

CASE SUMMARIES

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Criminal Law and Procedure

***Terry* during the Execution of a Search Warrant**

It is well established that the police may temporarily stop a person for questioning based on a reasonable suspicion of possible criminal activity under *Terry v. Ohio*, 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868 (1968). However, that investigative detention must be assessed to determine if the officer's actions were justified and whether the officer's actions were related to the circumstances that justified the stop in the first place. The Illinois Appellate Court Fourth District recently affirmed the trial court's decision to grant the defendant's motion to quash arrest, finding that police officers exceeded a valid *Terry* stop on a defendant who approached a residence at the time police officers were executing a valid search warrant on the residence. *People v. Chestnut*, No. 4-09-0338, 2010 WL 145142 (4th Dist. Jan. 12, 2010).

In *Chestnut*, police officers were executing a search warrant on a residence in Danville. Two of the officers were acting as security, protecting the perimeter of the residence by standing on the enclosed front porch to the home. As they were inside this porch, the doorbell rang, and one of the officers opened the door to the porch, and the defendant entered the enclosed porch area. The two police officers informed the defendant they were the police conducting a drug investigation at the home, at which point the defendant started to act nervous. The officers asked the defendant why he was at the residence and if he had any illegal drugs on his person. According to one of the officers at the defendant's motion to quash arrest hearing, the defendant began to look around and unzipped his coat, which police officers thought was possible flight, and the defendant told police he did not have anything illegal on his person. After the police continued to question the defendant, he consented to a search of his person. That search revealed a bag of crack cocaine from the defendant's right pants pocket, and he was subsequently charged with two counts of possessing that cocaine.

After hearing testimony at the defendant's motion to quash and suppress evidence, the trial court granted the defendant's motion. The trial court found the officers' detention of the defendant was unlawful in light of the purpose of the detention. The court concluded that the defendant did not present a reasonable suspicion of criminal activity by stepping into the porch area because he did so only after the police officers let him in; furthermore, the police did not ascertain the defendant's name and reason for his presence on the premises. Instead, the police asked the defendant if he had any drugs on his person, and the subsequent search of his person did not have anything to do with him having a weapon on his person, but rather the police were solely searching for drugs.

The state appealed the trial court's decision, arguing that the court erred in granting the defendant's motion to quash arrest. The state contended the factual findings were against the weight of the evidence, and the officers lawfully detained the defendant for investigative purposes.

In its analysis, the appellate court first looked at the general principle of a *Terry* stop and its two prongs. The facts supporting reasonable suspicion need not constitute probable cause and can arise when no violation of the law is witnessed; however, mere hunches are insufficient. 2010 WL 145142 at *6. Whether the stop is justified at its inception is an objective consideration based on specific, articulable facts that the officer must be able to point to. *Id.* The court acknowledged the officer's reasons for suspecting the defendant of criminal activity were because the defendant was present at a home searched for drugs, he entered the residence as if already familiar with his surroundings, he acted nervous when confronted by police, and he unzipped his coat, which police thought was indicative of flight.

With these reasons in mind, the appellate court examined each one to see if the facts supported the reasonable suspicions of the police. Mere presence in a residence that is being searched for drugs standing alone does not support a finding of reasonable suspicion. *People v. Elliot*, 314 Ill.App.3d 187, 732 N.E.2d 30, 35, 247 Ill.Dec. 314 (2d Dist. 2000). The fact alone that the defendant was present inside a porch during the execution of a search warrant does not satisfy a suspicion of criminal activity. By arriving at the residence during the search warrant does not in and of itself link the defendant to the possible drugs inside the house. While police testified that the defendant was nervous, nervousness is not always indicative of criminal conduct. The police asked the defendant about illegal narcotics on his person shortly after the defendant was inside the porch; there is no way to determine if his nervousness was linked to the conversation he had with police.

The court acknowledged the fact that while "reasonable suspicion sufficient to support a *Terry* stop may emerge from seemingly innocent, noncriminal conduct . . . [t]he facts used to support an investigatory detention are insufficient when they describe a "very large category of presumably innocent" " individuals. *People v. White*, 221 Ill.2d 1, 29, 849 N.E.2d 406, 423, 302 Ill.Dec. 614 (2006), quoting *People v. Anaya*, 279 Ill.App.3d 940, 665 N.E.2d 525, 529, 216 Ill.Dec. 465 (1st Dist. 1996). In *Chestnut*, the defendant arrived at a residence during the execution of a search warrant, rang the doorbell, and was questioned by police when he became nervous and unzipped his coat. These facts taken as a whole do not describe criminal conduct despite what the police thought at the time. Therefore, under the totality of the circumstances, the defendant's conduct does not suggest a reasonable suspicion of criminal activity, and the appellate court affirmed the trial court's decision.

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