2015 IL App (1st) 12-2138-U

FOURTH DIVISION
January 29, 2015

No. 1-12-2138

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In the interest of Michael C., a Minor,	)	
(PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois,
Petitioner-Appellee,	)	Juvenile Division.
	)	
v.	)	No. 12 JD 1350
	)	
MICHAEL C., a Minor,	)	The Honorable
	)	Richard F. Walsh,
Respondent-Appellant).	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court erred in denying the minor respondent's motion to quash arrest and suppress evidence, where the police lacked probable cause to arrest the minor. Any evidence obtained by the police after that illegal arrest should have been suppressed.

¶ 2 The minor respondent-appellant, Michael C., was convicted of armed robbery and adjudicated a ward of the court. After a dispositional hearing, the circuit court sentenced the responded to the Department of Juvenile Justice (hereinafter the DOJJ) for an indeterminate amount of time. The minor respondent now appeals contending: (1) that the court erred in denying his motion to quash arrest and suppress evidence because the police stopped and frisked

him on less than reasonable suspicion and then placed him under custodial arrest in the absence of probable cause; (2) that he was denied effective assistance of counsel when his trial attorney failed to file a motion to suppress evidence on the basis that his statement to police was (a) involuntary and (b) made without a knowing and intelligent waiver of *Miranda* rights; (3) that in sentencing the circuit court failed to comply with the mandatory guidelines set forth in section 5-750 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-750 (West 2010)), which governs the commitment of juveniles to the DOJJ; and (4) that the circuit court abused its discretion in committing him to the DOJJ, without giving adequate consideration to less restrictive alternatives. For the reasons that follow, we reverse and remand for a new trial.

¶ 3 I. BACKGROUND

¶ 4 The record before us reveals the following facts and procedural history. The respondent was arrested on April 4, 2012. On April 6, 2012, the State filed a petition for adjudication of wardship, charging the minor with armed robbery (720 ILCS 5/18-2(a) (West 2010)), robbery (720 ILCS 5/18-1 (West 2010)), retail theft (720 ILCS 5/16A-3(a) (West 2010)) and aggravated assault (720 ILCS 5/12-2(c)(1) (West 2010), and asking that the minor be adjudicated a ward of the court.[1]

[1] After conducting a detention and shelter care hearing (705 ILCS 405/5-415(1) (West 2010)), the trial court determined that there was probable cause to believe that the minor was delinquent, and that there was urgent and immediate necessity to detain him. Accordingly, the court placed the respondent on electronic monitoring, while awaiting trial. On May 10, 2012, the minor was placed into custody after he cut off his electronic monitoring bracelet. He was returned to electronic monitoring, however, when his case failed to proceed to trial on the scheduled date of

¶ 5 The respondent filed a motion to quash arrest and suppress evidence alleging that any inculpatory statements he made to police and evidence obtained from him were acquired in violation of the fourth amendment of the United States Constitution (U.S. Const., amend. IV.) and article I, section 6 of the Illinois Constitution (Ill. Const. 1970, art. I, § 6). Specifically, the minor respondent asserted that at the time of his arrest and seizure, he was merely walking down a street in Hoffman Estates, so that the police neither had reasonable suspicion to stop and search him, nor probable cause to arrest him.[2]

¶ 6 On June 19, 2012, the circuit court held a hearing on the respondent's motion to quash arrest and suppress evidence. At the time of the hearing the respondent was 15 years old. He testified that on April 4, 2012, at the time of the incident, he was 14 years-old. The respondent stated that at about 8:20 p.m. on April 4, 2012, he was alone, walking, and about two minutes away from his home at 1965 Georgetown Lane, in Hoffman Estates. A police officer in a marked squad car, saw him, u-turned on the street, drove up and parked next to him. The officer then ordered the respondent to come to his squad car. The respondent testified that he obeyed. He explained that

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June 1, 2012, or within 30 days of that scheduled date. The minor respondent remained on electronic monitoring until his trial.

[2] We note that in his written motion to suppress his statements, the respondent additionally asserted that after being placed into police custody, he "had no concerned adult acting on his behalf at any time prior to or during his interrogation." The respondent argued that the juvenile officer, who should have been there to represent him, instead conducted the investigation and the subsequent prove-up identification. However, during the hearing on the respondent's motion to suppress, the respondent's counsel inexplicably dropped this claim.

he did so because he did not feel free to walk way. The respondent thought that if he walked away, the officer would "think that [he] had something on [him] or think that [he] was afraid."

¶ 7 The respondent next testified that the police officer stepped out of his squad car and asked him if he had anything on him. According to the respondent, the officer was in uniform and he had a gun. The officer then told the respondent to put his hands on the police car, and proceeded to search him. The respondent testified that the officer found nothing on his person, because he only had a few dollars on him. When questioned as to whether at this point, he felt free to leave, the minor respondent answered in the negative, explaining that he believed that if he tried to leave, the police officer would "arrest him for resisting arrest."

¶ 8 According to the respondent, the police officer then told him that he "looked like one of the suspects." When the minor asked the police officer to explain in connection with what he was a suspect, the officer only said, "Well, I have to take you down to the scene." The police officer then put the respondent in the back of the police car and eventually transported him to the police station where he gave a statement. The respondent averred that when the police officer placed him in the backseat of his squad car, the back door was locked and he was not free to leave.

¶ 9 The respondent testified that at no point in his interaction with the police officer was he shown an arrest warrant or told that there was an arrest warrant out for him. In addition, the respondent stated that the police officer never told him that he was free to leave or that he did not have to accompany the officer into the squad car or the police station.

¶ 10 On cross-examination, the respondent admitted that before he was stopped by the officer he was "hanging out" with a friend, near the 7-11 and the Dollar Plus stores, located at 2326 Hassell Road in Hoffman Estates.

¶ 11 On cross-examination, the respondent also admitted that the police officer never handcuffed

him or drew his gun. The respondent, however reiterated that the officer did not "ask" him to get into the squad car, but rather "told him" to do so. The respondent also testified that when the officer searched him, he did not just "pat" the outside of his clothing, but rather also went inside of his pockets and pulled everything out. When asked if he was wearing baggy blue jeans that night, the respondent answered in the affirmative. When asked if he was also wearing a dark hoodie, the respondent stated that he could not recall.

¶ 12 Hoffman Estates Police Officer Joseph Golbeck (hereinafter Officer Golbeck) next testified that at approximately 8:23 p.m. on April 4, 2012, he was in uniform and on patrol, when he received a call regarding an armed robbery that had occurred a few minutes before that at the Dollar Plus convenience store located at 2326 Hassell Road in Hoffman Estates. The officer testified that the dispatch included a description of the offender, as 5' 4" to 5' 6" tall, weighing about 175 pounds, wearing a dark gray hooded sweat shirt and blue baggy jeans. Officer Golbeck testified that according to the dispatch the race of the offender was unknown because his face was completely covered during the robbery, but the dispatch had stated that he "had a Hispanic accent."

¶ 13 Officer Golbeck further averred that while still in the vicinity of the crime scene, at about 8:30 p.m. he observed the respondent walking on Hassel Road, just south of Georgetown Lane (which he estimated to be about two blocks from the crime scene). Officer Golbeck stated that he believed that the respondent matched the description of the offender because he was Hispanic, approximately 5' 6" to 5' 7" tall, and weighing180 pounds. Officer Golbeck stated that he therefore stopped the respondent. Officer Golbeck asked the respondent for his name and date of birth, and the respondent answered him. Officer Golbeck next asked the respondent where he was going, and the respondent stated that he was going home to his house on Georgetown Street

and gave the officer the exact address. When the officer asked him where he was coming from, the minor told him that he had been with his friend Marco. When asked where Marco lived, the respondent just said "down the street" and pointed west, but could not give the officer the exact address.

¶ 14 Officer Golbeck testified that because the respondent "wasn't giving straight answers," he told him that he would have to accompany him back to the scene of the crime. The officer admitted that he then performed a pat-down search of the respondent and told him to get into his squad car. He testified, however, that he did not place the respondent under arrest.

¶ 15 On cross-examination, Officer Golbeck admitted that before he stopped the respondent he never went to the scene of the crime and never spoke to the complaining witness, and that instead he received the description of the offender only through the police radio dispatch. On cross-examination, Officer Golbeck further admitted that according to the dispatch, the offender was closer to 5' 4" tall and 175 lbs in weight, and that he wore a dark gray or black hooded sweatshirt instead of a gray one. When asked how tall the respondent was, Officer Golbeck stated that he did not know.

¶ 16 Officer Golbeck further acknowledged that the description he received through the dispatch stated that the offender wore a black mask and gloves. He admitted that when he performed the pat down search of the respondent, going through his pockets, he did not find either of those items on the respondent's person. Officer Golbeck also admitted that his search of the respondent revealed no knife.

¶ 17 In addition, on cross-examination, Officer Golbeck acknowledged that he never told the

respondent that he was free to leave. In fact, he admitted that he "verbally detained" the respondent and expected the respondent to "follow [his] orders." Officer Golbeck acknowledged that if the respondent had attempted to leave, he would have pursued him.

¶ 18 After hearing all of the testimony the circuit court denied the respondent's motion to quash the arrest and suppress evidence. In doing so, the court first found that "for constitutional purposes, the respondent had established that there was in fact an arrest made at the time that he was placed in the back of the police squad car." The court then, nevertheless, found that at the time of the arrest, the officer had probable cause to effectuate such an arrest.

¶ 19 The parties immediately proceeded by way of a stipulated bench trial. The parties first stipulated that, if called to testify, the victim, Syed Fahad Anwery (hereinafter Anwery), would state that on April 4, 2012, he was working at the Dollar Plus store located at 2326 W. Hassell Road in Hoffman Estates. Anwery would testify that at about 8 p.m. that night he went to the front door of the store to lock it, because it was closing time, when a male walked through the front door, wearing a dark gray or black hooded sweatshirt, a black mask (or a hat) pulled over his face, with the hood of the sweatshirt over his head, and black gloves. Anwery would state that the offender appeared to be approximately 5' 4" to 5' 6" tall, 160 to 175 pounds, but that it was hard to guess his weight because of the "loose clothing." The offender pointed a large kitchen type knife, which he held in his right hand, at Anwery and said "fill the bag, m****r f****r." He instructed Anwery to fill a plastic grocery bag with money from the register, cigarettes, Swisher mini cigars, cigarillos and lighters. According to Anwery, the offender repeatedly used profanities and appeared to have a "Mexican accent." After obtaining the proceeds, which exceeded $300, the offender told Anwery not to call the police and ran out of the store heading south east toward the parking lot.

¶ 20 The parties stipulated that if called to testify, Anwery would also state that later he viewed a showup where the respondent was brought back to the Dollar Store, and wherein Anwery informed the police that the "physical [description] and clothing were a match."

¶ 21 The parties further stipulated that if called to testify, Hoffman Estates Police Officer Fernandez would state that he was with the victim when the showup was conducted. Officer Fernandez would state that based on that showup, he placed the respondent under arrest and took him to the Hoffman Estates police station.

¶ 22 The parties further stipulated that Officer Fernandez would testify that he "conducted an interview of [the respondent], read him his *Miranda* rights, at which point in time the minor agreed to waive his rights and agreed to give a statement." The officer would state that the respondent's final written statement was taken on April 5, 2012, at 7:45 p.m. at the police station.[3]

¶ 23 Officer Fernandez would then testify as to the contents of the respondent's statement to police. According to Officer Fernandez's stipulated testimony the respondent told the officers that on April 4, 2012, he was 14 years old. The respondent also told officers that at about 6 p.m. that day, he called a friend, codefendant Martin Munoz (hereinafter Munoz), and asked him to "come and chill." They met by the driving range at the Poplar Creek golf course. Both of them walked around for a while, and codefendant Munoz, "talked about needing money." The codefendant then asked the respondent to get some clothing for him and a knife so that he could rob the Dollar Plus store at 2326 West Hassel Road. The respondent told the officers that he and

[3] The record reveals that this was over 23 hours after the respondent was placed into Officer Golbeck's squad car.

Munoz then walked to 1965 Georgetown Lane, where the respondent lived. After going inside, the respondent gave codefendant Munoz a gray hooded sweatshirt, gray sweatpants, and a kitchen knife, which he obtained from his kitchen. After that, the respondent and codefendant Munoz walked to the area of 2326 West Hassel Road, where the respondent waited on the south side of the street and directed and provided information to codefendant Munoz via his cell phone. The respondent explained that codefendant Munoz had an earpiece and a microphone for his cell phone.

¶ 24 According to Officer Fernandez's stipulated testimony, the respondent further told officers that codefendant Munoz then went into the store, where he demanded money and cigarettes form the clerk. After obtaining the money and cigarettes, codefendant Munoz ran to the area where the respondent waited. The respondent took the proceeds from the robbery and went to 1899 Williamsburg, where he used to live, but which was now a vacant townhome. Somewhere along the way, the respondent and codefendant Munoz were separated. Once at this location, the respondent concealed the money in the upstairs heating vent in the main bedroom. He also took out all the cigarettes and placed them on the floor of the bedroom. The respondent the realized he had lost his cell phone so he decided to return to the area of 2326 West Hassel Road to look for it. The respondent told the officers that he was detained by police while looking for his cell phone.

¶ 25 The parties further stipulated that Officer Fernandez would testify that the minor respondent also told the officers that with the use of his cell phone he audio taped the entire incident at the Dollar Store, while he was speaking to codefendant Munoz. After the respondent gave Officer Fernandez permission to listen to the taped recording the officer heard it. The parties also stipulated that "all of the property was recovered, as well as the knife from the codefendant, and

the do rag as well, from the codefendant's place of residence." Officer Fernandez would also identify the respondent in open court. After the stipulation was entered, both the State and the defense rested.

¶ 26 After hearing all the evidence, the circuit court adjudicated the respondent delinquent. The court stated, "based upon the evidence and the stipulation, there will be a finding of guilty of armed robbery." The robbery, retail theft and aggravated assault convictions were merged into the armed robbery conviction. The respondent was taken into custody.

¶ 27 On July 3, 2012, the court held a dispositional hearing. The respondent's probation officer, testified as to the respondent's prior criminal record. He explained, *inter alia*, that this was a Class X felony, which the respondent committed while on a five year term of probation for aggravated battery, for which he had already spent six months in the DOJJ.

¶ 28 According to the probation officer, for the two weeks prior to being placed into custody, the respondent had been living with his father in an area populated by the Latin Kings gang, with which the minor admitted an affiliation. The probation officer explained that the respondent had been going back and forth between his mother's and father's homes, but that he preferred to live with his father, because the rules were not as stringent there, and because he did not get along well with his stepfather.[4]

¶ 29 The probation officer acknowledged that the respondent had experienced difficulties in

[4] The respondent's social investigation report further reveals that in addition to yoyo-ing between his father's and mother's homes, the respondent had lived in four other residences in the two years preceding this incident.

School and had admitted to using drugs and alcohol. Although the minor had been attending Academy North, he was expelled in March 2012 because of a gang related battery, and could not reenroll into another school because he was placed on a juvenile arrest warrant.

¶ 30 The probation officer further testified that the respondent had been working with counselor Marco Oviedo, who he was assigned through the DOJJ. The probation officer acknowledged that while working with Oviedo, the respondent "did extremely well" but that "they had to close out his case, and so, since that, he's gone downhill."

¶ 31 The probation officer further testified since he has been in custody, the respondent has talked about getting out of the Latin Kings gang and having his tattoos removed. The officer acknowledged that he knows that the respondent wishes him to recommend intensive prevention services (IPS). However, based on his experience with the respondent, the probation officer recommended that the respondent be placed in the DOJJ. He explained that he was making the recommendation not only for the respondent's safety but also for the safety of the public at large, because of the minor's gang activity.

¶ 32 On cross-examination, the probation officer admitted that the respondent was hospitalized two times in 2009, and diagnosed with ADHD, for which he needed medication. The officer acknowledged that the last time the respondent took his medication was in March 2012, one month before the incident. On cross-examination, the probation officer also acknowledged that the respondent's first contact with the juvenile justice system was a nonviolent misdemeanor offense in December 2010, and that the respondent was within a week of successfully completing his 90 day supervision before being picked up on another case. The probation officer also admitted that the respondent had not been offered any services other than the one instance of counseling with Oviedo, at which time he did exceedingly well.

¶ 33 After the probation officer's testimony, the court heard arguments by counsel. The respondent's counsel urged the court to explore other options besides committing the respondent to the DOJJ. Counsel requested that the respondent be assessed for residential inpatient treatment to address his substance abuse. In the alternative, counsel argued that even if the minor were committed to the DOJJ, that the court should order that his incarceration be limited to seven months, and that the minor then be reassessed for residential treatment.

¶ 34 Relying on the probation officer's testimony, on the other hand, the State sought to have the respondent committed to the DOJJ indefinitely.

¶ 35 After hearing the arguments of counsel, the court committed the respondent to the DOJJ for an indeterminate amount of time. In doing so, the court noted that it heard all the testimony and arguments and reviewed the social investigation report, as well as the respondent's letter asking for leniency. The court stated that although it found the minor to be "sincere," the minor nevertheless presented a danger to the community, requiring committed to the DOJJ. The respondent was granted 57 days for time spent in presentence custody. He now appeals.

¶ 36 II. ANALYSIS

¶ 37 On appeal, the respondent makes several contentions. First, he assert that the trial court erred in denying his motion to quash arrest and suppress evidence because the police lacked reasonable suspicion to conduct the *Terry* stop, and then placed him under arrest in the absence of probable cause. Second, the respondent asserts that his trial counsel was ineffective for failing to file a motion to suppress his involuntary statement to police. He asserts that the totality of circumstances (namely, his age, education, the length of his detention and interrogation and the absence of any youth officer or adult with which he could have consulted prior to the interrogation) establishes that his confession was involuntary. In addition, the respondent asserts

that his trial counsel was ineffective for failing to file a motion to suppress his statement on the basis that he did not knowingly and intelligently waive his *Miranda* rights. Third, the respondent asserts that the trial court failed to comply with the mandatory requirements of section 5-750 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-750 (West 2010)), which governs the commitment of juveniles to the DOJJ. Finally, the respondent argues that the trial court abused its discretion in choosing to incarcerate him, without giving adequate consideration to less restrictive alternatives.

¶ 38 Because we find it dispositive, we begin by addressing the issue of whether the circuit court should have granted the respondent's motion to quash arrest and suppress evidence on fourth amendment grounds.

¶ 39 The fourth amendment of the United States constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV; accord Ill. Const.1970, art. I, § 6; see *People v. Anthony*, 198 Ill. 2d 194, 201 (2001) (" 'This court has construed the search and seizure language found in section 6 [of the Illinois Constitution] in a manner that is consistent with the Supreme Court's fourth amendment jurisprudence.' "). A person is seized within the meaning of the Fourth Amendment when the police, "by means of physical force or show of authority, ha[ve] in some way restrained" that person's liberty. *People v. Gherna*, 203 Ill. 2d 165, 177-78 (2003) (quoting *Florida v. Bostick*, 501 U. S. 429, 434 (1991)); see also *People v. Perkins*, 338 Ill. App. 3d 62, 666 (2003). In other words, a seizure occurs if, in light of all the circumstances, "the conduct of the police would lead a reasonable innocent person *** to believe that he or she was not 'free to decline the officer's request or otherwise terminate the encounter.' " *Gherna*, 203 Ill. 2d at 178.

¶ 40 Our supreme court has repeatedly held that there are only three tiers of police-citizen

encounters that do not constitute an unreasonable seizure. See *Gherna*, 203 Ill. 2d at 176; see also *People v. Surles*, 2011 IL App (1st) 100068, ¶ 21. The first tier involves the arrest of a citizen, which must be supported by probable cause. See *Surles*, 2011 IL App (1st) 100068, ¶ 21; see also *Gherna*, 203 Ill. 2d at 176. Probable cause exists when the facts and circumstances known by the arresting officer are sufficient to warrant a reasonable person's belief that the arrested individual has committed an offense. *Gherna*, 203 Ill. 2d at 176. The next tier of such encounters between police and citizens involves a temporary investigative seizure conducted under the standards set forth by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968) and codified by section 107-14 of the Illinois Criminal Code of 1968 (Criminal Code) (725 ILCS 5/107-14 (West 2010)). See *Surles*, 2011 IL App (1st) 100068, ¶ 21; *Gherna*, 203 Ill. 2d at 177. In *Terry*, the Supreme Court held that an officer may, within the parameters of the fourth amendment, conduct a brief, investigatory stop of a citizen when the officer has a reasonable, articulable suspicion that the person has committed or is about to commit a crime, and such suspicion amounts to more than a mere "hunch." *Terry*, 392 U.S. at 27; see also *Surles*, 2011 IL App (1st) 100068, ¶ 21; *Gherna*, 203 Ill. 2d at 177. The final tier of police-citizen encounters involves those encounters which are consensual, *i.e.*, " 'involve [] no coercion or detention and therefore do[] not involve a seizure.' " *Gherna*, 203 Ill. 2d at 177 (quoting *People v. Murray*, 137 Ill. 2d 382, 387 (1990)); *Surles*, 2011 IL App (1st) 100068, ¶ 21.

¶ 41 Accordingly, a defendant challenging a seizure on fourth amendment grounds bears the burden of making " ' a *prima facie* case that the police lacked cause *** to arrest the defendant, or had no reasonable or articulable suspicion of criminal activity that would warrant an investigative stop.' " *People v. Jackson*, 348 Ill. App. 3d 719, 727 (2004) (quoting *People v. Culbertson*, 305 Ill. App. 3d 1015, 1023 (1999). In reviewing a trial court's ruling on a motion to

suppress evidence based on lack of probable cause or reasonable suspicion, we are presented with a mixed question of law and fact. *People v. Novakowski*, 368 Ill. App. 3d 637, 640 (2006). We therefore apply a two-part standard of review. *People v. Grant*, 2013 IL 112734, ¶ 12. While we accord great deference to the trial court's factual findings and credibility determinations and will reverse those findings only if they are against the manifest weight of the evidence, we review *de novo* the court's ultimate determination of whether the evidence should have been suppressed. *Grant*, 2013 IL 112734, ¶ 12; see also *Novakowski*, 368 Ill. App. 3d at 640.

¶ 42 On appeal, the respondent argues that his motion to suppress should have been granted, among other things, because Officer Golbeck lacked probable cause to arrest him when he placed him in his squad car. The State, on the other hand, asserts that the respondent was not arrested when he was placed in the police squad car because that was a temporary detention made solely for the purpose of conducting a showup identification and was therefore part and parcel of the officer's valid *Terry* stop. For the reasons that follow, we disagree with the State.

¶ 43 And arrest occurs "when a person's freedom of movement is restrained by physical force or a show of authority. " *Surles*, 2011 IL App (1st) 100068, ¶ 24 (citing *People v. Vasquez*, 388 Ill. App. 3d 532, 549 (2009)); see also *People v. Washington*, 363 Ill. App. 3d 13, 23 (2006); see also *Jackson*, 348 Ill. App. 3d at 728 (citing *People v. Delaware*, 314 Ill. App. 3d 363, 367 (2000)). Although our courts have previously held that minimally intrusive showups "can be employed by officers acting on somewhat less than probable cause to arrest" when such showups are legitimate extension of a lawful *Terry* stop (see *People v. Lippert*, 89 Ill. 2d 171, 182-87 (1982)), they have also recognized that there is no bright line test by which to determine when a police encounter escalates from such a *Terry* stop to a full blown arrest. *Surles*, 2011 IL App

(1st) 100068, ¶ 24. Instead, our courts have consistently held that to determine whether an arrest occurred, we must look to the totality of circumstances in each case, and ask " 'whether a reasonable person innocent of any crime, would have believed that he was not free to leave.' " *Jackson*, 348 Ill. App. 3d at 728 (quoting *People v. Williams*, 303 Ill. App. 3d 33, 40 (1999)); see also *People v. Agnew-Downs*, 404 Ill. App. 3d 218, 227 (2010) ("[A]n arrest occurs when a person's freedom of movement is restrained by physical force or a show of authority; the test for determining whether a suspect has been arrested is whether, in light of the surrounding circumstances, a reasonable, innocent person would have considered himself free to leave[.]") (citing *Washington*, 363 Ill. App. 3d at 23-24)). The factors to be considered in this analysis include, but are not limited to: (1) the time, place, length, mood and mode of the encounter between the defendant and the police; (2) the number of police officers present; (3) any use of handcuffs, weapons or other restraints; (4) the intention of the officers; (5) the subjective belief or understanding of the defendant; (6) whether the defendant was told he could refuse to cooperate and was free to leave; (7) whether the defendant was transported in a police car; (8) whether the defendant was told he was under arrest; and (9) the language used by the officers. See *Surles*, 2011 IL App (1st) 100068, ¶24; *Jackson*, 348 Ill. App. 3d at 728 (citing *Delaware*, 314 Ill. App. 3d at 370 and *Williams*, 303 Ill. App. 3d at 40); see also *People v. Willis*, 244 Ill. App. 3d 868, 875 (2003); *Washington*, 363 Ill. App. 3d at 24. "No factor is dispositive and courts consider all of the circumstances surrounding the detention in each case." *Washington*, 363 Ill. App. 3d at 24 (citing *People v. Reynolds*, 257 Ill. App. 3d 792, 800 (1994)).

¶ 44 In the present case, based on the testimony of both the respondent and Officer Golbeck, the trial court found that the minor respondent was in fact placed under arrest at the time that Officer Golbeck placed him in the back of his squad car. After a review of their testimonies, we

find nothing manifestly erroneous in that finding. The evidence presented at the suppression hearing established that after Officer Golbeck ordered the unaccompanied 14-year old minor to come to his squad car, he exited the squad car, asked the minor a few questions and then patted him down before instructing him to get into the squad car. Once the respondent was placed in the back seat of the squad car, that back door was locked, and he was not free to leave. Although the officer did not handcuff the minor, he was in uniform and carrying a weapon. What is more, although the officer did not tell the respondent he was under arrest, both the respondent and the officer unequivocally testified that the officer also never instructed the minor that he was free to leave or refuse to cooperate. The respondent averred that at no point in the encounter with the officer did he feel free to go about his way, and, in fact, believed that if he did try to leave the officer would place him under arrest. Officer Golbeck confirmed the respondent's version of events by testifying that he, in fact, "verbally detained" the respondent and expected the respondent to "follow [his] orders," and that if the respondent had attempted to leave, he would have pursued him. Accordingly, under these particular circumstances, and taking into account the respondent's very young age during this encounter, we agree with the trial court's finding that the minor was arrested when placed in Officer Golbeck's squad car. See *e.g.*, *Reynolds*, 257 Ill. App. 3d at 800 ("Even if a defendant was not told that he was under arrest, not touched by a police officer, not handcuffed, fingerprinted, searched, or subjected to any other arrest procedures, he may have been illegally detained if he was not told that he could leave and he did not feel free to leave.").

¶ 45 The State nevertheless asserts that even if Officer Golbeck arrested the respondent when he placed him in his squad car, at that moment, the officer had probable cause and was therefore justified in the arrest. We disagree.

¶ 46 Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime. *Grant*, 2013 IL 112734, ¶ 11 (citing *People v. Wear*, 229 Ill. 2d 545, 563 (2008)); see also *In re Edgar C.*, 2014 IL App (1st) 141703, ¶110 (there is probable cause "where the facts and circumstances known to the arresting officer at the time of the arrest would lead a reasonable person to believe that a crime had occurred and the suspect had committed it"). The existence of probable cause is an objective case-by-case determination that depends upon the totality of the circumstances at the time of the arrest. *Grant*, 2013 IL 112734, ¶ 11 (citing *Wear*, 229 Ill. 2d at 564). "Whether probable cause exists is governed by commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt." *People v. Hopkins*, 235 Ill. 2d 453, 472 (2009).

¶ 47 In the present case, the evidence presented at the motion to suppress hearing establishes that at the time of the arrest, Officer Golbeck had virtually no facts beyond the respondent's proximity to the crime scene and the vague description of the potential offender upon which to reasonably conclude that the respondent was the perpetrator. Officer Golbeck testified that the description that he received through the radio dispatch indicated that the suspect was about 5' 4" feet tall, weighing about 175 pounds and wearing a *dark* gray or black hooded sweat shirt and baggy blue jeans, and having "a Hispanic accent." The radio dispatch also indicated that the offender wore a black mask and black gloves and used a knife during the robbery. As such, the dispatch did not identify either the sex or race of the offender.[5] Officer Golbeck testified that about 10 minutes after the robbery, he observed the minor about two blocks from the crime

[5] Although at trial, the stipulated testimony of the victim revealed that the perpetrator was a male, this piece of evidence was not before the trial court during the suppression hearing.

scene, and stopped him because in his opinion he matched the description given by the dispatch in that he "was Hispanic, approximately 5' 6" to 5' 7" tall, weighing 180 pounds and wearing a gray hooded sweatshirt and baggy blue jeans." After the officer stopped the minor and asked him where he was going the minor told the officer that he was going home and gave the officer his exact address a few blocks away. Nevertheless, based solely on the vague description he received from dispatch, Officer Golbeck proceeded to conduct a pat down search of the respondent. During that pat down search, however, the officer did not retrieve either the black gloves and mask, or the knife that the offender had allegedly used in the robbery only minutes ago. Nor did he find any of the proceeds of the recently committed robbery on the respondent's person. Bases on this record, we are unable to find that Officer Golbeck had sufficient probable cause to arrest the respondent. See *Illinois .v. Wardlow*, 528 U.S. 119, 120 S. Ct. 673, 677 (2000) (if following a *Terry* stop "the officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his way"); *Delaware*, 314 Ill. App. 3d at 369 (reiterating that a *Terry* stop "must be limited in scope and duration because an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop."); *Walters*, 256 Ill. App. 3d at 237 (holding that if during an investigatory stop "the officer's suspicions are not allayed within a reasonable time, the suspect must be allowed to leave or an arrest [based upon probable cause] must be made.").

¶ 48 The State nevertheless cites to the respondent's failure to give the officer "straight answers" to support the position that the officer would have had sufficient probable cause to arrest. We disagree. It is well-settled that: "[a]person approached [by the police] *** need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. [Citations]. He may not be detained even momentarily without reasonable,

objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds." *Florida v. Royer,* 460 U. S. 491, 498 (1983). What is more, the record below reveals that Officer Golbeck only testified that the respondent could not provide the exact address of his friend Marco's home, from which he claimed to have come from. This, in and of itself, in combination with the vague description of the offender, would not have given the officer sufficient probable cause to arrest, since the pat down search of the respondent evidently revealed nothing connecting the 14-year-old minor to the crime.

¶ 49 In coming to this conclusion, we have reviewed the decisions in *People v. Follins*, 196 Ill. App. 3d 680 (1990), *People v. Jones*, 374 Ill. App. 3d 566 (2007) and *People v. Richardson*, 376 Ill. App. 3d 612 (2007) cited to by the State and find them inapposite.

¶ 50 Unlike here, in *Follins*, the trial court found that the police had probable cause to arrest the defendant based on far more incriminating circumstances, namely: (1) that the defendant exactly matched the detailed description given over the radio dispatch (including that the suspect was a black male, in his mid 20s, 5 ' 9" tall, weighing 170 pounds, and wearing a distinct blue jumpsuit) and (2) that, when stopped and questioned, the defendant lied and stated he was going to Wrigley Field when in fact he was walking in the opposite direction. See *Follins*, 196 Ill. App. 3d at 684, 693. Similarly, in *Jones*, the court held that the police had probable cause to arrest the defendant because: (1) he matched the description of the offender; (2) was found merely blocks away from the crime scene; (2) he was apprehended by police while running; and (3) the police smelled the odor of gunshot residue emanating from him when he was stopped. See *Jones*, 374 Ill. App. 3d at 575. None of those circumstances are present here. Finally, *Richardson* is distinguishable because in that case, unlike here, the defendant was apprehended after having been observed by police while carrying the proceeds of the robbery (two distinct

toolboxes) that had been stolen from a van minutes ago near where the defendant was stopped, and the defendant could not explain the toolbox's origin.

¶ 51 For all of the aforementioned reasons we find that Officer Golbeck lacked probable cause to arrest the 14-year old minor when he placed him in his squad car, and that therefore any evidence obtained after that illegal arrest should have been suppressed.

¶ 52 While we acknowledge that the illegality of an arrest does not necessarily prevent the admission of the respondent's post-arrest confession so long as the evidence admitted is sufficiently attenuated from any illegality (*People v. Hopkins*, 382 Ill. App. 3d 935 (2008)), we are not persuaded by the State's argument that we should reverse and remand for an attenuation hearing. In considering whether evidence obtained after an illegal arrest is sufficiently attenuated from that arrest courts look to four factors: (1) whether *Miranda* warnings were given; (2) the amount of time between the defendant's arrest and his statement; (3) whether there were intervening circumstances; and (4) the degree of flagrancy of police misconduct." *Hopkins*, 382 Ill. App. 3d at 937. "Typically, intervening circumstances and flagrancy of police misconduct are the two key factors in determining whether the police exploited the illegal arrest to obtain a confession." (Citation omitted.) *Hopkins*, 382 Ill. App. 3d at 937. Intervening circumstances are those that break the causal connection between the taint of unconstitutional police conduct and the defendant's confession. *Hopkins*, 382 Ill. App. 3d at 937

¶ 53 In the present case, we find that the last two factors strongly disfavor the State's position. Any attempt by the State to argue that the showup identification by the store clerk was an intervening circumstance, must fail since the record reveals that during that showup the clerk incorrectly identified the respondent as matching the robber's clothes and description, even though the respondent never in fact entered the store but only acted as a look-out during the

robbery, so that the clerk never in fact saw him. See *People v. Hughes*, 259 Ill. App. 3d 172, 176 (1994) (noting that "one person showups are inherently suggestive *** and not favored as a means of identification") (citing *People v. McKinley*, 69 Ill. 2d 145, 151 (1977)); *People v. Manion*, 67 Ill. 2d 564, 569-70 (1977) (same). In addition, we are acutely troubled by the officers' motivation in attempting a showup of an unrepresented 14-year-old minor, in a case where the radio dispatch description of the suspect unequivocally stated that the victim never saw the suspect's face because the suspect was wearing a mask and ski gloves. Under these circumstances, we find that a remand for an attenuation hearing would amount to a waste of valuable resources that could be more astutely spent on prosecuting more hardened criminals.

¶ 54 III. CONCLUSION

¶ 55 Accordingly, for all of the aforementioned reasons, we find that any evidence obtained by the police after the respondent's arrest (*i.e.*, the moment he was placed in the Officer Golbeck's squad car) should have been suppressed. We therefore reverse and remand for a new trial without the benefit of that evidence.[6]

¶ 56 Reversed and remanded.

[6] In doing so, after a review of the record, we conclude that the evidence was sufficient to prove the respondent guilty of reasonable doubt so that there is no double jeopardy impediment to a new trial. *People v. Naylor*, 229 Ill. 2d 584, 610-11 (2008). However, in that holding, we reach no conclusion as to the respondent's guilt that would be binding on retrial.