

FIRST DISTRICT,
SIXTH DIVISION
September 25, 2026

No. 1-25-0732

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 23 CR 1103001
	)	
KISHAUN QUALLS,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE GAMRATH delivered the judgment of the court, with opinion.
Justice Pucinski concurred in the judgment and opinion
Justice Hyman specially concurred, with opinion, joined by Justice Pucinski.

OPINION

¶ 1 On the afternoon of September 30, 2023, police investigating an unrelated matter spotted defendant Kishaun Qualls and Anthoni Mahone near a double-parked vehicle. Mahone glanced toward the officers, and both men left the car and headed for an apartment building. Before they could enter, officers approached them in the building’s enclosed front yard, launching a series of pointed questions. During the encounter, an officer noticed an L-shaped bulge in Qualls’s pants pocket and recovered a loaded handgun. Qualls was arrested and convicted of armed habitual criminal¹ (AHC) (720 ILCS 5/24-1.7(a) (West 2022)), receiving a nine-year prison sentence. On appeal, Qualls challenges the trial court’s denial of his pretrial motion to quash arrest and suppress

¹Effective January 1, 2025, the offense of armed habitual criminal has been renamed “[u]nlawful possession of a firearm by a repeat felony offender.” Pub. Act 103-822, § 20 (eff. Jan. 1, 2025). Although the name has changed, the elements of the offense have not. We refer to the offense by the name in effect when Qualls was charged.

evidence, as well as the propriety of his sentence. We reverse the denial of Qualls's motion, reverse his conviction, and vacate his sentence because the State cannot sustain the charge without evidence that should have been suppressed.

¶ 2

I. BACKGROUND

¶ 3

A. Motion to Quash Arrest and Suppress Evidence

¶ 4

Before trial, Qualls moved to quash arrest and suppress the gun recovered on September 30, 2023. He argued that the stop and detention were an illegal seizure unsupported by reasonable articulable suspicion of criminal activity. He asked the trial court to suppress the evidence obtained from the ensuing pat-down search.

¶ 5

At the hearing, Chicago police officer Malcolm Brogsdale testified that, around 12:45 p.m. on September 30, 2023, he was with a tactical team of eight officers investigating an unrelated matter near 6700 South Evans. The officers wore plain clothes and drove unmarked cars, but their duty belts, badges, vests, handcuffs, and firearms were visible. After finishing that investigation, the officers drove south on Evans until Brogsdale noticed a vehicle double-parked near 6725 South Evans. Qualls was sitting inside the car, and Mahone stood outside looking toward the officers. Qualls then exited the rear of the vehicle, and both men "quickly fled" toward a nearby apartment building. As he ran, Qualls yelled, "Open the door. Buzz the door."

¶ 6

Brogsdale exited his vehicle and approached the men to ask, "What's going on, why you guys running, screaming from the vehicle." Brogsdale did not see a firearm while Qualls was running or when he approached Qualls. Qualls was holding a plastic bag he said contained chips and did not prevent Brogsdale from looking inside. Brogsdale acknowledged that Qualls was cooperative and responded to his questions. While officers were searching Mahone, Brogsdale observed an "L-shaped bulge" in Qualls's pants. Brogsdale conducted a pat-down search and recovered a loaded semi-automatic Polymer80 handgun "in his right [sic], below his groin." Qualls

could not produce valid credentials and was arrested.

¶ 7 Brogsdale wore a body-worn camera (BWC), and the footage was admitted and published. The video begins as Brogsdale walks around the front of a vehicle parked the wrong way on Evans. Two officers stand in the street near a silver sedan. Brogsdale walks toward the apartment building as Mahone stands outside a fence and Qualls stands near the front steps. Brogsdale activates the audio recording when he reaches the sidewalk behind Mahone. Neither man can be heard saying or yelling anything. Brogsdale enters through the gate and asks Qualls, “Hey man, anything illegal on you?” Qualls, holding a plastic bag and phone in his left hand, turns and responds, “No I’m good.” Qualls pats his pants, and Brogsdale asks, “What’s on you, man?” Qualls looks into the bag and says, “Just a bag of chips.” Brogsdale asks, “What’s up here?” Qualls raises his arms and pats underneath, showing nothing. As he does, Brogsdale grabs the bag, looks inside, and feels the bottom. Brogsdale asks Qualls his name, and a siren can be heard in the background. After Qualls responds, Brogsdale walks around him until he stands between Qualls and the apartment entrance. At that point, three other officers are visible in the front yard, two in the street, and at least three police vehicles, one with its lights activated, are parked facing the wrong way on Evans.

¶ 8 Brogsdale walks around Qualls again and after taking a step away, approaches Qualls again and says, “Ay, I’m going to pat you right here.” Brogsdale pats the front left thigh of Quall’s pants and immediately says, “There we go. He got a gun.” Brogsdale then reaches into the left leg of Qualls’s pants and recovers a handgun.

¶ 9 Qualls argued that the officers lacked probable cause or reasonable articulable suspicion to stop and search him. Given the number of officers, their positions inside the gate, and their visible police gear, Qualls maintained that a reasonable person would not have felt free to leave. The encounter therefore was not consensual but a seizure. Qualls also argued that, apart from his alleged “flight,” he did nothing suspicious, which was not enough to justify a stop.

¶ 10 In response, the State argued that the interaction began as a consensual encounter because the officers did not handcuff Qualls when they approached him, did not draw their weapons, and spoke to him a calm tone. According to the State, the interaction became an investigatory stop when Brogsdale observed the bulge in Qualls’s pants, and he was permitted to conduct a pat down based on officer safety concerns.

¶ 11 The trial court denied the motion to quash arrest and suppress, finding that Brogsdale “had a right *** to come up and question him.” Rejecting Qualls’s argument that a reasonable person would not have felt free to leave, the court found “no *Mendenhall* factors *** but for the presence of many cops.” See *United States v. Mendenhall*, 446 U.S. 544 (1980). The court noted that the officers did not make “any commands,” raise their voices, draw their guns, or say anything that “could be read to require some type of consent to the officers or obedience to the officer’s command.” The court also observed that “you can notice the bulge” in the BWC video when Brogsdale approached Qualls and found that Brogsdale could conduct a pat-down and recover the firearm.

¶ 12 B. Motion to Reconsider

¶ 13 Qualls moved to reconsider, arguing that officers impermissibly seized him inside the gated courtyard without reasonable articulable suspicion and that a reasonable person in his position would not have felt free to leave. The State maintained that Brogsdale acted only after seeing the bulge in Qualls’s pants. After again viewing the BWC footage, the court denied reconsideration, finding the encounter consensual because “there is nothing indicated with conversation that compliance is, in fact, required.”

¶ 14 C. Bench Trial

¶ 15 Brogsdale’s trial testimony largely tracked his suppression testimony. He testified that Qualls was already inside the vehicle when Mahone, halfway inside the car, looked “nervously”

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toward the officers. Mahone said something to Qualls, and both men fled toward the apartment building. On cross-examination, Brogsdale acknowledged that his Chicago Police Department vest and badge were visible. He described Qualls as “very nervous” in the front yard, noting that Qualls “turned around several times” and “kept looking back and forth up to the second floor.” Brogsdale did not notice the L-shaped bulge until he was speaking with Qualls. The handgun, ammunition, and BWC video were admitted into evidence.

¶ 16 The parties stipulated that Qualls had two qualifying felony convictions for the purposes of AHC. The court found Qualls guilty of AHC and sentenced him to nine years’ imprisonment. Qualls appeals.

¶ 17 II. ANALYSIS

¶ 18 Qualls argues that the trial court erred in denying his motion to quash arrest and suppress evidence because police unconstitutionally seized him without reasonable articulable suspicion and the firearm should have been suppressed. We agree.

¶ 19 We review a ruling on a motion to suppress under a mixed standard. *People v. Lee*, 214 Ill. 2d 476, 483 (2005). We defer to the trial court’s factual findings unless they are against the manifest weight of the evidence. *People v. Hackett*, 2012 IL 111781, ¶ 18. “A factual finding is against the manifest weight of the evidence only if the finding appears to be unreasonable, arbitrary, or not based on the evidence or if the opposite conclusion is readily apparent.” *People v. Hernandez*, 2017 IL App (1st) 150575, ¶ 91. We review *de novo* the ultimate question whether suppression was warranted. *People v. Hill*, 2020 IL 124595, ¶ 14. “*De novo* consideration means we perform the same analysis that a trial judge would perform.” *People v. Randall*, 2022 IL App (1st) 210846, ¶ 33. We may consider evidence from both the suppression hearing and trial. *People v. Almond*, 2015 IL 113817, ¶ 55.

¶ 20 The Illinois and United States Constitutions protect against unreasonable searches and

seizures. *People v. Holmes*, 2017 IL 120407, ¶ 25; U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Article I, section 6, of the Illinois Constitution provides that “[t]he people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches[and] seizures.” Ill. Const. 1970, art. I, § 6. The fourth amendment likewise protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const., amend. IV. Through the fourteenth amendment, that protection applies to state searches and seizures. *Hill*, 2020 IL 124595, ¶ 19. The fourth amendment’s “essential purpose” is to impose reasonableness on the exercise of official discretion. (Internal quotation marks omitted.) *People v. Jones*, 215 Ill. 2d 261, 269 (2005); *People v. Bahena*, 2020 IL App (1st) 180197, ¶ 55.

¶ 21 Evidence obtained through an unconstitutional search or seizure may be suppressed. The exclusionary rule deters fourth amendment violations by police. *Terry v. Ohio*, 392 U.S. 1, 12 (1968) (“the rule excluding evidence seized in violation of the Fourth Amendment has been recognized as a principal mode of discouraging lawless police conduct”); *People v. Flunder*, 2019 IL App (1st) 171635, ¶ 40 (“The fourth amendment is a blunt-edged sword, but it protects the privacy of us all, both the ones with contraband and the ones without it.”).

¶ 22 Police-citizen encounters fall into three tiers: arrests, which require probable cause; brief investigative detentions, or *Terry* stops, which require reasonable articulable suspicion; and consensual encounters, which involve no police coercion and do not implicate the fourth amendment. *Bahena*, 2020 IL App (1st) 180197, ¶ 56; *Flunder*, 2019 IL App (1st) 171635, ¶ 25. This case turns on the line between a consensual encounter and a seizure. *People v. Townsend*, 2023 IL App (1st) 200911, ¶ 85.

¶ 23 A person is seized when, under the totality of the circumstances, a reasonable person would not feel free to leave. *People v. Oliver*, 236 Ill. 2d 448, 456 (2010). The officer must have restrained

the person's liberty "by physical force or show of authority." *People v. Williams*, 2016 IL App (1st) 132615, ¶ 36 (citing *People v. Luedemann*, 222 Ill. 2d 530, 550 (2006)). The inquiry is objective: how the officer's conduct would appear to a reasonable, innocent person. *Id.* ¶ 37. Neither the subject's nor the officer's subjective view controls. *Id.*

¶ 24 "Our supreme court has identified different tests for determining whether a person is seized based upon the circumstances of the encounter." *Id.* For example, "[w]here police approach a person sitting in a parked vehicle, the appropriate test is whether a reasonable innocent person would believe that he is 'free to decline the officers' requests or otherwise terminate the encounter.' " *Id.* (quoting *Luedemann*, 222 Ill. 2d at 550-51, quoting *Florida v. Bostick*, 501 U.S. 429, 436 (1991)). "However, when the person is walking down the street, the appropriate test is whether a reasonable innocent person would feel free to leave ***." *Id.*

¶ 25 "Generally, the following *Mendenhall* factors indicate a seizure without the person attempting to leave: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person; or (4) using language or tone of voice compelling the individual to comply with the officer's requests." *Almond*, 2015 IL 113817, ¶ 57 (citing *Oliver*, 236 Ill. 2d at 456, citing *Mendenhall*, 446 U.S. at 554). These factors are not exhaustive, and a seizure can be found based on other coercive police behavior that is similar to the *Mendenhall* factors. *Luedemann*, 222 Ill. 2d at 557.

¶ 26 In this case, limited facts support the view that the encounter was consensual. As the trial court found, Brogsdale and the other officers did not issue commands, raise their voices, or draw their guns. But the totality of the evidence, including the BWC video, shows that the encounter was a seizure from inception. Most notably, several officers were present. Brogsdale testified at the suppression hearing that his team had eight officers, though at trial he said he was working with five others. Either way, the video shows Brogsdale and three other officers inside the fence,

with at least two more in the street in front of the building. Although not in full uniform, the officers' tactical vests, duty belts, badges, handcuffs, and firearms were visible. At least three unmarked police vehicles were parked the wrong way, one with lights activated, and a siren can be heard. The scene looked like an active police operation, not an ordinary afternoon on the block.

¶ 27 Brogsdale also asked Qualls accusatory questions immediately upon approach: "Hey man, anything illegal on you?", "What's on you, man?", and "What's up here?" He grabbed Qualls's bag and prompted him to pat himself down. Those words and actions conveyed that compliance was expected. See *Williams*, 2016 IL App (1st) 132615, ¶ 40-41 (officers' show of authority and request that defendant "come here" made clear he was required to stop and answer questions); *People v. Ocampo*, 377 Ill. App. 3d 150, 160 (2007) (officer's statement that they "needed to talk," combined with his actions, was coercive and supported finding a seizure).

¶ 28 Finally, Brogsdale moved around Qualls and placed himself between Qualls and the building's front door. Three other officers stood near the fence gate while questioning Mahone and searching his backpack. Qualls had no clear path out. See *People v. Ghera*, 203 Ill. 2d 165, 180 (2003) (officers' positioning and questioning constituted a seizure); *People v. Billingslea*, 292 Ill. App. 3d 1026, 1030 (1997) (officer's blocking movement and saying "come here" showed intent to restrain).

¶ 29 The question is whether a reasonable innocent person in Qualls's position would have felt free to leave. Considering all the circumstances, the answer is no. This encounter therefore falls on the seizure side of the line. *People v. Washington*, 363 Ill. App. 3d 13, 24 (2006) ("No factor is dispositive and courts consider all of the circumstances surrounding the detention in each case.").

¶ 30 The cases relied on by the State do not suggest a different result. In *Luedemann*, a police officer was on patrol in a residential neighborhood when he saw a car parked legally in front of a residence. 222 Ill. 2d at 533-34. The officer pulled up approximately 25 to 30 feet away from the

car and saw the defendant in the driver's seat reach down towards the floorboard, return upright, and then slump down again. *Id.* at 534. The officer parked in the center of the street, approached the car, and noticed a beer bottle on the passenger's side floorboard. *Id.* After speaking with the defendant, the officer noticed signs of intoxication and called for backup. *Id.* at 534-35. The defendant was subsequently arrested and charged with driving under the influence. *Id.* The trial court granted the defendant's petition to rescind the statutory summary suspension, finding that the officer had neither probable cause for an arrest nor reasonable suspicion for a *Terry* stop. *Id.* at 535-36. Our supreme court reversed, finding that the defendant was not "seized" until after the officer noticed the beer bottle and signs of intoxication. *Id.* at 565. The court found that "clearly" none of the *Mendenhall* factors were present and the officer "did nothing to signal that compliance was expected." *Id.* at 553, 558. Specifically, the officer "drove past defendant's vehicle so as not to block it in its space," did not activate his flashing lights "to signal that defendant's compliance was expected," did not use "coercive language or a coercive tone of voice," did not touch defendant, and did not display his weapon. *Id.* 565.

¶ 31 In *People v. Burk*, 2013 IL App (2d) 120063, a police officer in an unmarked car observed the defendant and a woman walking along the edge of a street at 1:30 a.m. *Id.* ¶ 5. The two went behind some " 'bushes and trees' " between the street and an apartment building. *Id.* They emerged after 5 to 10 seconds and started walking in the street median. *Id.* The officer pulled up in his car and stopped in the street without blocking their path of travel or activating his lights. *Id.* ¶ 6. He asked, " '[H]ow you folks doing tonight?' " and did not give any commands or raise his voice. *Id.* The defendant responded, " 'I didn't even know you were in a squad car; I didn't even know who you were.' " *Id.* The officer exited his car and resumed the conversation, asking "what they were up to and why they had been by the bushes and trees." *Id.* ¶ 7. After asking the two for identification, the officer noticed that the defendant was sweating profusely, his hands were

shaking, and he was “ ‘fidget[ing] a lot.’ ” *Id.* ¶ 8. At this point the officer asked the defendant if he had anything illegal on him. *Id.* ¶ 9. The defendant said “ ‘no’ ” but consented to a search which revealed narcotics. *Id.* On appeal, the reviewing court agreed that the evidence viewed in totality demonstrated “nothing more than a consensual police-citizen encounter” in which a reasonable person would have believed he was free to leave. *Id.* ¶ 31. In doing so, the court relied on the facts that the sole officer approached in an unmarked car without his lights activated, did not position his car in a way to inhibit the defendant’s ability to continue walking, did not order him to stop, and simply asked them “what they were up to and why they had been by the bushes and trees.” *Id.* ¶ 29.

¶ 32 Finally, in *People v. Woods*, 2013 IL App (4th) 120372, a police officer stopped his car and approached a vehicle parked at a housing complex. *Id.* ¶ 7. The defendant was sitting in the driver’s seat, and his girlfriend was in the passenger seat. *Id.* The officer asked to see identification and asked whether they were permitted to be at the housing complex. *Id.* ¶ 8. The defendant provided a false name and appeared nervous. *Id.* ¶¶ 8-9. After further back-and-forth, the defendant consented to a pat down and exited the vehicle. *Id.* ¶ 9. The officer recovered narcotics during the pat down. *Id.* ¶ 10. On appeal, the reviewing court found that the interaction was a “textbook consensual encounter.” *Id.* ¶ 27. The court noted that the officer parked adjacent to the defendant’s car without activating his lights and approached the defendant “only to inquire as to whether defendant was permitted to be on the grounds of the housing complex.” *Id.* The court found that the officer “demonstrated no *** show of authority that would have in any way made a reasonable, innocent person feel like he was not free to decline the officer’s request or otherwise terminate the encounter.” *Id.*

¶ 33 Unlike *Luedemann*, *Burk*, and *Woods*, Brogsdale approached Qualls accompanied by multiple officers and vehicles, one with activated lights and an audible siren. He initiated contact

in a fenced front yard, immediately posed accusatory questions, inspected Qualls's plastic bag, and positioned himself between Qualls and the building entrance while other officers blocked the gate. The officers' visible tactical vests, badges, and firearms, along with the strategic placement of police vehicles, created an atmosphere of authority and implied that compliance was required. Under these circumstances, a reasonable person in Qualls's position would not have felt free to leave or terminate the encounter. The interaction thus exceeded the bounds of a consensual police-citizen encounter.

¶ 34 Having found that Qualls was seized, we must determine whether the officers had reasonable suspicion that he was committing a crime to justify the seizure. The reasonableness of a seizure is analyzed according to the principles set forth by the United States Supreme Court in *Terry*. *People v. Timmsen*, 2016 IL 118181, ¶ 9. Pursuant to *Terry*, a police officer may conduct a brief, investigatory stop when he reasonably infers from the circumstances that the person is committing, is about to commit, or has committed a criminal offense. *Id.* (citing *Terry*, 392 U.S. at 22, and *People v. Close*, 238 Ill. 2d 497, 505 (2010)). The officer must have a "reasonable, articulable suspicion" that the person is engaged in criminal activity, which must amount to more than an "inchoate and unparticularized suspicion or hunch." (Internal quotation marks omitted.) *Id.*

¶ 35 "The investigatory stop must be justified at its inception and the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the governmental intrusion upon the constitutionally protected interests of the private citizen." *Id.* The officer's conduct is judged by an objective standard by considering whether " 'the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate.' " *Id.* (quoting *Terry*, 392 U.S. at 21-22). When making this determination, we consider the totality of the circumstances.

Id.

¶ 36 Courts have recognized that unprovoked flight upon seeing police in a high-crime area may suggest wrongdoing and justify further investigation. *People v. Thomas*, 2019 IL App (1st) 170474, ¶ 19; see *Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000). But “headlong flight,” though relevant, does not by itself establish criminal activity. *People v. Horton*, 2019 IL App (1st) 142019-B, ¶ 63 (citing *Wardlow*, 528 U.S. at 124-25); see *People v. McClendon*, 2022 IL App (1st) 163406, ¶ 20. Here, the alleged “flight” was the only possible basis for suspicion, and it was insufficient.

¶ 37 When Brogsdale activated his BWC, neither Qualls nor Mahone were running or yelling. Qualls stood on the apartment steps, and Mahone stood near the gate. Neither man appeared hurried, winded, or tried to distance himself from police. Qualls was not pounding on the door or buzzing the intercom, and Mahone appeared to wait at the gate for Qualls to return. The video does not suggest wrongdoing or flight to evade officers.

¶ 38 The trial court stated that, from the BWC video, “you can notice the bulge” in Qualls’s pants when Brogsdale first approached. Although we defer to the court’s factual findings unless they are against the manifest weight of the evidence (*Hackett*, 2012 IL 111781, ¶ 18), the video does not support this conclusion. The State did not contend that Brogsdale saw the bulge before initiating contact, and Brogsdale acknowledged that he did not see it until he was speaking with Qualls. The video supports that testimony. Brogsdale neither mentions the bulge nor begins the pat-down until nearly a minute after the initial contact. Accordingly, the totality of the circumstances does not show that “the facts available to the officer at the moment of the seizure or the search warrant a man of reasonable caution in the belief that the action taken was appropriate.” (Internal quotation marks omitted.) *Timmsen*, 2016 IL 118181, ¶ 9.

¶ 39 The State alternatively argues that Brogsdale’s initial contact with Qualls was justified by

the community-caretaking doctrine. Qualls responds that the State forfeited that argument by failing to raise it below. Forfeiture aside, the record clearly demonstrates the police were not acting in a community caretaking or public safety function when they approached Qualls. This is apparent from Brogsdale's first words to Qualls asking if he had anything illegal on him without regard for Qualls's welfare, safety, or any circumstance suggesting a need for assistance. Instead, Brogsdale's inquiry was immediately accusatory and investigative, focusing solely on potential criminal activity rather than any community caretaking purpose.

¶ 40 In sum, the trial court erred in denying Qualls's motion to suppress the gun because police seized him without reasonable articulable suspicion. Without the gun, the State cannot sustain the conviction on remand. We therefore reverse Qualls's conviction and vacate his sentence. See *People v. Lopez*, 2018 IL App (1st) 153331, ¶ 38; *People v. Gaytan*, 2021 IL App (1st) 192228-U, ¶ 43.

¶ 41 III. CONCLUSION

¶ 42 We reverse the judgment of the circuit court of Cook County and vacate Qualls's conviction and sentence.

¶ 43 Reversed.

¶ 44 JUSTICE HYMAN, specially concurring:

¶ 45 I concur with the judgment and analysis. I write separately to question a legal fiction that has troubled me for some time: the "reasonable innocent person."

¶ 46 In this case, the encounter took place in West Woodlawn, a predominantly Black community on Chicago's South Side. Qualls was in a fenced front yard. Eight officers wore tactical vests, badges, handcuffs, and firearms. Police vehicles blocked the car Qualls was about to enter. An officer asked if he had "anything illegal" on him, took his bag, moved around him, and stood

between him and the building entrance. Several officers stayed within feet of Qualls, both inside and outside the fence.

¶ 47 In deciding whether a seizure occurred, courts ask if a reasonable innocent person would have felt free to leave or end the encounter with police. *People v. Williams*, 2016 IL App (1st) 132615, ¶ 37. The test requires an objective review of the totality of the circumstances. *People v. Oliver*, 236 Ill. 2d 448, 456 (2010).

¶ 48 Who is this reasonable innocent person? What age? Black, white, brown, or Asian? From Chicago's West Side, a North Shore suburb, Peoria, or a small central Illinois town? Is the person wealthy or poor, employed or unemployed, a lifelong resident of Illinois or not? How many years of schooling? Does this person trust the police, or approach them with caution because of past experience?

¶ 49 The law gives this reasonable innocent person no identity, even though personal characteristics can inform what is reasonable.

¶ 50 Consider race as a factor. For a Black individual, is the reasonable innocent person a 24-year-old with multiple police encounters, a 50-year-old doctor with none, or someone from the neighborhood where the encounter occurred or from 200 miles away? Race may influence a person's response. The objective test treats race and lived experience as if they have no place in deciding what is reasonable.

¶ 51 The term "innocent" also prompts concerns. "Innocent" assumes something about how that person will react to police. But innocent people can fear police, trust police, avoid them, or comply with an officer's requests. Innocence does not predict a person's response to police authority.

¶ 52 The United States Supreme Court has said that a personal characteristic can enter a reasonable person analysis without sacrificing objectivity. In *J.D.B. v. North Carolina*, 564 U.S. 261, 271-77 (2011), the Court held that age may inform the objective Miranda custody inquiry,

explaining that consideration of age does not do “any damage to the objective nature” of the test. The court noted that a reasonable child may feel compelled to stay when a reasonable adult would feel free to leave. *Id.* at 272.

¶ 53 A broader view of the objective test has begun to emerge. For instance, in *Dozier v. United States*, 220 A.3d 933 (D.C. 2019), the District of Columbia Court of Appeals recognized that for people of color, feeling free to leave may depend on “an assessment of the consequences” of ending the encounter. *Id.* at 944. Likewise, the court in *Carter v. United States*, 341 A.3d 1067 (D.C. 2025), looked “beyond the mere conduct of the officers to objectively determine whether Mr. Carter was seized,” and to “examine the impact of the defendant’s race.” *Id.* at 1076.

¶ 54 Also instructive is the Washington Supreme Court’s decision in *State v. Sum*, 511 P.3d 92 (Wash 2022). There, the court found that “in interactions with law enforcement, race and ethnicity matter.” *Id.* at 109-10. The court held, “For purposes of this analysis, an objective observer is aware that implicit, institutional, and unconscious biases in addition to purposeful discrimination, have resulted in disproportionate police contacts, investigative seizures, and uses of force against [Black, Indigenous, and other People of Color (BIPOC)] in Washington.” *Id.* at 108.

¶ 55 Race cannot be dismissed as irrelevant to the inquiry. “Black individuals from every background have long expressed that race can and does affect whether a citizen feels ‘free to leave’ a police encounter. Of course, we wish race were not relevant. But wishing does not make it so.” *United States v. Knights*, 989 F.3d 1281, 1295-96 (11th Cir. 2021) (Rosenbaum, J. concurring).

¶ 56 Scholars have challenged the assumptions behind the reasonable innocent person test for decades. *Carter*, 341 A.3d at 1077 n.4 (collecting law review articles addressing consideration of race as part of an objective Fourth Amendment inquiry citing, among others, Daniel S. Harawa, *Coloring in the Fourth Amendment*, 137 Harv. L. Rev. 1533 (2024); Aliza Hochman

Bloom, *Objective Enough: Race Is Relevant to the Reasonable Person in Criminal Procedure*, 19 Stan. J. Civ. Rts. & Civ. Liberties 1 (2023); Devon W. Carbado, *(E)racing the Fourth Amendment*, 100 Mich. L. Rev. 946 (2002)); see Cynthia Lee, *Reasonableness with Teeth: The Future of Fourth Amendment Reasonableness Analysis*, 81 Miss. L.J. 1133, 1150-52 (2012).

¶ 57 Empirical research casts doubt on the assumption as well. David K. Kessler, *Free to Leave? An Empirical Look at the Fourth Amendment's Seizure Standard*, 99 J. Crim. L. & Criminology 51, 74-80, 87 (2009) (finding people often did not feel free to leave in circumstances in which courts assumed a reasonable person would).

¶ 58 *Mendenhall* is more than four decades old. Our legal system has learned much about how people respond to police presence. Yet the totality of the circumstances includes almost everything about police authority and almost nothing about the person subjected to it. A test that leaves out so much about that person can hardly claim to consider the totality of the circumstances.

¶ 59 I do not propose replacing the objective test. Objectivity does not require courts to ignore the background and experiences of the person whose freedom to leave is at issue. Courts should reconsider the reasonable innocent person test to reflect the reality of how people experience police authority.

¶ 60 The Fourth Amendment protects people as they are, not as judges imagine them.

¶ 61 JUSTICE PUCINSKI joins in this special concurrence.

People v. Qualls, 2026 IL App (1st) 250732

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 23-CR-1103001; the Hon. Charles P. Burns, Judge, presiding.

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