2013 IL App (1st) 132057-U

SIXTH DIVISION
September 27, 2013

No. 1-13-2057

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In the Interest of OTHA E., a Minor	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County.
	)	
Plaintiff-Appellee,	)	
	)	No. 13 JD 128
v.	)	
	)	
OTHA E., a Minor,	)	Honorable
	)	Terrence V. Sharkey,
Defendant-Appellant.)	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed respondent's convictions where his trial counsel committed no ineffective assistance in failing to file a motion to suppress his identification. We modified respondent's term of probation to end on his 21st birthday.

¶ 2 Respondent, Otha E., was charged in a petition for adjudication of wardship with armed violence, residential burglary, burglary, theft, aggravated unlawful use of a weapon, unlawful possession of firearms, criminal trespass to residence, and criminal damage to property. Following trial, the trial court convicted respondent of residential burglary, burglary, theft, criminal trespass to

residence, and criminal damage to property and sentenced him to five years' probation. On appeal, respondent contends: (1) his trial counsel committed ineffective assistance by failing to file a motion to suppress his identification; and (2) his probation term must be modified to terminate on his 21st birthday. We affirm respondent's convictions and modify his probation term to terminate on his 21st birthday.

¶ 3 At trial, Martha Saprissa testified she was 62 years old at the time of trial and that on January 9, 2013, she lived on the main floor of the house at 5041 South Marshfield Avenue in Chicago. Her brother lived in the basement. Ms. Saprissa left her house to go to a Walmart at about 9 a.m. on January 9, 2013. When she left the house, the doors were locked, the windows were closed, and "[e]verything was fine."

¶ 4 Ms. Saprissa testified she received a phone call from her brother while she was at the Walmart, asking her where she was. Ms. Saprissa replied that she was "at the store." Her brother then told her he had heard some noises. Ms. Saprissa testified her brother "went to see what it was and he went outside and the people, the persons were coming out."

¶ 5 Ms. Saprissa testified she returned home at about 11:00 or 11:30 a.m. and saw a lot of police cars. She went to the rear of the house and observed that her door and a window were open. The door was "damaged." She saw a television, a box, and a remote control in the backyard. Another television was in a neighbor's yard. All of those items belonged to her. When she had left the house at 9 a.m., all of those items had been inside the house. Ms. Saprissa had not given anyone permission to enter her home on January 9 and remove the items. Ms. Saprissa testified she went inside her house and discovered that four televisions and an iPad were missing.

¶ 6 Bruno Cardona, Ms. Saprissa's brother, testified he was 50 years old at the time of trial and that on January 9, 2013, he lived in the basement of Ms. Saprissa's house at 5041 West Marshfield Avenue in Chicago. Between 11:00 and 11:45 a.m. on January 9, 2013, Mr. Cardona was in the basement when he heard some footsteps upstairs. He also heard something fall on the floor. Mr. Cardona called Ms. Saprissa and asked her if she or her daughter were upstairs on the main floor. Ms. Saprissa said no and she asked Mr. Cardona "to go and see what was happening." Mr. Cardona ran outside and saw two persons four or five feet away from him, coming out of the rear door of the house, each one carrying a television. Mr. Cardona made an in-court identification of respondent as one of the men he had seen carrying a television.

¶ 7 Mr. Cardona testified respondent lowered the television to the ground and tried to run away. Mr. Cardona grabbed respondent by his jacket and they struggled for 45 seconds to one minute. They were face-to-face the entire time. Respondent tried to punch Mr. Cardona, but he missed. Eventually, respondent escaped, jumped over a fence, and ran south down an alley between 51st Street and Ashland Avenue. Mr. Cardona chased respondent but gave up after one block.

¶ 8 Mr. Cardona testified he found a police officer in the middle of the alley, told him about the break-in, and gave a description of respondent as a black male, wearing a black jacket with a hood, and having a light mustache. Mr. Cardona described the other offender as a male black wearing a hood. Mr. Cardona returned home and spoke with several more officers. About five or six minutes later, one of the officers drove him four or five blocks where he saw two persons in a police car, one of whom was respondent. The officers had the persons step out of the police car and stand side-by-side. An officer asked Mr. Cardona whether he recognized them as the persons he had seen at the

house taking the televisions. Mr. Cardona told the officer that he recognized respondent. Mr. Cardona did not identify the second person.

¶ 9 Mr. Cardona acknowledged during his testimony that he could see respondent was currently wearing his long hair in a braid. When asked whether he ever told the police that respondent wore his hair in a braid, Mr. Cardona said no, explaining that respondent had been wearing a hood on January 9.

¶ 10 Officer Chris Hackett testified that at approximately 11:55 a.m. on January 9, 2013, he and his partner, Officer Philp, were in uniform driving a marked squad car at the 5000 block of South Justine Street when they received a call of a burglary-in-progress. After receiving the call, the officers began driving around the area, looking for suspects. The suspects were described as two black males in dark clothing; he did not recall that the description included that the black males wore hoods. The officers drove down Justine Street to 54th Street, driving eastbound until they reached Bishop Avenue, and then went north on Bishop Avenue.

¶ 11 Officer Hackett testified that about 90 seconds after receiving the burglary-in-progress call, they saw respondent and Cortez Shelton walking northbound out of a gangway at 5330 South Bishop Avenue, which was about four blocks away from the location of the burglary. Respondent and Mr. Shelton were wearing dark clothing and hoodies, and matched the description of the burglars. The officers approached them in the squad car, and Officer Hackett called to them to come to the car. As they approached the squad car, Officer Hackett said: "What's going on? What are you guys doing?" When the officers got out of the squad car to conduct a field interview, Mr. Shelton fled. While Officer Philp chased after Mr. Shelton on foot, Officer Hackett grabbed respondent and

"detained" him by putting him in the back of the squad car. Officer Hackett testified he could not recall whether respondent was wearing a hoodie while he was in the squad car. Officer Hackett testified that although respondent was "detained," he was not handcuffed at this time. About five seconds later, Officer Hackett heard a gunshot.

¶ 12 Officer Hackett testified he drove to 54th Street and Bishop Avenue, where he saw Mr. Shelton run into an apartment building at 1517 West 54th Street. Leaving respondent unhandcuffed in the back of the squad car, Officer Hackett ran into the apartment building and placed Mr. Shelton into custody "on the second floor landing on the stairs." Officer Philp recovered the weapon as Officer Hackett brought Mr. Shelton downstairs to the squad car. Not more than 30 seconds had passed from the time Officer Hackett ran into the apartment building, to the time he brought Mr. Shelton to the squad car. Officer Philp handcuffed respondent and Mr. Shelton. The officers then called another officer to bring the burglary witness over for a show-up identification.

¶ 13 Officer Hackett testified that Officer Carter brought the witness to 54th and Justine Streets for the show-up. Respondent and Mr. Shelton were brought in front of the squad car, where the witness identified respondent as one of the offenders. Respondent was placed under arrest for residential burglary and taken to the police station.

¶ 14 Officer Philp testified that at approximately 11:55 a.m. on January 9, 2013, he and his partner, Officer Hackett, were in uniform and on patrol in a marked squad car at the 5100 block between Ashland Avenue and Justine Street when they received a call of a burglary at 5041 South Marshfield Avenue. The suspects were described as black males in dark clothing. The officers began searching the area for the offenders.

¶ 15 Officer Philp testified they drove to the 5400 block of South Bishop Street, about four blocks away from the burglary scene where, about 10 minutes after the burglary call, they observed two persons (respondent and Mr. Shelton) walking northbound matching the description of the offenders. Officer Hackett asked them to approach the car. Respondent and Mr. Shelton started coming toward the squad car, and Officer Hackett and Officer Philp then exited the vehicle. As Officer Hackett approached respondent, Mr. Shelton "took off fleeing." Officer Philp gave chase on foot, staying within 20 or 25 feet of him.

¶ 16 Officer Philp testified Mr. Shelton ran in a southwest direction. When they reached 5354 Laflin Street, Mr. Shelton retrieved a black, semiautomatic handgun from his waist area and threw it over a fence. Officer Philp heard a gunshot and immediately took cover until he realized he was not in danger. Then he secured the weapon, which was loaded with six live .40-caliber rounds and had one spent casing. Meanwhile, Officer Hackett had captured Mr. Shelton in a building at 1517 West 54th Street and brought him to the squad car. They conducted a show-up identification on 54th Street, and the witness identified respondent. Officer Philp did not remember whether respondent was wearing a hoodie. The officers placed respondent under arrest at 12:07 p.m. and brought him to the police station. Respondent did not have any weapons, burglary proceeds, or burglary tools on his person. Officer Philp acknowledged that it was not unusual to find black males in dark clothing in the Ninth District, where the crime occurred.

¶ 17 After the State rested, respondent moved for a directed finding. The trial court found the State had not met its burden of proof on the armed violence count, the aggravated unlawful use of a weapon counts, or the unlawful possession of firearms count, and entered a finding of not guilty

on those counts.

¶ 18 Officer Jeffrey Carter testified in the defense case that at about noon on January 9, 2013, he went to 5041 South Marshfield Avenue, where he spoke with Mr. Cardona. Mr. Cardona told Officer Carter that his house had been burglarized at 11:55 a.m., that he had heard noises and gone outside to investigate, and that he had seen two persons in the backyard, one of whom was carrying a television. Officer Carter subsequently drove Mr. Cardona to a location near 54th and Justine Streets to view two suspects (one of whom was respondent) who had been detained by Officers Hackett and Philp. Mr. Cardona made a positive identification of respondent as one of the persons who had burglarized his house. Officer Carter could not recall whether respondent was wearing a hoodie at the time of his identification by Mr. Cardona.

¶ 19 Sergeant Kenneth Janeczko testified that shortly after noon on January 9, 2013, he went to 5041 South Marshfield Avenue in response to a call of a burglary-in-progress. Sergeant Janeczko found the rear door of the house open and the frame damaged. There was a television in the gangway toward the garage.

¶ 20 Respondent testified in his own behalf that he was 16 years old at the time of trial, and lives at 5127 South Loomis Avenue with his mother. Shortly after noon on January 9, 2013, he was "hanging out" with Mr. Shelton at 54th and Laflin Streets. Respondent was wearing black pants and a black windbreaker without a hood. Officer Hackett and Officer Philp pulled up and asked them to come over to their squad car. Respondent put his hands up and went to the squad car. Mr. Shelton took off running and an officer chased him. Respondent was put in the back of the squad car. He was not handcuffed.

¶ 21 Respondent testified that after "a minute or two," the officer in the squad car drove respondent to 1517 West 54th Street. Respondent further testified:

"Q. When it went over there, did you step out of the car?

A. No.

Q. Well, Mr. Cardona said that you stepped out of the car and he viewed you and identified you. Did that happen?

A. No.

Q. Did you ever get out of the car once you got into it before you got to the police station?

A. No.

* * *

Q. Did you see what happened to Cortez Shelton after he ran away from the police?

A. No, sir.

Q. Did he get in the car with you?

A. No, sir.

Q. Did he attend a show-up with you?

A. No, sir.

* * *

Q. Earlier that morning, did you commit a burglary at 5041 South Marshfield?

A. No, sir."

¶ 22 Following all the evidence and closing arguments, the trial court expressly found respondent was"not credible at all" and concluded that Mr. Cardona's testimony was "the key to this case." The trial court found "enough credibility in Mr. Cardona's testimony" to convict respondent of residential burglary, burglary, theft, criminal trespass to residence, and criminal damage to property. The trial court merged the burglary, theft, and criminal trespass to residence convictions with the residential burglary conviction, and sentenced respondent to five years of felony probation. Respondent appeals.

¶ 23 First, respondent contends his trial counsel committed ineffective assistance by failing to file a motion to suppress his identification, where police officers improperly arrested him without probable cause and then presented him for a show-up identification.

¶ 24 The State responds that a claim of ineffective assistance of counsel is better raised on collateral review rather than on direct appeal. See *People v. Ligon*, 239 Ill. 2d 94, 105-06 (2010) (holding that where "the record is insufficient because it has not been precisely developed for the object of litigating a specific claim of ineffectiveness raised in the circuit court, thereby not allowing both sides to have an opportunity to present evidence thereon, such a claim should be brought on collateral review rather than on direct appeal"). The State here contends that because respondent did not file a motion to suppress his identification, "the People did not need to elicit detailed evidence from the police officers describing how, when, where, and why the officers stopped [respondent] and presented him for a show-up." Therefore, the State contends this cause should be pursued on collateral review rather than on direct appeal so as to allow the State to present evidence thereon.

¶ 25 However, the respondent here is a juvenile, and this court has held that "the Post-Conviction Hearing Act (725 ILCS 5/122-1 (West 2008)), a collateral remedy for most adult offenders, does not apply to juveniles." *In re Joshua* B., 406 Ill. App. 3d 513, 516 (2011). Thus, in contrast to the adult offender in *Ligon*, respondent's only opportunity for review of his ineffective assistance claim is to raise it on direct appeal.

¶ 26 Further, contrary to the State's argument that it did not elicit detailed evidence regarding the circumstances of respondent's detention, the record reflects that the State elicited detailed testimony regarding where the officers stopped respondent, why they stopped him, when they stopped him, and how they stopped him. Accordingly, the appellate record is sufficiently detailed regarding the circumstances of respondent's detention so as to allow us to address respondent's claim that his trial counsel provided ineffective assistance by failing to file a motion to suppress his identification based on a lack of probable cause to arrest. See *People v. Henderson*, 2013 IL 114040, ¶¶ 18-24 (addressing on direct appeal defendant's claim of ineffective assistance where the record was adequate to evaluate that claim). We proceed to address respondent's claim of ineffective assistance.

¶ 27 To determine whether respondent was denied his right to effective assistance of counsel, we apply the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Respondent must show (1) that "counsel's representation fell below an objective standard of reasonableness" (*id.*); and (2) that he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. For respondent to establish he was prejudiced by his counsel's failure to file a motion to suppress his identification, he "must demonstrate that the unargued suppression motion is meritorious, and that

a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed." *Henderson*, 2013 IL 114040, ¶ 15.

¶ 28 Respondent argues the motion to suppress his identification would have been granted because police officers violated his fourth amendment rights by arresting him without probable cause.

¶ 29 The fourth amendment to the United States Constitution guarantees "[t]he 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. 1, § 6. "Reasonableness under the fourth amendment generally requires a warrant supported by probable cause." *People v. Johnson*, 237 Ill. 2d 81, 89 (2010). However, in *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court recognized an exception to the warrant requirement. Under *Terry*, a police officer may briefly detain a person, whom the officer reasonably suspects to be recently or currently engaged in criminal activity, so as to verify or dispel those suspicions. *People v. Arnold*, 394 Ill. App. 3d 63, 70 (2009). To justify a *Terry* stop, a police officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Terry*, 392 U.S. at 21. "An objective standard is used in determining whether the facts and circumstances known to the officer at the time of the stop would warrant a person of reasonable caution to believe a stop was necessary to investigate the possibility of criminal activity." *People v. Walters*, 256 Ill. App. 3d 231, 234 (1994). The validity of an investigative stop turns on the totality of the facts and circumstances known to the officers at the time. *People v. Adams*, 225 Ill. App. 3d 815, 818 (1992).

¶ 30 Section 107-14 of the Code of Criminal Procedure of 1963 codifies *Terry* and provides:

"A peace officer, after having identified himself as a peace officer, may stop any

person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense ***, and may demand the name and address of the person and an explanation of his actions. Such detention and temporary questioning will be conducted in the vicinity of where the person was stopped." 725 ILCS 5/107-14 (West 2012).

¶ 31 In the present case, Officers Hackett and Philp received a call of a burglary-in-progress at approximately 11:55 a.m. on January 9, 2013. The suspects were described as two black males in dark clothing. Within either 90 seconds after receiving the call (according to Officer Hackett), or 10 minutes after receiving the call (according to Officer Philp), the officers observed respondent and Cortez Shelton–two black males wearing dark clothing–walking about four blocks away from the location of the burglary. After Officer Hackett asked them to come over to the squad car, Mr. Shelton took off running. The totality of these facts and circumstances provided the minimal specific and articulable facts required to effectuate a *Terry* stop of the respondent. See *People v. Ross*, 317 Ill. App. 3d 26, 30 (2000) (officer had the minimal specific and articulable facts to stop defendant where he was observed walking within minutes of the crime a short distance from the victim's home and he matched the description of the offender as a black man wearing a blue shirt); *People v. Hopkins*, 363 Ill. App. 3d 971, 981 (2006) (officer had the minimal specific and articulable facts to stop defendant where he was observed within minutes of the crime a short distance away, and he met the description of the offender as a black male in his 20s); *People v. Bennett*, 376 Ill. App. 3d 554, 564 (2007) (officer had the minimal specific and articulable facts to stop defendant where he met the description of a black male wearing a dark hoodie and running northbound on 6th Avenue within

minutes of the crime).

¶ 32 Respondent contends, though, that the *Terry* stop was converted into an arrest without probable cause when Officer Hackett grabbed him, threw him into the car, and drove away, or alternatively when the officers handcuffed him.

¶ 33 " '[T]here is no brightline test for distinguishing between a lawful *Terry* stop and an illegal arrest.' " *Arnold*, 394 Ill. App. 3d at 70 (quoting *United States v. Glenna*, 878 F.2d 967, 971 (7th Cir. 1989)). " 'The [crucial] difference between an arrest and a stop lies not in the initial restraint on movement, but rather on the length of time the person may be detained and the scope of investigation which may follow the initial encounter.' " *People v. Paskins*, 154 Ill. App. 3d 417, 422 (1987) (quoting *People v. Roberts*, 96 Ill. App. 3d 930, 933-34 (1981)). "The totality of the circumstances, including the length of detention and the scope of investigation, must be considered in determining whether detention of a suspect constitutes an arrest or a stop." *People v. Calderon*, 336 Ill. App. 3d 182, 192 (2002).

¶ 34 In the present case, neither the length of the detention nor the scope of the investigation transformed the lawful investigatory *Terry* stop into an arrest. Respondent and Mr. Shelton were initially stopped at 5330 South Bishop Street either at about 11:57 a.m. (according to Officer Hackett's testimony), or at about 12:05 p.m. (according to Officer Philp's testimony). The show-up was conducted at 12:07 p.m. Thus, the total length of respondent's detention prior to the show-up was between two to ten minutes, which was not so lengthy as to transform respondent's *Terry* stop into an arrest. See *Ross*, 317 Ill. App. 3d at 30-31 (an eight-minute time lapse between when the police effectuated the defendant's stop and the time of arrest comported with the permissible length

of a *Terry* stop); *People v. Starks*, 190 Ill. App. 3d 503, 509-10 (1989) (10-minute detention was not so unreasonable as to transform the *Terry* stop into an arrest).

¶ 35 The scope of the investigation following the officers' initial encounter with respondent also conformed with *Terry*. "The purpose of a *Terry* stop is to allow a police officer to investigate the circumstances that provoke suspicion and either confirm or dispel his suspicions." *Ross*, 317 Ill. App. 3d at 31. "The scope of the investigation must be reasonably related to the circumstances that justified the police interference and the investigation must last no longer than is necessary to effectuate the purpose of the stop." *Id*. Here, respondent's brief (two- to ten-minute) stop during which the officers quickly apprehended respondent's fleeing companion, Mr. Shelton, and conducted a show-up of respondent and Mr. Shelton for a quick determination of their involvement in the crime comports with the permissible scope of an investigation after a *Terry* stop. See *id*. ("an eight-minute stop with a quick determination as to the person's involvement in the crime comports with the permissible scope of an investigation after a *Terry* stop"); *Bennett*, 376 Ill. App. 3d at 565 (a stop of only a few minutes in length which was limited to making a quick determination of defendant's involvement in the shooting comported with the permissible scope of an investigation after a *Terry* stop).

¶ 36 Further, "the transportation of a suspect for the purpose of an identification is not necessarily an unreasonable seizure under the fourth amendment." *Ross*, 317 Ill. App. 3d at 31. An unreasonable seizure may be found where a person is transported to an institutional setting such as a police station. *Id*. (citing *United States v. Vanichromanee*, 742 F.2d 340, 345 (7th Cir. 1984)). However, " 'the transportation of a suspect for purposes of a showup when the officer is conducting a field

investigation immediately after the commission of a crime and when the victim, a short distance away, could confirm or deny the identification of the suspect may not be an unreasonable seizure under the fourth amendment.' " *Ross*, 317 Ill. App. 3d at 31 (quoting *People v. Follins*, 196 Ill. App. 3d 680, 693 (1990)). The rationale is that " 'a short period of detention [is] only minimally intrusive when compared to the benefit of immediate investigation.' " *Follins*, 196 Ill. App. 3d at 693 (quoting *People v. Lippert*, 89 Ill. 2d 171, 183 (1982)).

¶ 37 Here, respondent's short transportation to 54th Street, only a few blocks from the crime scene and only minutes after the burglary occurred, resulted in the quick show-up identification of respondent by the victim and was minimally intrusive when compared to the benefit of the immediate investigation and comported with *Terry*. See *id*. ("transporting defendant a few blocks to the scene of the crime for a showup was minimally intrusive when compared to the benefit of the immediate investigation" and comported with *Terry*); *Ross*, 317 Ill. App. 3d at 31 ("the police officers' decision to transport defendant one block to the victim's house was reasonable considering the very short distance involved and the trauma the elderly victim had endured" and comported with *Terry*).

¶ 38 The restraint of respondent in this case also did not transform the investigatory *Terry* stop into an arrest. Although the use of handcuffs to restrain the person being detained is generally an indication that the detention is an arrest rather than a *Terry* stop, a detainee may be handcuffed during the duration of an investigatory *Terry* stop where necessary for the safety of the officers and/or the public. *Arnold*, 394 Ill. App. 3d at 70-71. See also *People v. Colyar*, 2013 IL 111835, ¶ 46 ("handcuffing does not automatically transform a *Terry* stop into an illegal arrest"). The

rationale is that "[i]t would be paradoxical to give police the authority to detain pursuant to an investigatory stop yet deny them the use of force that may be necessary to effectuate the detention." *Starks*, 190 Ill. App. 3d at 509. Therefore, "the difference between an investigatory stop and an arrest does not necessarily lie in the initial restraint of movement. Rather, it lies in the length of time the suspect is detained and the nature and scope of the investigation which follows the initial stop. If the officer's suspicions are not allayed within a reasonable time, the suspect must be allowed to leave or an arrest must be made." *People v. Walters*, 256 Ill. App. 3d 231, 237 (1994).

¶ 39 Here, the totality of the facts and circumstances known to the officers at the time they placed respondent in handcuffs are as follows: respondent and Mr. Shelton were seen walking together four blocks from the crime scene, minutes after the burglary occurred; they matched the description of the offenders; Mr. Shelton fled from the responding officers; Mr. Shelton discarded a weapon that discharged during his flight; and the weapon was recovered near the time of Mr. Shelton's apprehension and discovered to be loaded with six live .40 caliber rounds and one spent casing. As respondent and Mr. Shelton matched the description of the burglary suspects and were seen walking together near the scene of the crime, minutes after its occurrence, and Mr. Shelton had just been discovered as having possessed a loaded gun that discharged during his flight, the officers reasonably could have believed that respondent and Mr. Shelton were dangerous and that their temporary restraint for the remainder of the stop was necessary to protect the safety of the officers and/or the general public. Further, as discussed earlier in this order, the duration and scope of the stop comported with *Terry*; accordingly, respondent's *Terry* stop was never transformed into an arrest. See *People v. Waddell*, 190 Ill. App. 3d 914, 926-28 (1989) (a 15- to 20-minute *Terry* stop of a

defendant suspected of being involved in possession of drugs was not converted into an arrest where seven officers participated in the stop of defendant's vehicle, asked the occupants to exit the vehicle, handcuffed and pat-searched defendant, and secured defendant in a squad car while conducting a search of the vehicle pursuant to defendant's consent); *Starks*, 190 Ill. App. 3d at 508-10 (a 10-minute *Terry* stop of a defendant suspected of committing armed robbery was not converted into an arrest where officers stopped defendant's vehicle, handcuffed defendant and the other occupants thereof, and searched the passenger compartment of the vehicle for weapons).

¶ 40 As the stop here was valid under *Terry*, respondent has failed to show that the unargued motion to suppress his identification was meritorious and that his trial counsel's decision not to file said motion was objectively unreasonable. Accordingly, respondent's trial counsel committed no ineffective assistance.

¶ 41 Next, respondent argues that the trial court exceeded its jurisdiction under the Juvenile Court Act of 1987 (705 ILCS 405/5-755 (West 2012)) where it sentenced him to a term of probation extending beyond his 21st birthday. See *In re Jaime P.*, 223 Ill. 2d 526, 539 (2006) (holding that "the plain intent of the Juvenile Court Act was to set the age of 21 as the maximum for all juvenile dispositions"). The State agrees. Accordingly, pursuant to the agreement of the parties, we modify respondent's term of probation to terminate on his 21st birthday, July 22, 2017.

¶ 42 For the foregoing reasons, we affirm respondent's convictions and modify his term of probation to terminate on July 22, 2017.

¶ 43 Affirmed as modified.