



Illinois Prosecutor Services, LLC

Don Hays

PO Box 722

Carlinville, Illinois 62626

Office Phone: (217) 854-8041 Fax: (217) 854-5343

Webpage: www.ipsllconline.com

Email: don.ipsllc@gmail.com



PUBLISHER NOTE: If you are interested in obtaining access to these and other materials on our website at www.ipsllconline.com please contact us at don.ipsllc@gmail.com and subscription information will be provided.

SEARCH AND SEIZURE QUARTERLY

APRIL – 2017

IN THIS ISSUE

1. **People v. Ramsey Quarsh**, 2017 IL App (1st) 143412, (1st Dist., March 16, 2017) Denial of Motion to Suppress - - Affirmed. **ISSUE: SEARCH AND SEIZURE (Detention)**: Was this defendant detained when a police officer said, “come here,” to the defendant? (No).
2. **People v. Kevin Bond**, 2017 IL App (2nd) 150884, (1st Dist., March 13, 2017) Grant of Motion to Suppress - - Reversed and Remanded. **ISSUE: SEARCH AND SEIZURE (Jurisdiction)**: Did the police improperly use a grand jury subpoena to gather evidence in this case? (No).
3. **In re Elijah W.**, 2017 IL App (1st) 162648, (1st Dist., March 10, 2017) Denial of Motion to Suppress Evidence - - Affirmed. **ISSUE: SEARCH AND SEIZURE (Jurisdiction)**: Did the Officers improperly seize and search this defendant? (No).
4. **People v. Charles Evans**, 2017 IL App (4th) 140672, (4th Dist., March 9, 2017) Denial of Motion to Suppress Evidence - - Affirmed. **ISSUE: SEARCH AND SEIZURE (Detention)**: Did the Officers improperly seize and search this defendant? (No).
5. **People v. Thomas J. Williams**, 2017 IL App (3rd) 150879, (1st Dist., February 22, 2017) Suppression of Evidence - - Reversed and Remanded. **ISSUE: SEARCH AND SEIZURE (Jurisdiction)**: Did the Officers act of using a radar gun while outside of his jurisdiction to determine this defendant’s speed invalidate the Officer’s subsequent stop of the defendant after the Officer witnessed the defendant improperly change lanes? (No).
6. **People v. Todd J. Mandoline**, 2017 IL App (2nd) 150511, (2nd Dist., February 17, 2017) First-Degree Murder and Aggravated Arson - - Affirmed. **ISSUE: SEARCH AND SEIZURE (Probable Cause)**: Did the police have sufficient probable cause to support this defendant’s arrest? (Yes).
7. **In re Manuel M.**, 2017 IL App (1st) 162381, (1st Dist., February 10, 2017) Denial of Motion to Suppress - - Reversed and Remanded. **ISSUE: SUPPRESSION OF EVIDENCE (Surveillance Location)**: Did the trial court err in refusing to order the police to reveal their surveillance location in this case and then erred again in interviewing the arresting officer in camera? (Yes).
8. **People v. Christopher Biagi**, 2017 IL App (5th) 150244, (1st Dist., January 5, 2017) Suppression of Evidence - - Reversed and Remanded. **ISSUE: SEARCH AND SEIZURE (Consensual Encounter)**: Was the encounter between the police officer and the defendant, prior to the officer's observation of signs that the defendant had been driving under the influence (DUI), a consensual encounter that did not

amount to a seizure? (Yes).

9. People v. Lamont Thomas, 2016 IL App (1st) 141040, (1st Dist., December 23, 2016) Denial of Motion to Suppress - - Reversed and Remanded. **ISSUE: SEARCH AND SEIZURE (Reasonable Suspicion)**: Did the police have sufficient reasonable suspicion to justify a Terry stop of this defendant? (No).

CASE ANALYSIS

1. People v. Ramsey Quarsh, 2017 IL App (1st) 143412, (1st Dist., March 16, 2017) Denial of Motion to Suppress - - Affirmed.

ISSUE: SEARCH AND SEIZURE (Detention): Was this defendant detained when a police officer said, “come here,” to the defendant? (No).

FACTS: A two-count criminal information charged the defendant with (1) possession of a controlled substance (Diazepam) and (2) possession of cannabis after having previously been convicted of possession of a controlled substance. The trial judge found the defendant guilty of possession of a controlled substance (less than 200 grams of Diazepam) and possession of cannabis (10 to 30 grams) and sentenced him to concurrent prison terms of three years. On appeal, the defendant complained that (1) the trial court erred in denying his motion to suppress because the officer's statement of “come here” to defendant was a seizure and (2) the court erred in failing to hold a fitness hearing.

APPEAL: The Appellate Court held that: (a) the evidence supported a finding that officer's statement that defendant “come here,” uttered from a police vehicle, was a request, and did not constitute a seizure; (b) the evidence supported conclusion that there was no bona fide doubt as to defendant's fitness to stand trial.

RULE #1: Police-citizen encounters are divided into three tiers: arrests, which must be supported by probable cause; brief investigatory detentions or Terry stops, which must be supported by reasonable and articulable suspicion of criminal activity; and consensual encounters that involve no coercion or detention and thus do not implicate constitutional rights. **RULE #2:** A person is “seized” when his freedom of movement is restrained by physical force or a show of authority. **RULE #3:** The test for determining whether a person has been seized is whether a reasonable person would conclude, in light of the totality of the circumstances, that he was not free to leave.

FINDING #1: Evidence supported finding that officer's statement that defendant “come here,” uttered from a police vehicle, was a request, and did not constitute a seizure; defendant testified that the statement was a request, phrase “come here” was not unambiguously or per se compulsory in nature, and no evidence was submitted as to officer's tone when he said “come here.”

2. People v. Kevin Bond, 2017 IL App (2nd) 150884, (1st Dist., March 13, 2017) Grant of Motion to Suppress - - Reversed and Remanded.

ISSUE: SEARCH AND SEIZURE (Jurisdiction): Did the police improperly use a grand jury subpoena to gather evidence in this case? (No).

FACTS: After a stipulated bench trial, the defendant was convicted of possessing child pornography (720 ILCS 5/11-20.1(a)(6)) and sentenced to three years' probation. On appeal, he argued that the trial court erred in denying his motion to suppress evidence that he alleged was obtained by the abuse of the grand jury's subpoena power.

APPEAL: The Appellate Court held that defendant did not carry his burden to prove that he was prejudiced by detective's improprieties in issuing grand-jury subpoena and in using resulting information

to obtain search warrant, and thus evidence obtained under search warrant was not required to be suppressed.

FINDING: Defendant did not carry his burden to prove that he was prejudiced by detective's improprieties in issuing grand-jury subpoena to defendant's internet service provider and in using resulting information to obtain search warrant for defendant's home, and thus evidence obtained under search warrant was not required to be suppressed, even though detective, who was appointed as grand-jury investigator with subpoena power, abused subpoena power by deliberately making subpoena returnable to him and by refusing to transmit information obtained to grand jury, since State could have obtained information and used it to obtain search warrant had detective followed proper procedure by making subpoena returnable to the grand jury or by immediately transmitting information to grand jury.

3. In re Elijah W., 2017 IL App (1st) 162648, (1st Dist., March 10, 2017) Denial of Motion to Suppress Evidence - - Affirmed.

ISSUE: SEARCH AND SEIZURE (Jurisdiction): Did the Officers improperly seize and search this defendant? **(No).**

FACTS: Elijah W., a 13-year-old minor, was charged as a juvenile with two counts of possession of a controlled substance. Both counts were based on illegal drugs which police officers confiscated from Elijah's person. Elijah filed a motion to quash his arrest and suppress evidence, alleging he was seized without probable cause or a reasonable, articulable suspicion of criminal activity, and without a valid search or arrest warrant. Elijah sought suppression of the drugs seized as a result of the alleged illegal arrest and seizure. The trial court denied Elijah's motion. Following an adjudication hearing, the court adjudicated Elijah delinquent of both counts of possession of a controlled substance and sentenced him to one year of intensive probation. Elijah appealed the denial of his motion to suppress and seeks to vacate his adjudication.

APPEAL: The Appellate Court held that: (a) this encounter between a juvenile and police officers was not consensual, but (b) the juvenile's violation of curfew ordinance gave police officers reasonable, articulable suspicion to perform *Terry* stop, and thus juvenile's arrest would not be quashed and crack cocaine and heroin found during search of his person would not be suppressed.

RULE #1: Consensual encounters with law enforcement do not trigger Fourth Amendment scrutiny.

RULE #2: Unlike a *Terry* stop, consensual encounters with law enforcement require no reasonable, articulable suspicion that the person has committed or is about to commit a crime. **RULE #3:** If a police officer approaches an individual to ask a few questions, as long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual, and no reasonable, articulable suspicion is required on the part of the officer. **RULE #4:** If a police officer approaches an individual to ask a few questions, a seizure occurs only when the officer, by means of physical force or show of authority, in some manner restrains the individual's liberty. **RULE #5:** In order to determine whether a particular encounter with police constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter. **RULE #6:** Whether or not a person would have believed that he or she was free to leave an encounter with the police is to be evaluated in light of the totality of the circumstances, rather than emphasizing the particular details of that conduct in isolation. **RULE #7:** What constitutes a restraint on liberty prompting a person to conclude that he is not free to leave an encounter with police will vary, not only with the particular police conduct at issue, but also with the setting in which the conduct occurs. **RULE #8:** Factors that might indicate an unlawful detention has taken place during an encounter with the police include: (1) the threatening presence of several police officers; (2) an officer's display of a weapon; (3) some physical touching of the person; or (4) the use of language or a tone of voice indicating that compliance with the officer's request might be compelled. **RULE #9:** During a *Terry* stop, an officer may temporarily detain an individual for questioning where

the officer reasonably believes the individual has committed, or is about to commit, a crime. **RULE #10:** To justify a *Terry* stop, officers must be able to point to specific and articulable facts which, considered with the rational inferences from those facts, make the intrusion reasonable. **RULE #11:** Although reasonable suspicion, as will justify a *Terry* stop, is a less stringent standard than probable cause, an officer's hunch or unparticularized suspicion is insufficient.

FINDING #1: Encounter between 13-year-old juvenile and police officers was not consensual, since juvenile observed four officers wearing bulletproof vests and visible badges, officers, who were driving unmarked vehicle, initially passed juvenile and then drove in reverse to approach him, and one officer twice called to juvenile in stern voice to “come here,” and thus, considering circumstances, a 13-year-old youth would not have believed he or she could have denied officer's requests and avoided police without raising further suspicion. **FINDING #2:** Juvenile's violation of curfew ordinance gave police officers reasonable, articulable suspicion to perform *Terry* stop of juvenile, and thus juvenile's arrest would not be quashed and crack cocaine and heroin found during search of his person would not be suppressed, where police officers observed 13-year-old juvenile outside after curfew, officers sought to conduct field interview, when juvenile approached police vehicle and one officer specifically asked juvenile “what he was doing out there,” juvenile voluntarily responded that he had “a couple rocks on” him, and officers then recovered illegal drugs on juvenile's person.

4. **People v. Charles Evans, 2017 IL App (4th) 140672, (4th Dist., March 9, 2017)** Denial of Motion to Suppress Evidence - - Affirmed.

ISSUE: SEARCH AND SEIZURE (Detention): Did the Officers improperly seize and search this defendant? (No).

FACTS: The defendant appealed his conviction, arguing the trial court erred by denying his pretrial motion to quash arrest and suppress evidence. On appeal, the defendant argued that he was illegally seized when the police first spoke to him or, in the alternative, when they asked that he remove his hands from his pockets or when the Officers frisked him.

APPEAL: The Appellate Court held that: (a) the defendant's initial encounter with police officer on street was a consensual encounter; (b) the defendant was not seized when the officer requested that the defendant remove his hands from his pockets; (c) a police officer may conduct a *Terry* frisk during a consensual encounter upon developing reasonable suspicion the citizen is armed and dangerous; and (d) this police officer had reasonable suspicion that defendant was armed and dangerous.

RULE #1: Not every encounter between the police and a private citizen results in a seizure for Fourth Amendment purposes. **RULE #2:** Police-citizen encounters can be divided into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or *Terry* stops, which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) encounters that involve no coercion or detention and thus do not implicate Fourth Amendment interests. **RULE #3:** A person is “seized” for Fourth Amendment purposes only when, by means of physical force or a show of authority, his freedom of movement is restrained. **RULE #4:** In determining whether a person is “seized” for Fourth Amendment purposes, the standard established in *Florida v. Bostick*, 501 U.S. 429, applies where a restraint on movement independent of police action is shown, while the standard established in *United States v. Mendenhall*, 446 U.S. 544, applies where no independent restraint is shown. **ULE #5:** In determining whether a police-citizen encounter, where the citizen's movement was not restrained by something independent of police action, amounted to a seizure for Fourth Amendment purposes, the proper inquiry is whether in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. **RULE #6:** To assist in determining whether a reasonable person believes he or she is not free to leave a police encounter, as would render the encounter a seizure for Fourth Amendment purposes, courts use the following four indicators: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person of the citizen; and (4) the use of language or tone of voice indicating that compliance with the

officer's request might be compelled. **RULE #7:** Under the Fourth Amendment, a seizure does not occur simply because a law enforcement officer approaches an individual and puts questions to that person if he or she is willing to listen. **RULE #8:** Assertion of authority absent a physical show of force by police in a police-citizen encounter does not constitute seizure under the Fourth Amendment unless the citizen submits to the assertion of authority. **RULE #9:** A police officer may conduct a *Terry* frisk during a consensual encounter upon developing reasonable suspicion the citizen is armed and dangerous; the officer need not develop reasonable suspicion of criminal activity. **RULE #10:** When a police officer conducts a *Terry* frisk during a consensual encounter upon developing a reasonable suspicion the citizen is armed and dangerous, the seizure and frisk will occur contemporaneously because a consensual encounter is, by definition, not a seizure; accordingly, a police officer must have reasonable suspicion the individual is armed and dangerous at the time of the frisk. **RULE #11:** To develop reasonable suspicion that an individual is armed is dangerous, as would justify *Terry* frisk during consensual encounter, an officer must have more than an inarticulate hunch; the officer must point to specific and articulable facts which, taken together with rational inferences from those facts demonstrate the suspicion is reasonable. **RULE #12:** To have reasonable suspicion that an individual is armed and dangerous, as would justify *Terry* frisk during consensual encounter, an officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.

FINDING #1: Defendant's initial encounter with police officer on street was a consensual encounter not subject to the Fourth Amendment; officer saw defendant walking in the vicinity of a possible crime and peaceably approached defendant to speak with him, officer did not block defendant's path or prevent him from continuing on his way, and nothing indicated that defendant did not feel free to leave. **FINDING #2:** Defendant was not seized for Fourth Amendment purposes when police officer repeatedly requested that he remove his hands from his pockets during his encounter with officer on street; even if requests were a show of authority, fact that defendant continued to place his hands back into his pockets showed that he did not fully submit to the officer's request and did not believe compliance was necessary, defendant continued to speaking to officer after the requests, and the requests did not prevent him from exercising his right to terminate the encounter. **FINDING #3:** Police officer had reasonable suspicion that defendant was armed and thus dangerous, thereby permitting officer to conduct a *Terry* frisk during his initially consensual encounter with defendant on street; officer was alone with defendant at late hour in high-narcotics-crime area, defendant informed officer he was coming from a house officer knew belonged to a narcotics trafficker, and defendant continually placed his hands in his pockets even after officer asked him to remove them several times throughout the conversation.

5. **People v. Thomas J. Williams, 2017 IL App (3rd) 150879, (1st Dist., February 22, 2017)**
Suppression of Evidence - - Reversed and Remanded.

ISSUE: SEARCH AND SEIZURE (Jurisdiction): Did the Officers act of using a radar gun while outside of his jurisdiction to determine this defendant's speed invalidate the Officer's subsequent stop of the defendant after the Officer witnessed the defendant improperly change lanes? **(No).**

FACTS: The People appealed from an order granting the defendant's motion to quash his arrest for driving under the influence of alcohol (DUI) by a Lockport police officer, acting within his jurisdiction, after an off-duty Palos Hills police officer placed the defendant in custody for improper lane usage. During the hearing on the motion to quash arrest and suppress evidence, the off-duty Palos Hills police officer testified that he witnessed defendant driving erratically outside the officer's jurisdiction and stopped defendant for improper lane usage. However, since the off-duty Palos Hills police officer initially measured defendant's speed with a radar gun before witnessing the improper lane violation, the court quashed defendant's arrest for DUI as a product of the invalid citizen's arrest by the off-duty Palos Hills police officer.

APPEAL: The Appellate Court held that off-duty police officer's use of a radar gun outside of his jurisdiction did not taint subsequently developed probable cause for citizen's arrest.

RULE #1: At common law, a police officer cannot lawfully arrest a suspect outside of the jurisdiction that appointed the officer unless acting in fresh pursuit of a suspected felon fleeing from that jurisdiction. **RULE #2:** Under statute allowing for arrests by private persons, a police officer acting outside of his jurisdiction retains all of the rights of an ordinary citizen to effectuate a citizen's arrest. 725 Ill. Comp. Stat. Ann. 5/107-3. **RULE #3:** An extraterritorial arrest by an officer acting in the capacity of a private citizen will not be upheld by a court pursuant to statute allowing for arrests by private persons when the officer, acting as a citizen, relies on information gathered by using powers of his office to create reasonable grounds for the arrest.

FINDING #1: Off-duty police officer's use of a radar gun outside of his jurisdiction before personally witnessing defendant improperly use a lane did not taint subsequently developed probable cause for officer to make a citizen's arrest, even though on-duty officer, who was acting within his jurisdiction, arrested defendant for driving under the influence of alcohol (DUI) and did not charge defendant with improper lane usage; improper lane usage was an offense that qualified for an arrest by a private person per statute, defendant voluntarily stopped and exited his vehicle upon arrival at a friend's house, defendant voluntarily stopped walking to speak about the erratic driving when off-duty officer approached defendant, and on-duty officer who later arrived conducted his own investigation for DUI. **FINDING #2:** Improper lane use is an "offense other than an ordinance violation" for the purposes of creating the authority to effectuate a citizen's arrest under statute providing for arrests by private persons.

6. People v. Todd J. Mandoline, 2017 IL App (2nd) 150511, (2nd Dist., February 17, 2017) First-Degree Murder and Aggravated Arson - - Affirmed.

ISSUE: SEARCH AND SEIZURE (Probable Cause): Did the police have sufficient probable cause to support this defendant's arrest? **(Yes).**

FACTS: Following a jury trial, the defendant was convicted of first-degree murder (720 ILCS 5/9-1(a)(3)) and aggravated arson (720 ILCS 5/20-1.1(a)(2)). He appealed, arguing that: (1) probable cause did not exist for his arrest; (2) he did not voluntarily reinitiate questioning with the police after the initial interrogation had ceased due to his invocation of his right to counsel; (3) his statements to the police were not voluntary, knowing, and intelligent; (4) his statements were obtained in violation of section 103-2.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/103-2.1), which requires the electronic recording of custodial interrogations in murder investigations; and (5) the trial court erroneously refused a jury instruction bearing on the proximate-cause theory of felony murder.

APPEAL: Defendant was convicted of first-degree murder and aggravated arson and appealed.

RULE #1: An arrest occurs when, under all of the circumstances present, a reasonable, innocent person would conclude that he or she was not free to leave. **RULE #2:** Test for whether an arrest has occurred is objective. **RULE #3:** A person's decision to voluntarily accompany police officers means that he or she has not been arrested. **RULE #4:** In considering whether an arrest has occurred, the court is to consider the following factors: (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 indicia of formal arrest or restraint, such as whether the officers used handcuffs or drew their guns; (4) the officers' intention; (5) the defendant's subjective belief or understanding; (6) whether the defendant was informed that he or she could refuse to accompany the officers; (7) whether the defendant was transported in a police car; (8) whether the defendant was informed that he or she was free to leave; (9) whether the defendant was informed that he or she was under arrest; and (10) the language used by the officers; no single factor is dispositive.

FINDING #1: Defendant was not arrested, as would require probable cause, when police officers went to defendant's home during investigation of fatal fire which occurred a few hours previously, where defendant agreed to accompany officers to department to answer questions, such agreement occurred

within about 15 minutes of officers' arrival, officers were in plain clothes, total of four officers were present, defendant left home in unmarked police car, and officers did not display weapons or make physical contact with defendant. **FINDING #2:** Defendant was arrested, as would require probable cause, when he arrived at police department voluntarily to answer police officers' questions and was placed into interview room, during officers' investigation of fatal house fire which had occurred a few hours previously, where defendant was patted down and his wallet and phone were confiscated, and officer stated that defendant would have to remain in interview room if he invoked his right to counsel. **FINDING #3:** Probable cause existed to arrest defendant at time defendant arrived at police department and was placed into interview room, in officers' investigation of fatal house fire which occurred at night, approximately five hours prior to defendant's arrival at police department; fire department believed fire was result of arson, defendant had been in romantic relationship with resident of house, who died in fire, defendant had attended a party at the house shortly before fire started, defendant had engaged in heated argument with resident during party, resulting in defendant's statement, "I hope you all die" directed at partygoers and possibly at resident, and officers observed that defendant's clothes were visibly wet, apparently with sweat.

7. **In re Manuel M.**, 2017 IL App (1st) 162381, (1st Dist., February 10, 2017) Denial of Motion to Suppress - - Reversed and Remanded.

ISSUE: SUPPRESSION OF EVIDENCE (Surveillance Location): Did the trial court err in refusing to order the police to reveal their surveillance location in this case and then erred again in interviewing the arresting officer in camera? (Yes).

FACTS: The juvenile appealed from the trial court's judgment adjudicating him a delinquent minor by reason of his commission of two counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)) and one count of unlawful possession of a firearm (UPF) (720 ILCS 5/24-3.1(a)(1)) and the resulting sentence of 18 months' probation and 30 days' commitment to the Juvenile Temporary Detention Center with the order of commitment stayed.

APPEAL: The Appellate Court held that: (a) the application of the surveillance location privilege violated juvenile's right of effective cross-examination; and (b) the trial court violated defendant's federal and state rights to confrontation and public trial when prosecutor was permitted to question officer, out of the presence of juvenile and defense counsel, and present an ex parte argument in support of the State's surveillance location objection.

RULE #1: The People can satisfy its initial burden to demonstrate application of surveillance location privilege by establishing that the surveillance location was located on private property with the permission of the owner or in a useful location which would be compromised by disclosure; once the State has carried its burden, the defense can overcome the privilege by showing that the surveillance location is relevant to the defense or essential to the fair determination of the case. **RULE #2:** In making its determination of whether to apply the surveillance location privilege and prevent the defense from inquiring into the exact location from which the surveillance was conducted, the trial court may conduct an in-camera examination of the surveillance officer out of the presence of the defendant and his attorney; following such a hearing, the court should weigh the defendant's need for the information against the public's interest in nondisclosure.

FINDING #1: Trial court's application of surveillance location privilege to prevent juvenile from ascertaining the exact location from which testifying officer conducted his surveillance violated juvenile's right of effective cross-examination in delinquency proceedings that arose following juvenile's arrest for reckless conduct after he was seen flashing gang signs at passing cars; although juvenile was permitted to inquire into distance and lighting, officer was the only witness to testify for the State, and its case against juvenile rested entirely upon his testimony, defense challenged the credibility of officer's testimony that he observed juvenile and his companions flashing gang signs from a location more than one block away, and officer's point of observation was relevant to credibility of his testimony. **FINDING #1:** Trial court

conducting in camera examination as part of its consideration of application of surveillance location privilege in delinquency proceedings violated defendant's federal and state rights to confrontation and public trial when prosecutor was permitted to question officer, out of the presence of juvenile and defense counsel, and present an ex parte argument in support of the State's objection to any inquiry into the exact location from which the officer conducted his surveillance.

8. People v. Christopher Biagi, 2017 IL App (5th) 150244, (1st Dist., January 5, 2017) Suppression of Evidence - - Reversed and Remanded.

ISSUE: SEARCH AND SEIZURE (Consensual Encounter): Was the encounter between the police officer and the defendant, prior to the officer's observation of signs that the defendant had been driving under the influence (DUI), a consensual encounter that did not amount to a seizure? **(Yes).**

FACTS: The defendant received a citation for driving under the influence, pursuant to section 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501). A confirmation of the SSS of the defendant's driving privileges was entered in the trial court on January 28, 2015. The defendant filed a petition to rescind the SSS and a motion to suppress evidence on February 6, 2015, and February 24, 2015, respectively. The trial court entered an order granting both the motion to suppress evidence and the petition to rescind the SSS.

APPEAL: The Appellate Court held that: (a) the encounter between the officer and the motorist, prior to the officer's observation of signs that the motorist had been DUI, was a consensual encounter that did not amount to a seizure; (b) the warrantless arrest in this case, if any, of the motorist, who was driving his vehicle 20 miles per hour under the speed limit and slowed and stopped in front of officer, was reasonable under the community caretaking doctrine; (c) the officer did not seize the motorist when he took his license and registration back to his squad car; (d) the officer had reasonable suspicion to justify warrantless arrest of motorist for DUI;

RULE #1: For purposes of the Fourth Amendment, an individual is “seized” when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. **RULE #2:** A police officer does not violate the Fourth Amendment merely by approaching a person in public to ask questions if the person is willing to listen. **RULE #3:** The police may do more than merely ask questions without turning the encounter into a seizure, and even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual, ask to examine the individual's identification, and request consent to search his or her luggage, as long as the police do not convey a message that compliance with their requests is required. **RULE #4:** The encounter between a police officer and a vehicle's occupant becomes a seizure only if the officer, through physical force or a show of authority, restrains the liberty of the occupant. **RULE #5:** The appropriate test for determining whether a defendant was seized is whether a reasonable person in the defendant's position would have believed he was free to decline the officer's requests or otherwise terminate the encounter, and the test presupposes a reasonable innocent person. **RULE #6:** The analysis of whether a person was seized requires an objective evaluation of the police conduct in question and does not hinge upon the subjective perception of the person involved. **RULE #7:** In determining whether coercion is present, thereby resulting in a seizure, courts examine: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person of the citizen; and (4) the use of language or tone of voice indicating that compliance with the officer's request might be compelled. **RULE #8:** The “community caretaking doctrine” is analytically distinct from consensual encounters and is invoked to validate a search or seizure as reasonable under the Fourth Amendment; it is not relevant to determining whether police conduct amounted to a seizure in the first place. **RULE #9:** In determining whether the community caretaker exception to the warrant requirement applies, a court must find that: (1) law enforcement officers were performing some function other than the investigation of a crime, viewing the officer's actions objectively; and (2) the search or seizure was reasonable because it was undertaken to protect the safety of the general public, with reasonableness being measured in objective terms by examining the totality of the circumstances. **RULE #10:** Community caretaking tasks, for purposes of

the community caretaking exception to the warrant requirement, include but are not limited to helping children find their parents, mediating noise disputes, responding to calls about missing persons or sick neighbors, helping inebriates find their way home, or approaching a vehicle that is pulled over on the side of the road to offer assistance.

FINDING #1: Encounter between police officer and defendant, prior to officer's observation of signs that defendant had been driving under the influence (DUI), was a consensual encounter that did not amount to a seizure, even though officer used a flashlight and takedown lights after pulling behind defendant, who was stopped at the top of a hill; officer witnessed defendant voluntarily pull over, stop, and park his vehicle late at night, defendant had been traveling 32 miles per hour when the speed limit was 55 miles per hour, and there were no other officers present, officer did not display a weapon or physically touch defendant's person, and officer did not use any language or tone of voice to indicate that compliance with his requests were required. **FINDING #2:** Warrantless arrest, if any, of defendant, who was driving his vehicle over 20 miles per hour under the speed limit and slowed and stopped in front of police officer, was reasonable under the community caretaking doctrine, where defendant parked on the shoulder of a rural road in the middle of the night, road was poorly lit and sparsely populated, and anyone desiring to drive around defendant would have been required to cross over into the opposite lane before any oncoming traffic would have been visible. **FINDING #3:** Police officer did not seize defendant, who was driving a vehicle 20 miles per hour under the speed limit and slowed and stopped in front of officer, when officer took defendant's driver's license and registration back to his squad car, where defendant had his license and registration out and in hand when officer first approached vehicle, and defendant offered the documents to officer. **FINDING #4:** Police officer had reasonable suspicion that defendant was driving under the influence (DUI), as required to justify warrantless arrest of defendant, who was driving his vehicle 20 miles per hour under the speed limit and slowed and stopped in front of officer, where defendant parked on the shoulder of a rural road in the middle of the night and rolled down his window and wished officer a "good afternoon," defendant's speech was slow and he was slumped down in his seat, his movements were deliberate and delayed, and his pants were undone and partially down.

9. People v. Lamont Thomas, 2016 IL App (1st) 141040, (1st Dist., December 23, 2016) Denial of Motion to Suppress - - Reversed and Remanded.

ISSUE: SEARCH AND SEIZURE (Reasonable Suspicion): Did the police have sufficient reasonable suspicion to justify a Terry stop of this defendant? **(No).**

FACTS: Following a bench trial, the defendant was convicted of unlawful use or possession of a weapon by a felon and sentenced to five years' imprisonment. On appeal, maintained that the trial court erred in denying his motion to quash arrest and suppress evidence because the police lacked reasonable suspicion to justify his stop pursuant to Terry v. Ohio, 392 U.S. 1 (1968).

APPEAL: The Appellate Court held that: (a) this Terry stop based on reasonable suspicion that defendant violated a law subsequently found to be unconstitutional violated defendant's constitutional guarantees against unreasonable searches and seizures, and (b) the evidence seized as a result of the stop, including a handgun, was subject to the exclusionary rule.

RULE #1: A Terry stop may be initiated based on information received from a member of the public; generally, a tip from a "concerned citizen" is considered more credible than information from a paid informant or a person who provided the tip for personal gain. **RULE #2:** A tip from an anonymous person may be sufficient to justify a Terry stop provided the information bears some indicia of reliability; if an unidentified person places their anonymity at risk by speaking to officers in person, that fact may be considered when weighing the reliability of the tip, and the tip must be reliable in its assertion of illegality, not just in its tendency to identify a determinate person. **RULE #3:** When evidence is obtained in violation of the Fourth Amendment, the

exclusionary rule precludes the use of such evidence against a defendant in a criminal proceeding; the purpose of the exclusionary rule is not to provide a constitutional right to an aggrieved party but, rather, to act as a deterrent against improper conduct by government agents.

FINDING #1: *Terry* stop based on reasonable suspicion that defendant violated a law subsequently found to be unconstitutional violated defendant's United States and Illinois Constitutions' guarantees against unreasonable searches and seizures; while tip received by officers, that a black male wearing a red shirt had just placed a black handgun into a backpack and was walking eastbound approximately a block and half away, was sufficiently reliable to justify a *Terry* stop based on Illinois law in effect at that time that prohibited possession of a handgun in public, if the gun was uncased, loaded, and immediately accessible at the time of the offense, that law was subsequently found to be unconstitutional and therefore incapable of being enforced. 720 Ill. Comp. Stat. Ann. § 5/24-1.6(a)(1). **FINDING #2:** Defendant's *Terry* stop, initiated on the basis of reasonable suspicion of criminal activity pursuant to a subsequently invalidated portion of the aggravated unlawful use of a weapon (AUUW) statute, was unlawful, and evidence seized as a result of the stop, including a handgun, was subject to the exclusionary rule, since unconstitutional criminal statute was void ab initio and viewed as if it had never existed.

For a complete analysis of recent Search and Seizure Case Law see our **CRIMINAL CASE LAW DIGEST** on our website at **www.ipsllonline.com**

PUBLISHER NOTE: If you are interested in obtaining access to these and other materials on our website at www.ipsllonline.com please contact us at don.ipsllc@gmail.com and subscription information will be provided.