investigative detention of defendant and the other passengers after he discovered the items in the back seat pocket. We agree with the State.

¶ 27 While Officer Pruger initially testified that when he looked into the backseat pocket he could see that there a cell phone, not a gun, he later testified that the pocket was too deep to see everything from just looking at it, so he had to reach in to make sure there was not a gun. The trial court specifically found that "based on the thickness of the pocket from my observation and

the deepness of it," an officer would not be able to know for sure whether a gun was not inside the pocket "without the officer going into that pocket in order to learn whether or not there was a weapon." Because the circuit court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony, we find that the court's finding that Officer Pruger had to reach into the pocket in order to ensure there was no gun inside, was not against the manifest weight of the evidence. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). While it is true that the trial court when making its factual findings improperly viewed the evidence "in the light most favorable to the State," a reviewing court remains free to undertake its own assessment of the facts in relation to the issues presented and may draw its own conclusions when deciding what relief should be granted. *Id*. at 512. Based on the evidence presented, we also find that Officer Pruger, although able to see from peering inside the backseat pocket that a cell phone and jewelry were inside, he was justified in reaching into the pocket to make sure there was not also a gun inside.

¶ 28 The question then becomes whether Officer Pruger was justified in further detaining the witnesses once he pulled the items out of the backseat pocket and determined there was no gun inside. We reiterate that "[t]he initial stop may be broadened to an investigative detention if the officer discovers specific, articulable facts which give rise to a reasonable suspicion that the defendant has committed, or is about to commit, a crime." *Ruffin*, 315 Ill. App. 3d at 748. Additionally, inquiries that do not measurably extend the duration of the stop do not require additional Fourth Amendment justification. *Rodriguez v. U.S.*, 135 S. Ct. 1609, 1614-15 (2015) (an officer may conduct certain unrelated checks during an otherwise lawful traffic stop) (citing *Muehler v. Mena*, 544 U.S. 93, 101 (2005) (because unrelated inquiries did not extend the time petitioner was detained, no additional Fourth Amendment justification was required) and *Arizona*

*v. Johnson*, 555 U.S. 323, 333 (2009) (the seizure remains lawful only so long as inquiries do not measurably extend the duration of the stop)). Here, Officer Pruger asked the passengers who the cell phone belonged to, and asked if any of the passengers were "Armando Medina," the name on the class ring. These two questions did not measurably extend the duration of the stop. The passengers denied any knowledge of the cell phone, and denied knowledge of someone named "Armando Medina." We therefore find that the following specific, articulable facts gave rise to a reasonable suspicion that the passengers had just committed a robbery: Officer Pruger saw defendant stuff something into the backseat pocket as the car was being pulled over, defendant initially refused to put his hands up after being repeatedly asked, the contents of the backseat pocket included a broken chain, a cell phone, and a class ring, none of which belonged to any of the passengers. Accordingly, we find that Officer Pruger was justified in broadening the traffic stop into an investigative detention.

¶ 29 To the extent that defendant relies on *People v. Baldwin*, 388 Ill. App. 3d 1028 (2009) to support his proposition that the officers did not have the authority to detain the passengers after discovering there was no gun in the backseat pocket, we remain unpersuaded. In *Baldwin*, the Third District affirmed the trial court's granting of the defendant's motion to suppress in a case where a police officer stopped a vehicle in which the defendant was a passenger after observing two lane violations by the driver of the vehicle. 388 Ill. App. 3d at 1029, 1036. The *Baldwin* court found that at approximately 4 minutes and 30 seconds into the traffic stop, the officer had concluded the initial purpose of the stop, because no issues had arisen when he ran the license and warrant information on the driver and his two passengers. *Id*. at 1034. However, rather than issuing a citation or warning ticket, the officer, who claimed the defendant exhibited signs of nervousness such as heavy breathing and avoidance of eye contact, spent approximately four

additional minutes trying to gain consent to search the vehicle. When these attempts were rebuffed, the officer ordered the driver to return to the vehicle, then called for a drug-sniffing dog, which arrived two minutes later. *Id*. at 1035. The drug sniff was completed approximately 14 minutes after the officer's squad car camera began to record the stop, with recording beginning just after the car in which the defendant was riding stopped. *Id.* at 1029, 1035. The court held that because the purpose of the initial stop was completed at 4 minutes and 30 seconds into the stop, "the duration of the detention was prolonged beyond the time reasonable required to complete the traffic stop." *Id*. at 1035. The court also held that the defendant's nervousness did not provide reasonable suspicion to the officer that would amount to a separate legal justification to broaden the stop into a lawful investigative detention. *Id*. Rather, the court characterized the officer's observations as mere hunches and unparticularized suspicions, which are insufficient to justify broadening a stop into an investigatory detention. *Id.* In the absence of a reasonable, articulable suspicion to prolong the detention, the trial court did not err in granting the defendant's motion to suppress. *Id*.

¶ 30 In the case at bar, on the other hand, Officer Pruger's observations were not mere hunches or unparticularized suspicions. Rather than observing any nervousness on behalf of the passengers, Officer Pruger saw defendant stuff what he thought was a gun into a backseat pocket. Officer Pruger then had to tell defendant multiple times to put his hands up before he complied. Officer Pruger recovered certain items from the backseat pocket that included a broken chain, a cell phone, and a class ring, none of which belonged to any of the passengers. We find that the actions by the passengers, combined with the contents of the backseat pocket, gave Officer Pruger sufficient justification to broaden the stop into a lawful investigative detention, as he had a reasonable suspicion of criminal activity. *Ruffin*, 315 Ill. App. 3d at 748.

¶ 31 Defendant next argues that the Illinois statutory scheme which required defendant, a juvenile at the time of the offense, to be tried and sentenced as an adult, is unconstitutional. Defendant admits that our supreme court recently rejected a challenge to the statutory scheme he now challenges, and acknowledges that this court cannot overrule a decision of our supreme court. See *People v. Patterson*, 2014 IL 115102, ¶ 89-104. Defendant, however, notes that a petition for certiorari has been filed in *Patterson* and seeks to preserve this claim for further review pending the outcome of the petition. In light of *Patterson*, we reject defendant's constitutional challenge but acknowledge that he did present this claim of error for preservation purposes.

¶ 32 Defendant next contends that certain fines and fees assessed against him were improper. The State agrees on some of those contentions. Accordingly, we find that: (1) the $5 electronic citation fee and the $5 court system fee should both be vacated; (2) the $50 court system fee should be offset by the $5-per-day credit for fines pursuant to section 110-14(a) of the Code (725 ILCS 5/110-14(a) (West 2010)); and (3) defendant is entitled to presentence incarceration credit for the $15 State Police Operations charge (705 ILCS 105/27.3a-1.5 (West 2010)).

¶ 33 However, defendant contends that the $25 Violent Crime Victim Assistance Fine should be reduced to $12. 725 ICLS 240/10(c)(1) or (2) (West 2010). The State points out that the statute defendant relies on was amended by Public Act 97-816. The new version of the statute became effective on July 16, 2012, which provides in relevant part:

> (b) When any person is convicted in Illinois of an offense listed below or placed on supervision for that offense on or after July 1, 2012, the court shall impose the following fines: (1) $100 for any felony. ***

(c) The change imposed by subsection (b) shall not be subject to the provisions of Section 110-14 of the Code of Criminal Procedure of 1963 ***."

¶ 34 Here, the State argues that because he was found guilty of aggravated battery and armed robbery on November 29, 2012, and was sentenced for these offenses on May 2, 2013, the current version of section 240/110 is applicable, and defendant should be assessed a Violent Crime Victims Assistance Fund fine in the amount of $100, rather than $25. Defendant maintains that because the incident occurred in August 2011, the current version of section 240/110 is not applicable, and that the $25 fine should be reduced to $12.

¶ 35 "The constitutional prohibition against *ex post facto* laws prevents the punishment of an offense being increased by an amendatory act taking effect after the offense has been committed." (Internal quotation marks omitted.) *People v. Bosley*, 197 Ill. App. 3d 215, 220 (1990); *People v. Maxwell*, 2011 IL App (4th) 100434, ¶ 105. Accordingly, we find that defendant's Violent Crime Victim Assistance Fine should be reduced from $25 to $12.

¶ 36 This court is authorized to modify the trial court's order to reflect the accurate amount owed by defendant. See *People v. Avery*, 2012 IL App (1st) 110298, ¶ 51. Therefore, the total amount of fines and fees owed by defendant should be reduced from $680 to $547.

¶ 37 Finally, defendant argues that the mittimus should be corrected to reflect only one conviction. Defendant contends that the aggravated battery counts merged into the armed robbery count, but that the sentencing order reflected all three convictions. However, the sentencing order then states, "It is further ordered that *** Counts 2, 3 to merge into Count 1." Because there is ambiguity in the mittimus, we order the mittimus to be corrected by striking the aggravated battery convictions. See *People v. Walker*, 2011 IL App (1st) 072889, ¶ 39 (when multiple convictions have been entered for the same act, only the conviction for the most serious

charge should be reflected on the mittimus). The State contends for the first time, however, that the trial court erroneously stated that the counts should merge, but because the offenses were based on separate acts, the trial court should simply have indicated that the sentences should run concurrently, not that the counts should merge. Because the State is making this argument for the first time on appeal, the State has no authority to seek review of the trial court's decision to merge the counts of aggravated battery with armed robbery, and we will not address the merits of the State's argument regarding merger. See *People v. Ramos*, 339 Ill. App. 3d 891, 906 (2003).

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, order the fines, fees and costs to be corrected, and order the mittimus to be corrected in accordance with this order.

¶ 40 Affirmed; fines, fees and costs corrected; mittimus corrected.

¶ 41 JUSTICE HARRIS, dissenting.

¶ 42 I respectfully dissent.

¶ 43 As with the motion to suppress brought by his co-defendant, Eddie Rosado, (*People v. Rosado*, 2015 IL App (1st) 131556-U (Harris, J. dissenting)) I would grant the motion and order a new trial be held.

¶ 44 What I wrote in my Rosado dissent bears repeating as I believe the majority opinion there and here wrongly permits improper police conduct to trump constitutional safeguards protecting citizens from unreasonable searches and seizures. Suppressing evidence, even if it means freeing the guilty, is an unpleasant judicial result, but allowing a violation of the Constitution is much worse. The suppression doctrine is designed to safeguard the Fourth Amendment right against unreasonable searches and seizures by denying the government the use

of the evidentiary fruits of unconstitutional intrusions. See *Terry v. Ohio*, 392 U.S. 1, 29 (1968) (declaring that evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation). Because the officers unlawfully extended the scope of the original traffic stop, I would reverse the judgment of the circuit court which erred when it denied Defendant's motion to quash and suppress evidence.

¶ 45 The majority's opinion approves Chicago police officers' wrongly prolonging the seizure of a vehicle and its occupants after the officers' thorough search did not reveal a weapon during a safety check. In affirming the denial of defendant's motion to suppress, the majority has turned a blind eye to the principles set forth in the seminal case *Terry v. Ohio,* 392 U.S. 1 (1968), and its progeny, including the Supreme Court's most recent decision in *Rodriguez v. United States*. 575 U.S. ___, 135 S.Ct. 1609 (2015). Pursuant to these cases, I find the police unlawfully prolonged an initially justified stop and safety search which failed to turn up a weapon of any kind and then switched their inquiry to the source of jewelry and cell phone taken from the rear seat pocket of the car. Here, the investigative detention was not temporary and lasted longer than was necessary to effectuate the original purpose of the stop, a seat belt violation.

¶ 46 Illinois citizens are guaranteed the right to be free from unreasonable searches and seizures by both the federal and Illinois constitutions. *People v. Gayton*, 2015 IL 116223, ¶ 20 (citing U.S. Const., amend. IV; *Mapp v. Ohio,* 367 U.S. 643 (1961); Ill. Const. 1970, art. I, § 6). "Generally, stopping a vehicle based on a suspected violation of the law constitutes a seizure, even if the stop is for a brief period and for a limited purpose." *Id.* Passengers of a vehicle are also considered to be seized when subjected to a traffic stop. *People v. Harris*, 228 Ill. 2d 222,

231 (2008). An analysis of a vehicle stop is made pursuant to the reasonableness requirements of the Fourth Amendment as set forth in *Terry v. Ohio*. *People v. Henderson*, 2013 IL 114040, ¶ 25 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). Pursuant to *Terry*, "police may conduct a brief, investigatory stop 'where the officer reasonably believes that the person has committed, or is about to, commit a crime.' " *Id.* "The investigatory stop must be justified at its inception." *People v. Close*, 238 Ill. 2d 497, 505 (2010).

¶ 47 During an investigatory stop based on a reasonable suspicion, the police are permitted to make "a reasonable search for weapons when the officer has reason to believe that the subject of his investigation is armed and dangerous." *People v. Colyar*, 2013 IL 111835, ¶ 35 (citing *Terry*, 392 U.S. at 27). A protective search of the passenger compartment of an automobile is permitted during an investigatory stop, provided that the officers reasonably believe that an individual is armed and could gain control of the weapon. *Id.* ¶ 38-39. Such a search, however, is limited to the area where the possible weapon may be hidden or located. *Id.* ¶ 39.

¶ 48 A seizure during a traffic stop that is initially lawful can become unlawful and violate the Fourth Amendment if the stop is improperly prolonged beyond the reasonable amount of time required to complete the vehicle stop. *Harris*, 228 Ill. 2d at 235 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). The Supreme Court recently reaffirmed this principle, and explained:

¶ 49 "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission' – to address the traffic violation that warranted the stop, [citation] and attend to any related safety concerns, [citation]. [Citations]. Because addressing the infraction is the purpose of the stop, it may 'last no longer than is necessary to effectuate th[at] purpose.' [Citations]. Authority for the seizure thus ends when tasks tied to the traffic infraction are – or

reasonably should have been – completed. [Citation.]" *Rodriguez v. United States*, 575 U.S. ___, 135 S. Ct. 1609, 1614 (2015) (internal citations omitted).

¶ 50 In determining whether to issue a traffic ticket, and to ensure vehicle safety on the road, the police are permitted to make " 'ordinary inquiries incident to [the traffic] stop' " such as performing a warrant check, and reviewing vehicle registration and insurance information. *Id.* at 1615 (quoting *Caballes,* 543 U.S. at 408). Certain unrelated investigations during the course of a roadside detention may also be permissible, unless such an investigation prolongs the stop. *Id.* at 1614-1615. Unlike my majority colleagues, the Supreme Court has reasoned that the State's interests in police officer safety during a traffic stop are different from the State's goals in detecting crime, and that "[o]n scene investigation into other crimes *** detours" from the State's interest in officer safety during a traffic stop. *Id.* at 1616. Accordingly, we must look to what the police actually did to determine whether the seizure was reasonable to complete the mission of the stop. *Id.* Furthermore, under Illinois law "an officer's authority to investigate a traffic violation may not serve as a subterfuge to obtain other evidence based on suspicion." *People v. Penny,* 188 Ill. App. 3d 499, 502 (1989).

¶ 51 Based on my review of the record, the police in this matter unlawfully prolonged a legitimate traffic stop by extending an initially proper safety search of the back seat pocket into an investigation of the origin of the jewelry and phone recovered from the pocket.

¶ 52 It is undisputed that the police were justified in curbing the vehicle in which defendant was a backseat passenger due to Officer Pruger's observation of a seat belt violation from the driver and front seat passenger of the vehicle. However, while the seat belt violation made the stop lawful, the officers clearly had other motivations in stopping the vehicle. Officer Pruger testified he recognized co-defendant Rosado as a member of the Latin Kings, and that "a

major gang conflict" between the Latin Kings and the Two-Six gang was happing in the area. Officer Pruger testified that based on the Rosado's gang affiliation and the current gang conflict, he wanted to investigate further. While entirely permissible under our jurisprudence, Officer Pruger clearly used the seat belt violation as a pre-text to pull the car over and investigate the occupants for other possible criminal activity.

¶ 53 While curbing the vehicle for seat belt violations may have been a pretext, Officer Pruger had a legitimate safety concern based on Molina's actions in the backseat as he approached the vehicle. Therefore, Officer Pruger's safety search of the backseat pocket was justified. Officer Pruger was further justified in reaching his hand inside the pocket to determine the contents. The point at which Officer Pruger unlawfully prolonged the traffic stop is when he began to investigate the origin of the items removed from the pocket, which were not a weapon and were not immediately identifiable as contraband.

¶ 54 It is well-established that the allowable time frame for a seizure during a traffic stop is determined by the purpose of the stop, *i.e.*, the traffic violation, and any safety concerns of the officers. *Rodriguez*, 575 U.S. ___, 135 S. Ct. 1609, 1614 (2015). The authority for the stop ceases "when tasks tied to the traffic infraction are – or reasonably should have been – completed." *Id.* Here, the purpose of the stop was to issue a traffic citation for a seat belt violation and to attend to Officer Pruger's legitimate safety concern based on co-passenger Molina's actions in the backseat. After removing the jewelry and the phone from the pocket, however, Officer Pruger's safety concerns regarding a possible weapon were shown to be unfounded and a seat belt citation should have been issued.

¶ 55 Even prior to engaging in a search of the backseat pocket, Officer Pruger and his partner had ordered all occupants out of the vehicle, placed them in handcuffs and then placed

them at the back of the vehicle. While the record makes no indication, I presume that officers performed a safety pat down of the defendants before turning their attention back to the vehicle. After removing the occupants from the car, Officer Pruger on direct examination, testified that even prior to physically examining the pocket he "could tell there was no gun there." While the State later elicited testimony that Officer Pruger did not know for sure a gun was not in the pocket, such testimony should be seen for it is – an attempt by the State to rehabilitate Officer Pruger's testimony after he candidly admitted he was aware no gun was in the pocket prior to physically searching it.

¶ 56 The majority, without explanation or justification, has somehow concluded that the actions by Molina, combined with the contents of the backseat pocket, gave Officer Pruger sufficient justification to broaden the stop into lawful investigation detention, as he had a reasonable suspicion of criminal activity. The facts refute his having a reasonable suspicion of criminal activity before he unjustifiably prolonged the stop.

¶ 57 Officer Pruger testified that he had no knowledge of the prior robbery nearby. Officer Pruger testified he was concerned about the major gang conflict between the Latin Kings and Two-Six gangs. Officer Pruger testified that Molina's actions of stuffing items into the backseat and refusing to raise his hands led the officer to believe a gun was present and his immediate safety may be in danger. It was his legitimate safety concerns, not suspicion that the occupants had committed a crime, which provided the basis by which Officer Pruger could lawful search the pocket of the seat.

¶ 58 Even before physically searching the backseat pocket, Officer Pruger's safety fears had begun to dissipate because he testified based on a visual of the pocket, he could tell a gun was not present. Officer Pruger's hunch that a gun was not present was confirmed when he

physically searched the pocket and found none. After failing to find a weapon, Officer Pruger testified that he was still concerned about his safety because he was outnumbered, however there is no indication he called for additional units.

¶ 59 While officer safety is of paramount concern when conducted traffic stops, Officer Pruger testimony that he continued to fear for his safety after failing to find a gun in the backseat pocket is not credible. Officer Pruger's fears of a firearm had been dispelled, all the occupants were restrained via handcuffs (and presumably searched for weapons), and despite being outnumbered 4 to 2, he did not radio for back-up. An officer concerned about safety because of numerical disadvantage would immediately call for additional units to ensure officer safety, not engage in a criminal investigation. Moreover, even before that point, Officer Pruger engaged in a search of the vehicle while the four occupants were outside the vehicle with his partner. When additional officers did arrive, it was to investigate a robbery not provide for officer safety.

¶ 60 It is also clear from Officer Pruger's testimony that he did not begin to interview the occupants of the car, including defendant, until after he had removed the items and examined them. The jewelry and phone were not immediately identifiable as contraband at this point. Officer Pruger had no knowledge of the items origin at this point. To consider these items contraband before any knowledge of a robbery is obtained would allow the police to criminalize the contents of almost every citizen's pocket.

¶ 61 The majority's reliance on *People v. Ruffin* is also misplaced. 315 Ill. App. 3d 744 (2000). In that case, the court held that the defendant's motion to suppress should have been granted because the officer in that case, like Officer Pruger in this case, used the prolonged stop as a subterfuge to obtain other evidence unrelated to the initial stop. *Id.* at 750. Like the *Ruffin*

court, I conclude that the actions of the officers in this case represented an unreasonable search and seizure under the fourth amendment warranting suppression of the cell phone and jewelry.

¶ 62 After failing to find a firearm, and while the defendants were still restrained, Officer Pruger took several steps that in my view unlawfully prolonged the traffic stop. First, Officer Pruger engaged in a physical examination of the objects. He identified the name "Armando Medina" from the ring. He then inquired the names of the occupants, not in order to issue a traffic citation, but to investigate the provenance of the ring. Officer Pruger questioned Molina about whether the items were his. When Molina denied the items were his, Officer Pruger asked the occupants where they were coming from. He then inquired of police dispatch whether there had been any robberies in Cicero. Next, he put the name Medina (the name on the ring) out over the police radio. He then waited Officers Sanchez and Castro to arrive on scene. After those two officers arrived, Officer Pruger conferred with them and learned a man named Armando Medina had been assaulted seven or eight blocks away. He then transported the occupants to an area hospital and conducted a showup, having Medina identify the occupants as his assailants and the jewelry and phone as his property.

¶ 63 None of these actions were related to the initial seat belt violation or officer safety. As the Supreme Court recently reiterated in *Rodriguez*, "[t]he seizure remains lawful only 'so long as [unrelated] inquiries do not measurably extend the duration of the stop.' " *Rodriguez*, 135 S. Ct. at 1615 citing *Arizona v. Johnson*, 555 U.S. 323, 333 (2009).

¶ 64 Accordingly, I find these inquiries unlawfully prolonged the initially justified traffic stop. These actions unlawfully prolonged the mission of the stop which was to issue a seat belt violation citation and to attend to any safety concerns. The police in this matter pursued an unrelated investigation into a possible robbery despite not having any knowledge of the robbery.

These actions unlawfully extended a legitimate traffic stop prohibited under *Terry*. Officer Pruger's subjective good faith in believing a robbery took place may have turned out correct, but the Fourth Amendment requires more than a subjective good faith belief. *Terry*, 392 U.S. at 22 ("simple good faith on the part of the arresting officer is not enough. *** If subjective good faith were the test, the protections of the Fourth Amendment would evaporate, and the people would be secure in their persons, houses, papers, and effects, only in the discretion of the police.") (internal quotes omitted).

¶ 65 For these reasons, I respectfully dissent.