Illinois Official Reports

Appellate Court

People v. Jenkins, 2021 IL App (1st) 200458

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DeANGELO JENKINS, Defendant-Appellant.
District & No.	First District, Third Division No. 1-20-0458
Filed	December 8, 2021
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 19-CR-06155; the Hon. James B. Linn, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Andrew Rima and Betsy Farrington, of Goldman Ismail Tomaselli Brennan & Baum LLP, of Chicago, for appellant. Kimberly M. Foxx, State's Attorney, of Chicago (John E. Nowak, Tasha-Marie Kelly, and Brian A. Levitsky, Assistant State's Attorneys, of counsel), for the People.
Panel	JUSTICE ELLIS delivered the judgment of the court, with opinion. Presiding Justice Gordon and Justice Burke concurred in the judgment and opinion.

OPINION

¶ 1 A jury convicted defendant DeAngelo Jenkins of being an armed habitual criminal. He raises two issues on appeal. First, he alleges ineffective assistance, based on counsel's failure to move for suppression of the gun, his criminal history, and an inculpatory statement—all fruits, he says, of an arrest without probable cause. Second, he claims the trial court erred in finding that the State's key witness, a Chicago police officer assigned to the United States Marshals Fugitive Task Force (Task Force), was not required to wear a body camera. This finding, in turn, led the trial court to erroneously limit his cross-examination of the officer and to deny his proposed nonpattern jury instructions addressing the officer's lack of a body camera. We find no error and affirm.

¶ 2 BACKGROUND

¶ 3 I

¶ 4 Defendant was arrested on the 2800 block of West Harrison Street after Chicago police officer Sherry Kotlarz saw him put a gun into a parked car. Officer Kotlarz and her two partners, Officer Joseph Fitzgerald and Detective Christopher Ross, were assigned at the time to the Task Force. They had converged on this particular block to interview someone who might have information about the whereabouts of a fugitive in an unrelated case. They were not looking for defendant and had no idea who he was before they encountered him here.

¶ 5 The officers came in separate unmarked cars. Officer Kotlarz was the first to arrive. She saw defendant while walking westbound on the sidewalk, on the south side of Harrison Street. A grey Jeep had parked on the same side of the street. Defendant got out, walked up to a clothing store, and stood in front of the door. Soon enough, he turned around and was facing Officer Kotlarz, who was approaching from the east, donning her vest and star, radio, cuffs, and sidearm.

¶ 6 Officer Kotlarz testified that she thought defendant "had looked right at [her]" and "made eye contact." She also noted that Detective Ross was making a U-turn in the street directly behind her at the time. Defendant "slouch[ed]" or "crouched down" and walked back to the Jeep. When Officer Kotlarz demonstrated his manner of walking, the trial court described it as "crouch[ing] down and walk[ing] like a duck walk." Because the Jeep was parked about two car lengths to the east of the store, he was walking toward Officer Kotlarz at the time.

¶ 7 With his left hand, defendant opened the rear passenger side door "slightly," "just enough to squeeze his arm through there." With his right hand, he took a gun from his waistband and put it inside the door. The right side of his body faced Officer Kotlarz, who claimed to have an "unobstructed" view of the gun for "a couple seconds" from 20 to 25 feet away. Defendant closed the door and walked back to the clothing store.

¶ 8 Meanwhile, Officer Fitzgerald had just parked on the same block. He met Officer Kotlarz on the sidewalk. She pointed to defendant, who was still in front of the store, and said he had just put a gun in the back of a car. Together, the officers approached the passenger side of the Jeep with their guns drawn. Detective Ross saw them and approached the driver side. There were three passengers inside—a man in the rear passenger side seat and two women in the front and rear driver side seats.

¶ 9 Officer Fitzgerald ordered the passengers to put their hands up, which they did, and then opened the rear passenger side door. Detective Ross opened the rear driver side door. Upon opening the doors, both officers immediately saw a "large" and "silver-ish" handgun. Officer Fitzgerald testified that it was "in between like the doorjamb of the rear passenger seat and the seat." Detective Ross testified that it was in "a standing up position as if it was tucked in either between the seat and the body portion of the vehicle," "where the door opens and meets the body of the car." Similarly, Officer Kotlarz testified that "when you open the [rear] passenger side door, it was between like the doorjamb and the passenger side seat." She acknowledged that in her police report, she wrote that the gun was "resting on the seat."

¶ 10 Officer Kotlarz secured the gun, which was loaded. The officers ordered the passengers out of the Jeep. Backup officers detained them on the sidewalk, while Officers Fitzgerald and Kotlarz and Detective Ross went into the store to look for defendant.

¶ 11 Defendant was in the store bathroom, with the door locked. Officer Fitzgerald ordered him to come out and then to "get on the ground," both of which he did. After he was handcuffed, defendant asked what all of this was about. Officer Fitzgerald said, "we saw you put the gun in the back of the car," and "you're getting arrested today." Defendant replied, "Man, I f*** up. I'm on parole. Is there some way I can help you out so I don't have to catch this case?"

¶ 12 II

¶ 13 As it turned out, the Jeep belonged to Terri McCain, the woman in the front seat, who was defendant's girlfriend and the only defense witness at trial. (They lived together at the time of the arrest but split up before the trial.) McCain testified that she had defendant drive her and her friend Kanisha, the woman in the rear driver side seat, to a job orientation. With them was one "Little Lord," the man in the rear passenger side seat, who earlier that day had offered to pay McCain for a ride to somewhere on Laramie Avenue. McCain agreed because she needed the money.

¶ 14 McCain testified that, after the job orientation, defendant drove to a clothing store on West Harrison Street. He parked and made his way toward the store, but he came back to the Jeep to get his wallet, which he had left in an "open spot" under the glove compartment. McCain passed it to Little Lord, who in turn passed it to defendant. McCain was not sure if he passed it through a partially open window or if defendant opened the door. In any event, defendant got his wallet and went back to the store.

¶ 15 A "bunch" of police officers soon approached the Jeep. McCain didn't know why and was nervous. She looked back and caught "a glimpse" of "Little Lord" "trying to tuck a gun" into his waistband or "rear of the pants area." The officers removed everyone from the Jeep, handcuffed them, and took their IDs. After they were uncuffed, "Little Lord" fled, but McCain had "no clue" where. McCain testified one of the officers said, "if we don't find him, we are going to place the gun on one of you guys." McCain did not see where the gun was when the police seized it. And she never saw defendant with a gun that day.

¶ 16 III

¶ 17 On direct examination, the State elicited from Officer Kotlarz that she was not wearing a body-worn camera. Officers assigned to the Task Force, she testified, "do not wear body-worn

camera *** [b]ecause we're on the fugitive task force so we're exempt from the body-cam." The defense did not object to that testimony.

¶ 18 But on cross-examination, defense counsel asked Officer Kotlarz about her knowledge of the Chicago Police Department (CPD) directive supposedly "requiring you to be equipped with a body-worn camera." The trial court sustained the State's objection and, after a sidebar held off the record, instructed the jury to disregard that question.

¶ 19 After Officer Kotlarz testified, and outside the presence of the jury, the trial court made a record of the earlier sidebar. The defense believed that it should be permitted to cross-examine Officer Kotlarz on her claim that she was "exempt" from CPD's directive requiring officers to wear body cameras. More specifically, the defense wanted to question Officer Kotlarz about her knowledge of the directive and "who should have [body-worn cameras] and when they should have them."

¶ 20 The trial court barred that line of questioning or the following reasons. First, "[t]he fact of the matter is that not every police officer is assigned body-worn cameras," including some detectives and tactical officers, and "officers in certain units such as this one *** where she is actually assigned to the marshal's department of the United States government."

¶ 21 Second, Officer Kotlarz was a fact witness, but the meaning of the directive is a question of law. For this reason, cross-examining the officer on her own knowledge or understanding of the directive would be "totally misleading to the jury."

¶ 22 Third, during the sidebar, defense counsel had cited a provision of the CPD directive that apparently implied that all officers are required to wear body cameras. But defense counsel had taken that provision "out of context" because the directive at issue "doesn't apply to every single police officer in every setting, especially officers not in uniform." Giving the jury the impression that every officer must wear a body camera, either through cross-examination or instructions, "would be totally misleading."

¶ 23 The defense was free to argue "that in a perfect world or a better world," these officers, too, would have been issued body-worn cameras, but it could not cross-examine Officer Kotlarz on her knowledge of the directive, and there would be no instruction employing the language cited "out of context" by counsel. With that said, the trial court gave defense counsel the floor to "make your record."

¶ 24 Counsel argued that it was Officer Kotlarz who first brought up the directive, and so the defense should be allowed to cross her on that topic. And apart from the officer's claim, there were "no facts in evidence" showing that Task Force officers, or for that matter any others, were exempt from wearing body cameras. To the contrary, counsel asserted, "the directives say that it is mandatory for all officers" to wear a body camera.

¶ 25 The trial court then asked counsel whether the directive says "all officers or all uniformed officers." Counsel then recited the following provision of the directive, evidently the provision cited earlier in the sidebar:

> "[T]he Department member will activate the system to event at the beginning of an incident and will record the entire incident for all law-enforcement-related activities. If circumstances prevent activating the body-worn camera at the beginning of an incident, the member will activate the body worn camera as soon as practical."

The last word should be "practicable," but other than that, counsel was reciting section III-A2 of Chicago Police Department Special Order No. S03-14 (eff. Apr. 30, 2018).

¶ 26 Counsel went on to explain that the directive "doesn't say anything about the uniform," but "the statute"—an apparent reference to the Law Enforcement Officer-Worn Body Camera Act (Act) (50 ILCS 706/10-1 *et seq.* (West 2018))—does. In particular, the statute requires an officer's body-worn camera to be turned on "at all times when the officer is in uniform" and "engaged in any law enforcement-related encounter[s]" (see *id.* § 10-20(a)(3)), and the defense's position was that Officer Kotlarz was "in uniform" as the term is defined by the statute (see *id.* § 10-10). So the defense "should at least have the right to ask her about where she gets the idea that she is exempt."

¶ 27 The trial court reiterated, "Well, no, those are questions of law." So "we're not getting into what the Chicago Police Department directives say." That line of questioning "wouldn't be helpful" for the jury; it would be "misleading" and would "confuse them totally."

¶ 28 And the fact remained that Officer Kotlarz "wasn't given a body-worn camera and we know and I can take judicial notice of the fact that the Chicago Police don't give all officers body-worn cameras." When they are in "certain jobs," such as when they are "assigned to units of other government like the United States government, the marshal service, they're not given body-worn cameras."

¶ 29 As the trial court summed up, "[t]he officer is not on trial for not being issued a body-worn camera. Your client is on trial for having a gun illegally," and that's what the examination of witness, and the jury instructions, "will all be about."

¶ 30 Officer Fitzgerald testified that none of the Task Force officers were "assigned" a body-worn camera. Detective Ross testified that he was not "equipped" with a body-worn camera.

¶ 31 The defense proposed six non-IPI jury instructions derived from various provisions of the Act. See *id.* § 10-1 *et seq*. The key points of the proposed instructions were these: First, body-worn cameras "must be turned on at all times when the officer is in uniform and is *** engaged in any law enforcement-related encounter or activity, that occurs while the officer is on duty." *Id.* § 10-20(a)(3). Second, if the jury finds "that a recording was intentionally not captured," it "shall consider *** that [fact] in weighing the evidence, unless the State provides a reasonable justification." *Id.* § 10-30. The remaining instructions conveyed the statutory definitions of the terms "officer-worn body camera," "in uniform," and "law-enforcement related encounters or activities." *Id.* § 10-10.

¶ 32 The trial court denied the proposed instructions, explaining that "[t]his is not law that applies to the facts of this case" and would not "help the jury in deciding whether [defendant] is an armed habitual criminal or not." As the court elaborated, "to suggest that somehow this is about a body cam when they should have had it or shouldn't have had it" was "not accurate, not helpful," and "misleading" to the jury.

¶ 33 The court also reiterated that "I know and I think everybody here knows who works here regularly that not every unit of the police department gets body cams"—and that includes Task Force officers, among others. And so the court did not believe it was "any fault we can lay on the police officers because the department did not issue body-cams in this case."

¶ 34 In a supplemental posttrial motion, the defense claimed the court erred in limiting cross-examination, denying the proposed non-IPI instructions, and in taking "judicial notice" that CPD exempts certain officers, including Officer Kotlarz, from the body-camera directive.

¶ 35 In denying the motion, the trial court stood by its earlier "findings and rulings." Cross-examining Officer Kotlarz on the meaning of the directive would have been "mixing apples

and oranges"—confusing fact issues with "police policy issues." And the latter, like "what the word exempt means" and "what makes somebody exempt" under CPD policy, "are not really issues for the jury." And again, "I know and you know and everybody knows you can take judicial notice that all undercover non-uniformed police officers do not get body-worn cameras."

¶ 36 The trial court sentenced defendant to nine years in prison for being an armed habitual criminal. This appeal follows.

¶ 37 ANALYSIS

¶ 38 I

¶ 39 Defendant's principal argument on appeal is that he was denied effective assistance of counsel for failing to seek suppression of certain evidence. He claims he was arrested without probable cause and the gun, his criminal history, and his inculpatory statement to Officer Fitzgerald were fruits of that illegal arrest. Effective representation of counsel, he says, would have led to the suppression of all this evidence.

¶ 40 Defendant's claim is governed by the familiar deficiency-and-prejudice framework of *Strickland v. Washington*, 466 U.S. 668 (1984). Defendant must establish both deficient performance and prejudice; if his claim of prejudice fails, we can dispose of his ineffectiveness challenge on that basis alone. *People v. Haynes*, 192 Ill. 2d 437, 473 (2000). To establish prejudice in this context, defendant must show (1) that the proposed motion to suppress was "meritorious," meaning that it "would have succeeded," and (2) a reasonable probability that he would have been acquitted had the evidence been suppressed. *People v. Henderson*, 2013 IL 114040, ¶¶ 12, 15.

¶ 41 Because the facts of defendant's encounter with the police were not established at a suppression hearing, we look to the trial evidence. See *People v. Hopkins*, 235 Ill. 2d 453, 473 (2009); *People v. Stewart*, 104 Ill. 2d 463, 480 (1984).

¶ 42 Defendant correctly notes that the mere possession of a gun outside of the home no longer necessarily amounts to criminal conduct, and thus it no longer automatically provides probable cause for an arrest (or a search) in every instance. See, *e.g.*, *People v. Bloxton*, 2020 IL App (1st) 181216, ¶ 19; *People v. Thomas*, 2019 IL App (1st) 170474, ¶ 40; see *People v. Aguilar*, 2013 IL 112116. But "mere possession" of a gun is not a full and fair description of what Officer Kotlarz saw as she approached defendant.

¶ 43 Officer Kotlarz did not just walk by a nonchalant individual, tending to his own business, as if there was nothing for him to worry about, and then arrest him for having a gun, say, tucked into his waistband. It is a reasonable inference that defendant immediately and deliberately took measures to hide the gun from the officers' view when he noticed the police converging on that block. As Officer Kotlarz walked toward defendant, she thought he "looked right at [her]" and "made eye contact." At the same time, Detective Ross was pulling up, making a U-turn directly behind Officer Kotlarz and thus, it would seem, in plain sight of defendant.

¶ 44 Defendant "slouch[ed]" or "crouched down" and walked, "like a duck," back to the Jeep. And Officer Kotlarz's testimony made clear that there were several parked cars lining the block, thus giving defendant cover, at least from Detective Ross (perhaps Officer Fitzgerald, too). An officer could reasonably infer, in this context, that defendant was trying his best to keep himself, and whatever was in his possession, out of view of the police.

¶ 45 True, avoiding an approaching officer does not, on its own, give rise to probable cause or even reasonable suspicion; there must be further indications of potentially illegal behavior. See *Bloxton*, 2020 IL App (1st) 181216, ¶ 21. But here, there were. When defendant returned to the Jeep, he rid himself of the gun quickly and surreptitiously, opening the rear passenger side door ever so "slightly," "just enough to squeeze his arm" through for a fleeting moment and stash the gun inside the vehicle. And that, it seemed, was defendant's only reason for stopping at the Jeep before continuing into the store.

¶ 46 A reasonable officer, viewing defendant's conduct as a whole and in its full context and drawing common-sense inferences (see, *e.g.*, *Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000)), would be entitled to this thought: Upon noticing the police, defendant acted as if he knew he was prohibited from having a gun and seemed to take immediate steps to separate himself from the gun in an undetectable manner. That may not be probable cause, but it *is* "reasonable suspicion" that defendant's gun possession was unlawful or that he was planning a crime. See *People v. Hood*, 2019 IL App (1st) 162194, ¶ 71 (defendant's "efforts to conceal and toss the gun" when encounter with police became imminent established reasonable suspicion of unlawful possession or planning of crime and thus supported *Terry* stop); see *People v. Gomez*, 2018 IL App (1st) 150605, ¶¶ 29-30 ("efforts to conceal the weapon" in presence of police created reasonable suspicion, albeit not probable cause, of illegal possession).

¶ 47 A reasonable suspicion of criminality—a decidedly lower standard than probable cause—arises when an officer "observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity *may* be afoot." (Emphasis added.) *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Granted, defendant *might* have possessed the gun lawfully, for all the officers knew at the outset. Even still, because he acted suspiciously, in the specific ways Officer Kotlarz described, the officers could reasonably suspect that his possession or activity was unlawful. Reasonable suspicion does not require an officer to "rule out the possibility of innocent conduct." *United States v. Arvizu*, 534 U.S. 266, 277 (2002); see *Wardlow*, 528 U.S. at 126 ("*Terry* accepts the risk that officers may stop innocent people.").

¶ 48 When an officer reasonably suspects an unlawful gun possession, the officer may take limited investigative steps to confirm or dispel that suspicion. In short, the officer can proceed with a *Terry* inquiry. There is no need to confirm that the possession is unlawful *before* conducting that inquiry. See *Hood*, 2019 IL App (1st) 162194, ¶ 71. That would put the cart before the horse; the point of the *Terry* inquiry is to make that very determination.

¶ 49 A *Terry* inquiry is justified as long as the officer is acting on more than a mere "inarticulate hunch," as evidenced by the officer's ability to articulate a *basis* for the suspicion of criminality in specific facts about the suspect's conduct and its attendant circumstances. *Terry*, 392 U.S. at 21-22, 27. Here, Officer Kotlarz had more than a mere hunch. She did not paper over a lack of articulable facts with a bald declaration that defendant's conduct or demeanor was "furtive" in some unexplained way. Rather, she described, with specificity, behavior that warranted a prompt, albeit limited, police inquiry into whether an illegal gun possession or other crime was afoot.

¶ 50 So the officers had a reasonable suspicion that defendant was illegally possessing a firearm. The next question is what that reasonable suspicion allowed them to do. Often in cases like this one, the first order of business would be a *Terry* stop—detaining the suspect and securing his weapon, two things that happen simultaneously. Here, of course, those two things could

not happen at the same time because the gun and the suspect were separated—defendant had stowed the gun in the car and then walked into the store. That led the officers to take two separate actions—secure the gun and detain defendant. Because defendant challenges the admissibility of the firearm in evidence as well as the information gleaned from defendant once he was detained, we must analyze each of these two actions by the officers independently.

¶ 51 A

¶ 52 The officers chose to secure the gun first, so we start with an analysis of those actions under *Terry*. To secure the gun, the officers first had to detain the Jeep—which was parked and occupied by passengers other than defendant—before obtaining the weapon inside that vehicle.

¶ 53 The principles of *Terry* apply in full force to stops or detentions of vehicles. See *Michigan v. Long*, 463 U.S. 1032, 1050 (1983); *People v. Bunch*, 207 Ill. 2d 7, 13-14 (2003) ("the reasonableness of a traffic stop is analyzed under *Terry* principles"). *Terry* permits the stop or detention of a vehicle as long as officers have a reasonable suspicion that the vehicle is connected to criminal activity. *Navarette v. California*, 572 U.S. 393, 397 (2014); *People v. Timmsen*, 2016 IL 118181, ¶ 9.

¶ 54 The officers had that reasonable suspicion here. True, defendant was not inside that vehicle, but the gun was; the officers saw defendant place the firearm inside the car. That firearm was potential evidence of a crime. Absent a detention of that vehicle, the occupants could have driven away with the firearm, thereby thwarting the officers' limited investigatory inquiry.

¶ 55 What is more, the officers could reasonably perceive the gun as a potential threat to officer safety. The gun was still in close proximity to the Jeep's passengers, at least one of whom was sitting within arm's reach of it. The officers were not required to leave the gun unsecured, in unknown and potentially hostile hands, while they pursued defendant. They could reasonably conclude that both their own safety and the safety of others required the gun to be secured without delay. They were thus allowed to perform a "protective search" or "*Terry* search" of the vehicle's interior. *Long*, 463 U.S. at 1049-50; *People v. Colyar*, 2013 IL 111835, ¶¶ 45, 47-48.

¶ 56 A protective search or *Terry* search is not a true "search" in the sense that requires probable cause. Rather, it is the vehicular counterpart of a pat-down or weapons frisk during a *Terry* stop of a person and is thus limited to the areas within the vehicle, including closed containers, where a weapon could be placed or hidden. *Long*, 463 U.S. at 1049.

¶ 57 The officers' search here fell easily within the scope of a permissible *Terry* search. When they opened the rear doors to remove Kanisha (on the driver side) and "Little Lord" (on the passenger side), Officer Fitzgerald and Detective Ross immediately saw the gun, tucked between the rear passenger side seat and the doorjamb. Because it was visible to the officers from this position, even the most limited protective search under *Long* would yield the gun without requiring the officers to intrude on any privacy interests protected by the more stringent probable-cause requirement. (This point can also be put in terms of the plain-view doctrine: The gun was visible to the officers from a vantage point that, under *Long*, they lawfully occupied and thus was not the fruit of a full-blown "search" that would require probable cause. See *People v. Jones*, 215 Ill. 2d 261, 271 (2005).)

¶ 58 Once the officers found the gun, they could confiscate it, as a protective measure, at least until their investigation determined whether it was legally in defendant's possession. See

People v. Spain, 2019 IL App (1st) 163184, ¶ 23; 725 ILCS 5/108-1.01 (West 2018) (for safety, officer may confiscate weapon for duration of *Terry* stop). And once they determined that defendant did not legally possess it, the police were obviously justified in permanently seizing it.

¶ 59 Nor did the officers act outside the boundaries of the fourth amendment in ordering the occupants out of the vehicle before conducting the protective search. Police officers may remove the passengers during a valid *Terry* stop of a vehicle as a precautionary measure, regardless of whether they suspect those passengers to be dangerous. See *Brendlin v. California*, 551 U.S. 249, 258 (2007); *Maryland v. Wilson*, 519 U.S. 408, 415 (1997); *Bunch*, 207 Ill. 2d at 14-15.

¶ 60 So each step of the officers' actions, from their initial observation of defendant to their seizure of the firearm inside the vehicle, was consistent with *Terry*. They reasonably suspected that defendant's possession of the gun was illegal, they detained the vehicle both to obtain the gun as potential evidence in their investigatory inquiry and for officer safety, and their search for the weapon inside the vehicle was well within the limited search *Terry* permits. As we find the officers complied with the fourth amendment in obtaining the firearm, there would be no arguable basis for suppressing evidence of the firearm at defendant's trial. A motion to suppress that item of evidence would not have succeeded, and thus defendant's ineffectiveness claim, insofar as it concerns suppression of the firearm, fails. See *Henderson*, 2013 IL 114040, ¶ 12.

¶ 61 B

¶ 62 That leaves two additional pieces of evidence defendant claims should have been suppressed, both of which arose after the officers had obtained the firearm, occurring when they seized defendant inside the store. The first was evidence of defendant's criminal history. The other was his inculpatory statement to the officers. We will provide a separate analysis for each, starting with how the officers obtained defendant's criminal history.

¶ 63 1

¶ 64 After securing the gun, the officers went into the clothing store to find defendant. Again, they could take any investigative measures that were permissible under the principles of *Terry*, and those principles "permit a State to require a suspect to disclose his name in the course of a *Terry* stop." *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177, 187 (2004). Illinois is one of those states that requires that disclosure. See 725 ILCS 5/107-14 (West 2018). Thus, the officers could compel him to disclose his identity. They could then check his criminal history, relevant as it was to the purpose at hand—confirming or dispelling their reasonable suspicion that he was prohibited from possessing a gun.

¶ 65 Defendant would no doubt object at this point that Officer Fitzgerald did not merely stop him, but rather *arrested* him, in the clothing store. Officer Fitzgerald removed defendant from the store bathroom, ordered him to the ground, handcuffed him, and told him that he was "getting arrested today." To be clear, the use of handcuffs to detain an individual does not automatically mean that the individual is arrested. See *Colyar*, 2013 IL 111835, ¶ 46 ("handcuffing does not automatically transform a *Terry* stop into an illegal arrest"). But the State does not appear to dispute that defendant was arrested at that moment, and because it will

not affect our disposition, we will assume in our analysis that defendant was arrested when he was ordered to the floor and handcuffed.

¶ 66 What follows from the premise that defendant was arrested inside the clothing store? That he was arrested before the police obtained his criminal history, says defendant, and thus before they had probable cause for an arrest. But that does not render his criminal history inadmissible. Even if the police obtain evidence "through a chain of causation that began with an illegal seizure," it is not subject to suppression as the "fruit" of the illegal seizure unless it was obtained "by *exploitation* of [the] illegality" of the seizure. (Emphasis added.) *Henderson*, 2013 IL 1104040, ¶ 34; *Wong Sun v. United States*, 371 U.S. 471, 488 (1963).

¶ 67 As we already explained, the officers had sufficient reasonable suspicion to perform a *Terry* detention of defendant, which allowed them to obtain defendant's identification. See *Hiibel*, 542 U.S. at 187. Even if, as defendant argues and we assume, the officers overstepped the bounds of a *Terry* stop and arrested defendant in the clothing store, that arrest did not allow them to gather information they were not already allowed to gather under *Terry* and *Hiibel*—his name. And that was the only information the officers needed to conduct a check of defendant's criminal history.

¶ 68 Had the officers obtained information from defendant, following an illegal arrest, that *Terry* would *not* have allowed them to obtain—say, a DNA swab or an incriminating statement following custodial interrogation—our analysis would be significantly more complicated. But they had preexisting authority under *Terry* and *Hiibel* (and state law) to ask him for identification, so we cannot find that the officers "exploited" the arrest to obtain that information. The arrest did not gain the officers access to information they did not already have the right to demand.

¶ 69 A motion to suppress evidence of defendant's criminal history thus would have failed, as the State could have easily provided a fourth-amendment justification for the acquisition of that information under *Terry* and *Hiibel*. Because a motion to suppress the criminal history would not have succeeded, defendant cannot sustain a claim of ineffectiveness based on failure to file that motion. See *Henderson*, 2013 IL 114040, ¶ 12.

¶ 70 2

¶ 71 The last piece of disputed evidence defendant claims should have been suppressed is his incriminating statement to Officer Fitzgerald in the clothing store. On the floor and handcuffed, defendant reportedly said, "Man, I f*** up. I'm on parole. Is there some way I can help you out so I don't have to catch this case?" If, as he argues, defendant had just been arrested, he might have a viable argument that his inculpatory statement was the fruit of the arrest and thus inadmissible in court.

¶ 72 But we need not decide that question, because even if a motion to suppress that inculpatory statement would have succeeded, it is not reasonably probable that suppression of that evidence would have led to his acquittal. See *id.* ¶ 15. We say that because, even absent defendant's admission to the crime, the evidence overwhelmingly suggested that defendant unlawfully possessed that firearm.

¶ 73 It is true, as defendant points out, that Officer Kotlarz was the only officer who saw him with the gun. Thus, his inculpatory statement was the only evidence that corroborated her

testimony on this critical point. But even absent that corroboration, it is not reasonably likely that the jury would have rejected Officer Kotlarz's testimony.

¶ 74 Officer Kotlarz's claim that a gun was passed into the Jeep was contradicted only by McCain, defendant's then-girlfriend and sole witness, who claimed that a *wallet* was passed *out* of the Jeep to defendant. In an effort to cast doubt on Officer Kotlarz's testimony, defendant asserts that "logically" speaking, her view had to be "at least partially obstructed." That is because the Jeep was parked on the south side of the street, facing east, and Officer Kotlarz approached from the east; thus, the open car door would have obstructed her view. Maybe. But not necessarily. It all depends on the particular angles, which are not discernible from the record. Defendant has not identified the geometric necessity he thinks he has.

¶ 75 And the alternative account, offered by McCain, was not credible. As McCain would have it, "Little Lord" had the gun in *his* waistband. Yet the officers, so we are asked to believe, for some reason uncuffed the man who possessed the gun ("Little Lord"), stood there helpless while he fled, and threatened to "put" the gun on someone else if they could not find him. And then, apparently not wanting to try to catch the fleeing man, they immediately "put" the gun on defendant—a total stranger, by their own admission, whose criminal history they had no inkling of at the time.

¶ 76 McCain's account, and thus the defense theory, made little or no sense. Officer Kotlarz's testimony was far more believable. The corroboration afforded by defendant's statement made the State's case stronger, but we are confident that Officer Kotlarz's testimony would have carried the day without it.

¶ 77 In sum, defendant would not have prevailed on a motion to suppress his criminal history or the gun. Even if we assume that his inculpatory statement would have been suppressed, the exclusion of this evidence would not have made an acquittal reasonably likely. Thus, defendant has not established prejudice, and his ineffective assistance claim fails with regard to suppression of his incriminating statement. See *id.*

¶ 78 We thus find that defendant cannot establish prejudice from trial counsel's failure to seek suppression of either the firearm, defendant's criminal history, or defendant's incriminating statements to the officers. Defendant has not shown ineffective assistance of counsel.

¶ 79 II

¶ 80 Defendant argues that the trial court erred in finding that Officer Kotlarz and her Task Force partners were "exempt" from CPD's body-worn camera directives. To be clear, defendant does not claim that this finding is, itself, a basis for reversal. Rather, this finding led the trial court, in defendant's mind, to two errors: (1) improperly limiting defendant's cross-examination of Officer Kotlarz and (2) denying his proposed non-IPI instructions on the topic. And these two errors, he argues, are reversible, either individually or cumulatively.

¶ 81 A

¶ 82 We start with the court's rulings on cross-examination. The trial court has broad discretion to limit or exclude cross-examination that would be irrelevant or unhelpful or that would risk confusing the issues for the jury, and we will not find error in those rulings absent an abuse of that discretion. *People v. Klepper*, 234 Ill. 2d 337, 355 (2009).

¶ 83 It is critical, at the outset, to clarify what the trial court did and did not do. The trial court did not make a finding that Officer Kotlarz was exempt from the body-camera directive in the sense that the court issued an authoritative interpretation of that directive. The trial court certainly took issue with defendant's interpretation of the directive, stating more than once that the directive did not apply to *all* sworn officers—even to the point of discussing judicial notice of that fact—but the court saw no need to provide a definitive interpretation of the directive, as it was a question of "law" or "police policy" that was not relevant to the issues in this case.

¶ 84 Recall that the topic of body-worn cameras began when Officer Kotlarz testified on direct examination that she was not wearing a body camera during the incident in question and that officers on the Task Force "do not wear body-worn cameras" because they are "exempt from the body-cam." The defense sought to cross-examine Officer Kotlarz on her knowledge of the department directives supposedly "requiring [her] to be equipped with a body-worn camera." In particular, the defense wanted to probe her understanding of "who should have [body cameras] and when they should have them" (as the trial court summed up counsel's position during the sidebar) and to "ask her about where she gets the idea that she is exempt" (in counsel's own words). The trial court barred this line of questioning. And rightfully so, for two reasons.

¶ 85 First, even if we grant, for the sake of argument, that the scope and meaning of the directive was relevant to the issues in this case (it was not, as we will discuss later), cross-examination of Officer Kotlarz was not the appropriate forum for making that point. As the trial court correctly concluded, this question of "law" or "police policy" (a characterization which defendant does not contest) was not an appropriate topic for a *fact* witness. It was either a question of law for lawyers to argue and the court to decide, or it required testimony from someone within the department qualified to explain how the department interprets its directive.

¶ 86 Officer Kotlarz only knew what she knew, which was that neither she nor any other member of the Task Force was issued a body camera. True, she claimed she and her fellow Task Force officers were "exempt," which might strike one as a legal conclusion, but in context, the trial court reasonably understood her testimony as merely indicating that none of the Task Force members were issued body-worn cameras, ergo they must be "exempt." Whether the department's decision not to issue Officer Kotlarz a body camera was a correct interpretation of its own directive was not a question properly directed to this fact witness. See *North Moraine Wastewater Reclamation District v. Illinois Commerce Comm'n*, 392 Ill. App. 3d 542, 573 (2009) (fact witness may not opine on legal conclusions).

¶ 87 As noted, the appropriate way for the defense to raise this issue was either to produce expert testimony on this question or produce the relevant language in the governing directive or applicable statutes and present legal argument to the court. The defense took the latter option. And though the trial court found the questions irrelevant, it respected that the defense disagreed and gave the defense ample opportunity to "make [its] record."

¶ 88 Counsel quoted a provision of the directive and argued, on that basis, that the directive applies to all officers. The argument did not prevail, and we will have more to say about that later, but the important point for now is that the defense had a full and fair opportunity to make it. The trial court heard legal argument on a legal question. Cross-examination of a fact witness on that same question was neither necessary nor appropriate. Limiting cross-examination of Officer Kotlarz did not deprive the defense of an opportunity to make its point.

¶ 89 We also agree with the trial court that this line of inquiry was irrelevant and could confuse or mislead the jury. Defendant claims it was relevant to Officer Kotlarz's credibility. The defense, he says, should have been allowed to probe "whether [Kotlarz] was correct about her 'exempt' status, how she came to that conclusion, and whether the jury could consider *why* these officers were not issued body-worn cameras."

¶ 90 The trial court properly disagreed. The reason the officers were not issued body-worn cameras was answered by both Officers Kotlarz and Fitzgerald: the department did not issue body cameras to any Task Force officers. *Why* the department did not, presumably based on its interpretation of its own directive, had nothing to do with Officer Kotlarz's credibility.

¶ 91 It would be one thing had Officer Kotlarz been issued a body-worn camera and chosen not to wear it on the day in question—or worse yet, was wearing it but did not activate it as the relevant events unfolded. Those scenarios could reasonably lead to an inference that the defense clearly hoped to impress on the jury—that she did not wear a camera because she did not want a recording of her actions and other related events. That theory would relate to her credibility, but that theory found no traction here because she testified under oath that she was not issued a body-worn camera in the first instance.

¶ 92 The court properly refused to allow defendant to argue claims that were irrelevant and could confuse the jury. We find no abuse of discretion in the trial court's limitation on cross-examination on this point.

¶ 93 B

¶ 94 That brings us to the second claim of error regarding body-worn cameras—the trial court's refusal to tender nonpattern jury instructions on that topic. We review these ruling as well for an abuse of discretion. *People v. Hudson*, 222 Ill. 2d 392, 400-01 (2006). For many of the reasons we have already given, we find no abuse of discretion here, either.

¶ 95 As noted earlier, defendant proffered a series of non-IPI instructions regarding body-worn cameras. Principal among them was the instruction that, if "a recording was intentionally not captured," the jury "shall consider that fact in weighing the evidence, unless the State provides a reasonable justification." See 50 ILCS 706/10-30 (West 2018). This was essentially an adverse-inference finding: If Officer Kotlarz intentionally failed to record events she was supposed to record, the jury could find that her testimony about the underlying events deserved less (or even no) weight.

¶ 96 In denying the proposed instructions, the trial court said, "I don't believe it's any fault we can lay on the police officers because the department did not issue body-cams in this case." We agree entirely. The jury could not possibly find that Officer Kotlarz intentionally failed to record her encounter with defendant when she was never given a body camera in the first instance. Again, the officer's lack of a body camera could not reasonably be taken to impugn her credibility. This instruction was properly denied.

¶ 97 Along with four definitional instructions that do not require separate discussion, the defense also proposed this one: "Officer-worn body cameras must be turned on at all times when the officer is in uniform and is responding to calls for service or engaged in any law enforcement encounter or activity, that occurs when the officer is on duty." See *id.* § 10-20(a)(3).

¶ 98 This instruction would clearly signal the jury that Officer Kotlarz was required to wear and activate a body camera. The court properly rejected it for two reasons. One, as already noted, even if the instruction accurately stated the law, it was irrelevant and misleading. That is, even if Officer Kotlarz *should have been* issued a body camera, she was not.

¶ 99 But the trial court also correctly found that the instruction did not accurately state the law. Defendant cited to the trial court a single provision of the directive—which stated that "the Department member will activate the system to event at the beginning of an incident and will record the entire incident for all law-enforcement-related activities"—and argued on this basis that the directive applies to CPD officers across the board. The trial court found this selective quotation "misleading" and "out of context." We agree.

¶ 100 Given that defendant cited the directive to the trial court, he can hardly object—though object he does—if we consider other relevant provisions, to give context to his own selection. We may take judicial notice of CPD directives published on the department's website (*People v. Brown*, 2019 IL App (1st) 161204, ¶ 40), as this one is.[1]

¶ 101 The State points us to the following provision of the directive:

> "All sworn members and their immediate supervisors assigned to a Bureau of Patrol district normally assigned to field duties and any other member at the discretion of the district commander will be assigned and utilize a BWC [body-worn camera].
>
> NOTE:District commanders will ensure that all members under their command that are exempt from using BWCs are properly documented in the appropriate CLEAR application." Chi. Police Dep't Special Order No. S03-14(II)(C) (eff. Apr. 30, 2018).

¶ 102 It is simply not true, as the defense has repeatedly asserted, that the directive requires all officers (or all uniformed officers) to wear body cameras. Some officers are "exempt," and the directive only applies, in the first instance, to officers "assigned to a Bureau of Patrol district." Defendant's argument in the trial court failed to establish that he was entitled to his proposed instructions.

¶ 103 If defendant wanted to establish that Officer Kotlarz was required, under the directive, to wear a body camera (for whatever that may have been worth), he needed to establish that the Task Force is part of the Bureau of Patrol. That is a question about organizational structure of CPD—a question far afield from the core issues in this case, but one that the defense was nonetheless obliged to answer before it could assert to the jury, by means of an instruction or otherwise, that Officer Kotlarz was required to wear a body camera.

¶ 104 Because the defense misinterpreted the directive, it never properly identified its burden on this issue, and thus necessarily failed to carry it—either by producing judicially noticeable sources or, if necessary, live testimony from a CPD representative who could speak authoritatively about the department's organizational structure. Even if her lack of a body-worn camera were relevant (it was not), the defense did not establish that Officer Kotlarz was required to wear one and thus was not entitled to the jury instruction claiming she was.

¶ 105 For this reason, and the others given above, defendant's claims of evidentiary and instructional error must be rejected.

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[1]See Chi. Police Dep't Special Order S03-14 (eff. Apr. 30, 2018), http://directives.chicagopolice.org/#directive/public/6120 [https://perma.cc/2X5H-2NJG].

¶ 106 CONCLUSION

¶ 107 The judgment of the circuit court is affirmed in all respects.

¶ 108 Affirmed.