FOURTH DIVISION
June 12, 2014

No. 1-12-0931

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 10 CR 15403
	)	
TERRILL BROWN,	)	Honorable
	)	James Michael Obbish,
Defendant-Appellant,	)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in denying defendant's motion to quash arrest and suppress evidence where defendant's act of resisting the placement of handcuffs by swinging at the police officer was an intervening factor that attenuated the discovery of narcotics from the illegal search. Judgment affirmed.

¶ 2 Defendant, Terrill Brown, appeals from the trial court's ruling denying his motion to quash arrest and suppress evidence. He contends that his detention after a traffic stop was entirely pretextual. He alternatively argues that his *de minimus* act of resisting arrest did not serve as an independent intervening factor so as to attenuate the discovery of narcotics from the

illegal search. We affirm the trial court's order denying defendant's motion to quash arrest and suppress evidence.

¶ 3 BACKGROUND

¶ 4 On July 30, 2010, while he was driving in the vicinity of Cleveland Avenue and Chestnut Street in Chicago, defendant was stopped, arrested and searched. He was subsequently charged with four counts of aggravated battery to a police officer, and one count of possession of a controlled substance with intent to deliver 15 grams or more but less than100 grams of cocaine. Prior to trial, defendant filed a motion to quash arrest and suppress evidence.

¶ 5 At the hearing on the motion to quash arrest and suppress evidence, defendant and Tyler Johnson, the passenger in the vehicle testified in support of the motion. Johnson testified that on July 30, 2010, at approximately 7 p.m., defendant was driving a borrowed 2000 Pontiac Bonneville on the near north side of Chicago and had stopped the vehicle "for two seconds" so that Johnson could talk to a friend. No traffic was being obstructed. The two drove off but were soon stopped by the police. A police officer approached the driver's door and asked defendant "to show his license." Defendant tried to show his license but the officer opened the door and aggressively grabbed defendant's arm and pulled him out of the car. The officer pushed defendant against the car and tried to search him. A female officer stayed on Johnson's side of the car and aggressively pulled out her weapon, pointed it at Johnson, and told him to sit still and not move. Johnson remained in the car with his attention on the female officer and did not see what was going on between defendant and the officer. Johnson did not get out of the car until after defendant was handcuffed. After they subdued defendant, they placed him and Johnson in separate cars. Johnson also testified that he saw the police throw defendant to the ground, saw him "get beat up," and did not know why it got physical.

¶ 6 Defendant testified that, after he was pulled over, the officer asked for his license. The license was in his pants pocket in his wallet but he never got the opportunity to show it to the officer. Defendant pointed to his pocket and asked if he could get it. As defendant pointed and as he was getting his license, the officer opened the door, grabbed him, pulled him out of the car, and "shoved him up on the hood of the car." Defendant "pulled back up" and was pushed to the ground and then handcuffed. Defendant testified that when the officer shoved him to the ground, he was punched three times in the face. He was searched and the officer found drugs in his left pants pocket.

¶ 7 The State called Officer Luis Laurenzana, who testified to a slightly different version of events as follows. On July 30, 2010, at about 7 p.m., he was in full uniform in a marked vehicle with his partner, Officer Jenny Molda, on Chestnut Street, near a CHA housing complex. During roll call that day, six hours earlier, the officers had been told that a person had been shot in the area and to patrol the area and had been specifically told to "make sure that the CHA complex wasn't going up because due [*sic*] to possible retaliation." They were not told when the shooting took place nor were they given a description of the offender. Officer Laurenzana did not recall the exact location where the shooting was alleged to have taken place. Officer Laurenzana also stated that he had not been told that someone in a Pontiac Bonneville was involved in the shooting.

¶ 8 Officer Laurenzana saw a tan sedan with two occupants on Cleveland Avenue and several males outside on the passenger side of the vehicle engaged in conversation. Although there was no car was trying to pass the vehicle, it would not have been possible for traffic to flow around it because the car was in the middle of the street. After watching for approximately one

minute, Officer Laurenzana pulled up directly behind the vehicle and the men outside the vehicle dispersed, each in a different direction.

¶ 9 The vehicle proceeded north to Locust Street where the driver, using the turn signal, turned and headed eastbound. The vehicle then turned north onto Hudson Avenue, without the proper turn signal. Officer Laurenzana activated his emergency equipment and stopped the vehicle.

¶ 10 Officer Laurenzana got out of his car and approached the driver's side and his partner approached the passenger side, where there was a male passenger. Officer Laurenzana asked defendant to show his hands. While defendant's hands were on the steering wheel, Officer Laurenzana asked him for his driver's license and proof of insurance. As defendant put his hand toward his pockets on his left side, Officer Laurenzana told defendant not to reach for anything and asked him where his license was located. Defendant did not respond and reached again. Officer Laurenzana told defendant to show him his hands but defendant did not respond. Officer Laurenzana told defendant to get out of the vehicle, which he did. Officer Laurenzana told defendant to put his hands on top of the car, which he did. Officer Laurenzana denied that that he pulled defendant out of the car or that he touched defendant as he was getting out.

¶ 11 Officer Laurenzana intended to perform a protective pat down. He stated that he had not seen defendant commit a criminal act and wanted to perform the pat down for safety's sake, *i.e.*, "for my safety and my partner safety." He also testified that he was performing the pat down for defendant's safety.

¶ 12 As Officer Laurenzana started to perform the pat down, defendant placed his left hand halfway into his pocket. Officer Laurenzana told defendant to please not remove his hands from the vehicle. Defendant put his hand back on the car. As Officer Laurenzana attempted to check

defendant's right side waistband for any hard objects, defendant again removed his hand from the car. Officer Laurenzana told defendant to put his hand back on the car and told him he was going to be detained. He intended to handcuff defendant to keep his left hand from reaching into the pocket. He was not placing him under arrest at that time.

¶ 13 Officer Laurenzana stated that his reason for believing defendant was armed was the prior shooting in the area, which was the reason that the officers were in the area. Later, at trial, Officer Laurenzana stated that he had no reason to believe that defendant was armed but was concerned because he could not tell whether defendant had a weapon when he reached the second time for his left pants pocket.

¶ 14 Officer Laurenzana started putting handcuffs on defendant's right wrist when "[l]ike a flash, he just swung." Officer Laurenzana exhibited the gesture for the court. Defendant flung his right arm backwards taking Officer Laurenzana's arm with him "ripping a piece of [the officer's] knuckle with the steel of his handcuff." At that point, Officer Laurenzana punched defendant in the face. He eventually placed defendant under arrest for resisting a peace officer and aggravated battery of a peace officer.

¶ 15 Once defendant was placed in custody for those charges, *i.e.*, after he had been detained, handcuffed, arrested, and was on the ground, he was searched. The search recovered the physical evidence that the State planned to introduce at trial.

¶ 16 The trial court denied defendant's motion to quash arrest and suppress evidence. Following a bench trial, defendant was convicted of possession of a controlled substance and sentenced to 4 years' imprisonment. This appeal followed.

¶ 17 ANALYSIS

¶ 18 We review a trial court's ruling on a motion to suppress evidence using a two-part standard. *People v. Colyar*, 2013 IL 111835, ¶ 24. First, the reviewing court affords "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." *Id*. We review *de novo* the ultimate question of whether the arrest should be quashed and the evidence suppressed. *Id*. A reviewing court may look to both trial testimony and testimony presented at the suppression hearing when reviewing the denial of a motion to suppress. *People v. Hopkins*, 235 Ill. 2d 453, 473 (2009) (citing *People v. Stewart*, 104 Ill. 2d 463, 480 (1984)).

¶ 19 Both the fourth amendment to the United States Constitution (U.S. Const., amend. IV) and article I, section 6, of the Illinois Constitution (Ill. Const.1970, art. I, § 6) protect individuals from unreasonable searches and seizures. *People v. Garcia*, 2012 IL App (1st) 102940, ¶ 4. However, it is well established that a police officer may conduct a brief investigatory stop after observing unusual conduct that gives the officer a reasonable suspicion that criminal activity may be afoot. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). We consider the totality of the circumstances in determining whether an officer had reasonable suspicion to stop an individual for investigative purposes. *People v. Tisler*, 103 Ill. 2d 226, 236 (1984); *Illinois v. Gates*, 462 U.S. 213, 230-231 (1983).

¶ 20 As the Illinois Supreme Court recently explained:

> "Traffic stops are certainly seizures under the fourth amendment [citations], but they are less like formal arrests, and more like investigative detentions [citation]. Accordingly, the reasonableness of a traffic stop is gauged by the standard in *Terry v. Ohio*, ***. Under *Terry*, a police officer may briefly detain and question a person if the officer reasonably believes that person has committed, or is about

> to commit, a crime. [Citation.] Such a detention is reasonable if it was initially justified, and if it was reasonably related in scope to the circumstances which justified the interference in the first place. [Citations.] [A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. [Citation.] A traffic stop that is initially justified 'can become unlawful if it is prolonged beyond the time reasonably required to complete the purpose of the stop. [Citations.]" (Internal quotation marks omitted.) *People v. Cummings*, 2014 IL 115769, ¶ 15.

¶ 21 "[H]andcuffing does not automatically transform a *Terry* stop into an illegal arrest." *People v. Colyar*, 2013 IL 111835, ¶ 46 (citing *United States v. Glenna*, 878 F. 2d 967, 972 (7th Cir. 1989). Yet, "the use of handcuffs during a detention is a relatively severe restriction on a person's freedom of movement." *People v. Arnold*, 394 Ill. App. 3d 63, 73 (2009). "Ultimately, the propriety of handcuffing during a *Terry* stop depends on the circumstances of each case." *Id.*

¶ 22 Here, the trial court carefully considered the circumstances of the present case. The court specifically found that, at the time Officer Laurenzana decided to perform the pat down he did not have probable cause at that point to place defendant "under arrest and take him into custody, *nor did he have reasonable grounds to pat him down for officer safety looking for a weapon which Terry would allow.*" (Emphasis added.) As the court further explained, even though the pat down was not justified, had defendant just complied, the court would have suppressed any drugs that were recovered. However, as the court additionally stated: "But that's when things unfortunately get out of hand." The court explained its reason for denying defendant's motion: "because at that point I believe that Mr. Brown did in fact resist arrest."

¶ 23 We therefore turn to defendant's alternative argument that his *de minimus* act of resisting arrest did not serve as an independent intervening factor so as to attenuate the discovery of narcotics from the illegal search. Defendant argues that "while the stop for a traffic violation may have been proper," Officer Laurenzana's actions were clearly outside the rule of *Terry*. Defendant contends that the "rule of *Terry* required that the trial court find a wrongful violation and to suppress the fruit of [the] detention" that went "beyond the time necessary to issue a citation." As the State notes, defendant is making a "fruit of the poisonous tree" argument.

¶ 24 "Under the doctrine known as 'the fruit of the poisonous tree,' a violation of the fourth amendment is considered to be, metaphorically, the poisonous tree, and any evidence the government obtained by exploiting that violation is subject to suppression as fruit of the poisonous tree." *People v. Ferris*, 2014 IL App (4th) 130657, ¶ 66 (citing *People v. Henderson*, 2013 IL 114040, ¶ 33). However, "evidence which comes to light through a chain of causation that began with an illegal seizure is not *per se* inadmissible." *Henderson*, 2013 IL 114040, ¶ 34 (citing *People v. Harris*, 495 U.S. 14, 17 (1990)). As the United States Supreme Court has explained, in determining whether evidence is fruit of the poisonous tree, the question is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). "[A] court must consider whether the chain of causation proceeding from the unlawful conduct has become so attenuated or has been interrupted by some intervening circumstance so as to remove the "taint" imposed upon that evidence by the original illegality." (Internal quotation marks omitted.) *Ferris*, 2014 IL App (4th) 130657, ¶ 66 (quoting *Henderson*, 2013 IL 114040, ¶ 33, quoting *United States v. Crews*, 445 U.S. 463, 471 (1980)).

¶ 25 Here, the trial court denied defendant's motion to suppress the contraband evidence because it found that defendant's act of resistance provided independent probable cause for his arrest. As the trial court stated:

> "[W]hat happened at that point for whatever reason Mr. Brown I believe swung his arm away in trying to resist the officer placing the handcuffs on him, and swinging his arm away attached to a handcuff *** injured [the] officer tearing off a piece of his skin knuckle *** and it was that action *** certainly in resisting *** [that] then created the reason to ultimately place Mr. Brown under arrest.
>
> Then it was [a] custodial search of Mr. Brown. After he was under arrest that caused the recovery of the items that were used. So, I believe that that search was in fact a legal search because it was [a] custodial search after Mr. Brown['s] action of resisting the officers provided the probable [cause] to place him under arrest."

¶ 26 "Factors relevant to an attenuation analysis include the temporal proximity of the illegal police conduct and the discovery of the evidence; the presence of any intervening circumstances; and the purpose and flagrancy of the official misconduct." *Henderson*, 2013 IL 114040, ¶ 33 (citing *Brown v. Illinois*, 422 U.S. 590, 603-04 (1975); *People v. Johnson*, 237 Ill. 2d 81, 93, (2010)).

¶ 27 In *Henderson*, the court concluded that the intervening flight from police interrupted the causal connection between an unlawful seizure and the subsequent discovery of evidence:

> "We conclude that defendant has failed to demonstrate that the gun was the fruit of the poisonous tree. Defendant's flight interrupted the causal connection between the officers' misconduct, which was not flagrant, and the discovery of the

> gun. * * * To conclude otherwise *** is not only contrary to fourth amendment jurisprudence, but is contrary to public policy. Permitting defendants to flee from police under the circumstances of this case, and yet claim the protections of the fourth amendment, would foster a lack of cooperation with law enforcement officers, putting the police and the public at risk." *Id*. ¶ 50

As the *Henderson* additionally noted: "[P]ublic policy supports courts of law, rather than suspected criminals, determining the legality of seizures." *Id*. (citing *People v. Keys*, 375 Ill. App. 3d 459, 464 (2007)). If an individual believes that the officer's conduct is illegal, he should "[test] its legality through the courts, rather than engage in self-help by fleeing." *Id*. (quoting *Henson v. United States*, 55 A. 3d 859, 869 (D.C. App. 2012)).

¶ 28 In *People v. Keys*, 375 Ill. App. 3d 459 (2007), officers conducted an unlawful *Terry* stop of defendant. When an officer attempted to conduct a pat down without permission, the defendant ran. *Id*. at 460-61. During the chase, the defendant disposed of three bags of heroin. *Id*. at 461. After the officers apprehended the defendant, they retraced his path of flight and discovered the heroin. *Id*. On appeal, the court rejected defendant's argument that the narcotics should be suppressed because he was unlawfully seized and searched. Although the parties in *Keys* disagreed regarding the legality of the initial stop, the court noted that even if the initial seizure and attempted pat down of the defendant were unlawful, the drugs recovered by the police were discovered as a result of the defendant's escape and abandonment of the drugs, not through exploitation of that initial illegality. *Id*. at 461.

¶ 29 The same reasoning as in *Henderson* and *Keys* applies here. Even accepting that the initial search of defendant was unlawful, defendant's act of swinging his arm and injuring Officer Laurenzana, which the trial court found had occurred, broke the causal connection between the

initial illegality and the discovery of the narcotics. In Illinois, a person may not use force to resist or obstruct an arrest, even if it is an unlawful arrest. *City of Champaign v. Torres*, 214 Ill. 2d 234, 241 (2005); *People v. Locken*, 59 Ill. 2d 459, 465 (1974); see also *People v. Miller*, 199 Ill. App. 3d 603, 610 (1990) (noting that resisting a peace officer is a separate crime which does not require the establishment of a battery). As the trial court correctly concluded, defendant's action in resisting Officer Laurenzana created a reason to place defendant under arrest. *Cf*. *People v. Von Hatten*, 52 Ill. App. 3d 338, 341 (1977) (noting that defendant's action of lunging for a knife after police officers entered his motel room without a warrant or permission, established independent probable cause which validated the arrest). The drugs were then found incident to that lawful arrest. The trial court did not err in denying defendant's motion to quash arrest and suppress evidence.

¶ 30 CONCLUSION

¶ 31 In accordance with the foregoing, we affirm the trial's order denying defendant's motion to quash arrest and suppress the evidence recovered during the unlawful search. In view of our decision, we need not address the State's alternative arguments that Officer Laurenzana had "probable cause to arrest" defendant for the traffic offense of failing to use the turn signal when turning and this "probable cause provided the proper basis for any subsequent searches."

¶ 32 Affirmed.