**[Cite as *State v. French*, 2009-Ohio-2342.]**

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| STATE OF OHIO | ) | IN THE COURT OF APPEALS |
| | )ss: | NINTH JUDICIAL DISTRICT |
| COUNTY OF SUMMIT | ) | |

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| STATE OF OHIO<br><br>Appellee<br><br>v.<br><br>STACEY M. FRENCH<br>AKA STACY M. FRENCH<br><br>Appellant | C.A. No. 24252<br><br>APPEAL FROM JUDGMENT<br>ENTERED IN THE<br>COURT OF COMMON PLEAS<br>COUNTY OF SUMMIT, OHIO<br>CASE No. CR 07 06 1763 (A) |

DECISION AND JOURNAL ENTRY

Dated: May 20, 2009

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DICKINSON, Presiding Judge.

INTRODUCTION

**{¶1}** Officer Bernard Cirullo stopped Stacey and Daniel French outside a CVS pharmacy after he learned that they had been attempting to purchase Sudafed from multiple drugstores. After Ms. French lied to him about whether she owned a car that was in the parking lot, Officer Cirullo detained them in the back of his police cruiser until a K-9 unit could perform a drug sniff of her car. When the dog alerted on the car, Officer Cirullo searched it. Ms. French moved to suppress the evidence found during the search, but the trial court denied her motion. This Court affirms because the evidence found in the car was not derived from an illegal recording, the trial court properly applied the inevitable discovery rule, and the additional 10 to 15 minute wait for the K-9 unit to arrive was not unreasonable under the circumstances.

FACTS

**{¶2}** On May 11, 2007, the City of Tallmadge Police Department received a telephone call from a CVS pharmacy that there were two individuals in the store trying to buy Sudafed and that those same individuals had earlier attempted to buy Sudafed from two other CVS locations. Sudafed contains an ingredient that is used in the manufacture of methamphetamine.

**{¶3}** According to Officer Cirullo, he drove to the CVS and waited in the parking lot until the Frenches exited the store. When he saw them, he got out of his car and met them by the front door of the store. He asked them if they had a moment to speak with him, and they said that they did. Ms. French, however, began looking around the parking lot for a woman driving a blue car, saying "[w]here is Kim? Kim left us." When Officer Cirullo asked her why her friend would leave them, she answered "[f]or the same reason you are speaking with us now, because of the pills." According to Officer Cirullo, no cars had exited the parking lot while he was waiting for the Frenches to leave the store. In addition, he had not asked them about any pills.

**{¶4}** Officer Cirullo began running the license plates of the cars in the parking lot. The second car that he checked was registered to Ms. French. When Officer Cirullo asked Ms. French about the car, she denied that she owned it. Officer Cirullo, therefore, ran the license plate again and let Ms. French listen to the information that came back from the dispatcher on his radio. When Ms. French heard the dispatcher say that the car was registered to her, she told Officer Cirullo that she "was just joking. I thought you were talking about something else." According to Officer Cirullo, Ms. French became "real fidgety, talking real fast and looking around the parking lot."

**{¶5}** Officer Cirullo testified that, because Ms. French had lied to him, he grew suspicious and decided to detain them in the back of his police cruiser. When he asked Ms.

French if he could have a "quick look in [her] vehicle," she asked if she could speak to Mr. French first in private. Officer Cirullo closed the door of the cruiser and left them alone until Ms. French indicated they were done talking. In the meantime, he contacted the Summit County Drug Task Force and learned that the Frenches had purchased Sudafed from several other drugstores in the area. He, therefore, became even more suspicious that they were either buying pills to sell to a methamphetamine manufacturer or making it themselves.

**{¶6}** After the Frenches finished their conversation, Ms. French told Officer Cirullo that he could not search her car. The Frenches did not realize, however, that their conversation had been recorded. Officer Cirullo listened to the recording and then called for a K-9 unit. According to Officer Cirullo, he called the K-9 unit because Ms. French would not voluntarily let him search her car. If she had, there would have been no reason for a dog sniff. Officer Cirullo continued to detain the Frenches for 10 to 15 minutes until the K-9 unit arrived. When the handler ran her dog, Brown, around Ms. French's car, Brown alerted on the passenger compartment. Officer Cirullo, therefore, searched the car.

**{¶7}** After the State charged Ms. French, she moved to suppress the recording and any evidence found during the search of her car. The trial court granted her motion in part, concluding that Officer Cirullo should not have listened to the recording of the Frenches' conversation. It found, however, that "the police would have had the canine sniff [Ms. French's] vehicle even if they had not heard [the Frenches'] statements." It, therefore, denied Ms. French's motion to suppress the evidence found during the search of her car. Ms. French has assigned one error, arguing that the trial court incorrectly denied her motion to suppress the evidence found in her car.

INVESTIGATORY STOP

**{¶8}** A motion to suppress evidence presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St. 3d 152, 2003-Ohio-5372, at ¶8. A reviewing court "must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Id*., but see *State v. Metcalf*, 9th Dist. No. 23600, 2007-Ohio-4001, at ¶14 (Dickinson, J., concurring). The reviewing court "must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *Burnside*, 2003-Ohio-5372, at ¶8.

**{¶9}** "[N]ot all seizures of the person must be justified by probable cause to arrest for a crime." *Florida v. Royer*, 460 U.S. 491, 498 (1983). "An investigative stop does not violate the Fourth Amendment to the United States Constitution if the police have reasonable suspicion that 'the person stopped is, or is about to be, engaged in criminal activity.'" *State v. Jordan*, 104 Ohio St. 3d 21, 2004-Ohio-6085, at ¶35 (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). "Reasonable suspicion can arise from information that is less reliable than that required to show probable cause." *Id*. Officers may "draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *Cortez*, 449 U.S. at 418). The officer, however, must "point to specific, articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

**{¶10}** "The scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case." *Royer*, 460 U.S. at 500. "[A]n investigative detention must . . . last no longer than is necessary to effectuate the purpose of the stop." *Id*. Furthermore,

"the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Id*. "The propriety of an investigative stop by a police officer must be viewed in light of the totality of the surrounding circumstances." *State v. Freeman*, 64 Ohio St. 2d 291, paragraph one of the syllabus (1980).

**{¶11}** Ms. French has argued that the trial court should have suppressed the evidence found during the search of her car under Section 2933.62(A) of the Ohio Revised Code. That section provides that "[n]o part of the contents, and no evidence derived from the contents, of any intercepted wire, oral, or electronic communication shall be received in evidence in any trial, hearing, or other proceedings in or before any court . . . if the disclosure of that information is in violation of sections 2933.51 to 2933.66 of the Revised Code."

**{¶12}** The trial court determined that Officer Cirullo violated Section 2933.52(A)(3) when he listened to the recording of the Frenches' conversation after telling them that they could speak in private. The issue, therefore, is whether the evidence that was found in her car "was derived from the contents of the illegal tap." *State v. Davies*, 145 Ohio App. 3d 630, 637 (2001). This Court has interpreted "evidence derived from the contents" to mean "evidence gathered as a direct result of the violation." *Id*. (quoting R.C. 2933.62(A)).

**{¶13}** The trial court found that Officer Cirullo would have had Brown sniff Ms. French's car even if he had not listened to the recording of her conversation with Mr. French. Its finding is supported by the record. Officer French testified that he was suspicious that the Frenches might have been pill shopping even before placing them in the back of his cruiser. He testified that the information he received from the Drug Task Force while the Frenches were talking in private only bolstered his suspicions. This Court, therefore, concludes that Ms. French has not established that the evidence found during the search of her car was "derived from the

contents" of the improperly intercepted communication. R.C. 2933.62(A). The trial court correctly concluded that the evidence did not have to be excluded under Section 2933.62(A).

**{¶14}** Ms. French has next argued that the trial court improperly concluded that the inevitable discovery exception applied to the evidence found in her car. Under "[t]he ultimate or inevitable discovery exception to the Exclusionary Rule[,] . . . illegally obtained evidence is properly admitted . . . once it is established that the evidence would have been ultimately or inevitably discovered during the course of a lawful investigation." *State v. Perkins*, 18 Ohio St. 3d 193, paragraph one of the syllabus (1985).

**{¶15}** Ms. French has argued that the trial court improperly focused on whether the evidence in her car could have been discovered rather than whether it would have been discovered. The trial court, however, found that, because Officer Cirullo would have requested the K-9 sniff even if he had not listened to the recording, "the contraband that was found in Defendant's car would have inevitably been discovered."

**{¶16}** Ms. French has also argued that there is "no basis to believe that [Officer Cirullo] would have called the canine unit, but for listening to the illegally recorded conversation." During the course of his investigation, however, Officer Cirullo obtained information and made a number of observations that gave him reasonable suspicion that Ms. French's car contained chemicals that were intended to be used to manufacture methamphetamine. He drove to the CVS based on information that the Frenches were attempting to buy Sudafed and that they had been at two other CVS stores that same day, also attempting to buy Sudafed. Before he even had the chance to ask Ms. French about her attempts to buy Sudafed, she told him that she thought he was there to speak with her "because of the pills." She lied to him about whether she owned a car that was in the parking lot and, when confronted with her lie, became "real fidgety" and

began rambling incoherently. While she and Mr. French talked in the back of the police cruiser, he also learned from the Drug Task Force that the Frenches were on the Sudafed logs of several pharmacies in the area. Accordingly, this Court concludes that, even without the information that was on the recording, Officer Cirullo's observations supported a reasonable suspicion that there was contraband in Ms. French's car.

**{¶17}** Ms. French has further argued that it was improper for Officer Cirullo to detain her for an additional 10 to 15 minutes so that Brown could sniff her car. "In assessing whether a detention is too long in duration to be justified as an investigative stop, . . . it [is] appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." *United States v. Sharpe*, 470 U.S. 675, 686 (1985).

**{¶18}** According to Officer Cirullo, he called the K-9 unit to investigate his suspicion that the Frenches were pill shopping. This Court has previously concluded that a 10-minute wait for a K-9 unit was not unreasonably long. *State v. Mootoosammy*, 9th Dist. No. 3150-M, 2001 WL 833479 at *3 (July 25, 2001) (concluding duration of stop was not unreasonably long when dog was called 15 minutes into stop and dog arrived 25 minutes into stop); *State v. Poole*, 9th Dist. No. 2336-M, 1995 WL 338477 at *2 (June 7, 1995) (noting dog handler arrived ten minutes after being requested). "Greater intrusions on an individual's liberty or privacy during a temporary investigatory detention require a stronger suspicion based on more significant articulable circumstances." *State v. McFarland*, 4 Ohio App. 3d 158, 160 (1982). The stronger an officer's suspicion, the longer a detention can be before it becomes unreasonable. Having reviewed the totality of the circumstances, this Court concludes that Officer Cirullo's investigation was diligent, that he used the least intrusive means reasonably available to confirm

or dispel his suspicions, and that he did not detain the Frenches for an unreasonable amount of time to wait for the K-9 unit to arrive. Ms. French's assignment of error is overruled.

CONCLUSION

**{¶19}** The trial court correctly denied Ms. French's motion to suppress the evidence found during the search of her car. The judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
CONCURS

BELFANCE, J.
DISSENTS, SAYING:

**{¶20}** I respectfully dissent. I would reverse because what began as a constitutionally permissible stop was transformed into a constitutionally impermissible seizure without probable cause.

**{¶21}** The Fourth Amendment to the United States Constitution provides:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

**{¶22}** Prior to the seminal decision of *Terry v. Ohio* (1968), 392 U.S. 1, the Fourth Amendment prohibited any restraint on the person that amounted to a seizure unless it was based on probable cause. *Florida v. Royer* (1983), 460 U.S. 491, 498. When the United States Supreme Court decided *Terry*, the Court created a very narrow exception to the requirement of probable cause prior to effecting a search or seizure. In *Terry*, the Court determined that a police officer may momentarily stop and frisk a person where, based on specific facts, the officer concludes that the person has committed a crime or is about to commit a crime and may be armed and dangerous. *Terry*, 392 U.S. at 30. The Court emphasized that it had created very narrowly drawn authority to search for weapons without a warrant. Id. Thus, the Court found that "[a] brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo *momentarily* while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." (Emphasis added.) *Adams v. Williams* (1972), 407 U.S. 143, 146, citing *Terry*, 392 U.S. at 21-22. In concluding that it was permissible to allow a

seizure without probable cause, the *Terry* Court weighed the substantial government interest of protecting the public and preventing crime against what it determined to be a minimal intrusion to justify the seizure. *Terry*, 392 U.S. at 21-27. In weighing those interests, the Court concluded that this brief, momentary search and seizure was a minimal intrusion that was justifiable when weighed against the substantial government interest at stake. Id.

**{¶23}** In determining whether a stop itself is permissible, *Terry* established that in order for an officer to temporarily seize an individual without probable cause, the officer must have reasonable articulable suspicion of criminal activity based on "specific and articulable facts" and "rational inferences from those facts." Id. at 21. This initial inquiry must be satisfied in order to justify the stop at its inception. Once seized, *Terry* makes clear that the scope of the seizure must be limited to maintaining the status quo momentarily. Id. at 19-20. This would typically mean that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. Id. at 34 (White, J., concurring). But the detainee is not obliged to respond. Id. And unless the detainee's answers provide the officer with probable cause to arrest him, he must then be released. Id. In *Royer*, the United States Supreme Court stated that the stop and inquiry must be reasonably related in scope to the justification for its initiation and police must use the "* * * least intrusive means available to verify or dispel the officer's suspicion * * *." *Royer*, 460 U.S. at 500.

**{¶24}** Since *Terry*, the United States Supreme Court has declined to establish a precise time limitation when evaluating the scope of warrantless stop. Thus, the contours of "maintain[ing] the status quo momentarily while obtaining more information," *Adams*, 407 U.S. 146, must be evaluated keeping in mind that brevity is a fundamental characteristic of a seizure

based on less than probable cause. *United States v. Place* (1983), 462 U.S. 696, 709. *Terry* made clear that the justification for a departure from the Constitution's requirement of probable cause was premised upon the notion that the *Terry* stop was only momentary and therefore so limited an intrusion upon the individual that the substantial governmental interests at stake could overcome Fourth Amendment probable cause requirement. *United States v. Sharpe* (1985), 470 U.S. 675, 692 (Marshall, J., concurring) ("*Terry* 'stops' are justified, in part, because they are *stops*, rather than prolonged seizures. * * * Consistent with the rationales that make *Terry* stops legitimate, we have recognized several times that the requirement that *Terry* stops be brief imposes an independent and per se limitation on the extent to which officials may seize an individual on less than probable cause."). See, e.g., *United States v. Brignoni-Ponce* (1975), 422 U.S. 873, 881-882 (brief stop permitted to allow officer to ask about citizenship, immigration status and to ask about suspicious circumstances, but any further detention must be based upon consent or probable cause).

**{¶25}** In light of the brief and limited nature of the intrusion inherent in *Terry*, it is possible that a permissible *Terry* stop can be transformed into a constitutionally impermissible seizure. *Florida v. Royer* is illustrative of such a case. Royer was observed by two plainclothes detectives who felt that Royer's appearance, mannerisms and luggage fit the profile of a drug courier. *Royer*, 460 U.S. at 493. Upon stopping Royer, the detectives asked for Royer's ticket and identification and asked questions concerning the fact that Royer's ticket and luggage tag did not match his identification. Id. at 494. Not satisfied with Royer's answers, the detectives then asked Royer to follow them to a small room and proceeded to retrieve his bags from the airlines without his permission. Id. While in the room, the detectives obtained Royer's consent to open the luggage. Id.

**{¶26}** The Florida District Court of Appeal concluded that Royer had been seized when he gave his consent to search his luggage, and that the scope of the investigative stop had been exceeded. Id. at 501. Because Royer's seizure went beyond the limited restraint of the *Terry* stop, Royer's ultimate consent was tainted by the illegality of the stop. Id.

**{¶27}** The United States Supreme Court agreed. It held that because Royer was being illegally detained when he consented to the search of his luggage, the consent was tainted by the illegality and was ineffective to justify the search. Id. at 507-508. In affirming the Florida District Court of Appeal, the *Royer* Court agreed that the officer's conduct was "more intrusive than necessary to effectuate an investigative detention otherwise authorized by the *Terry* line of cases." Id. at 504. Thus, "[w]hat had begun as a consensual inquiry in a public place had escalated into an investigatory procedure in a police interrogation room, where the police, unsatisfied with previous explanations, sought to confirm their suspicions." Id. at 503.

**{¶28}** The *Royer* Court further found that, upon removal to the private room, "[a]s a practical matter, Royer was under arrest." Id. Royer was never informed that he was free to board his plane if he so chose, and he reasonably believed that he was being detained. Id.

**{¶29}** In the instant matter, we are told that the officer received a call that two individuals who had attempted to buy Sudafed at two other CVS locations, were attempting to purchase Sudafed at the CVS on Canton Road. He observed a couple matching the description given to him leaving the CVS. He approached French and asked to speak with her. As he spoke to her, his suspicions were aroused based on the fact that she was nervous, she lied about not having a car in the parking lot and she referenced "the pills" without the officer mentioning pills. After some discussion, the officer directed French and her husband to sit in the police cruiser.

**{¶30}** In evaluating French's warrantless seizure it is necessary to first determine whether the initial seizure of French was justified under *Terry*. In light of the facts of record in this case, I agree that the officer possessed a reasonable articulable suspicion of possible criminal activity based on the specific facts and rational inferences from those facts which justified a stop. It is clear that at this juncture, the officer did not have probable cause to arrest French or her husband, however he did have a basis to engage in a limited *Terry* stop. Thus, the issue before this Court is whether under the circumstances of this case, the scope of *Terry* was exceeded because French was ultimately subjected to a more serious intrusion on her personal liberty than is allowable under the circumstance of mere suspicion of criminal activity. *Royer*, 460 U.S. at 502.

**{¶31}** A problem inherent in this case is that the evidence did not establish precisely how long the entire detention lasted. It is the government's burden to prove facts justifying the duration of an investigative detention. Id. at 500. In *Royer* the total detention from the moment the detectives stopped Royer until they opened his luggage was fifteen minutes. Id. at 495. In this case, we are only told how much time elapsed *after* French told the officer she would not consent to the search of her vehicle. There was no evidence as to how much time elapsed from the inception of the stop outside of the CVS until the search of French's vehicle was concluded. In light of that omission, the total length of the detention was not established. Thus, I believe that the State did not succeed in demonstrating that the scope of the detention was not unduly intrusive and did not exceed the limits of *Terry*.

**{¶32}** In addition to the lack of evidence as to the total length of French's detention, I believe that the scope of the detention was impermissible under *Terry*. Notwithstanding the lack of probable cause, the officer removed French from the openly public area and confined her to

the police car. The State articulated no reason for French's removal from the parking lot and confinement in the cruiser. The officer asked French whether he could search her vehicle and French indicated that she wanted to speak with her husband. While speaking with her husband, the officer surreptitiously recorded the conversation while he and his partner further investigated. We are not told how much time elapsed. However, during this time the officers proceeded to engage in the limited investigation contemplated by *Terry* that is designed to maintain the status quo momentarily while gathering information. One officer obtained social security numbers and ran the names through the police computer system. This did not produce any information such as an outstanding warrant upon which the police could arrest French. The other officer also investigated inside the CVS and learned that French had purchased the Sudafed under her actual name, and therefore had not illegally purchased the Sudafed. The police also confirmed that French was on a list of persons who had purchased Sudafed, a fact that did not confirm any illegality on her part.

**{¶33}** Thus, the brief investigatory stop envisioned under *Terry* did not produce facts upon which the police could further detain French. At this point, French also informed the officer that she did not consent to the search of her vehicle. In light of the lack of probable cause to seize French or her property, the officer was required to allow French and her husband to leave. Instead, the police continued to detain French impermissibly in the cruiser during which time the police initiated a call to a canine unit to come to the scene. As in *Royer*, the "* * * bounds of an investigative stop had been exceeded * * *" and the continued detention "* * * was a more serious intrusion on [French's] personal liberty than is allowable on mere suspicion of criminal activity." *Royer*, 460 U.S. at 501, 502.

> "Detentions may be 'investigative' yet violative of the Fourth Amendment absent probable cause. In the name of investigating a person who is no more than

> suspected of criminal activity, the police may not carry out a full search of the person or of his automobile or other effects. Nor may the police seek to verify their suspicions by means that approach the conditions of arrest." Id. at 499.

Assuming it was appropriate to remove French from the public parking lot and confine French in the cruiser initially (an assumption that is questionable under the circumstances of this case), the scope of *Terry* was exceeded where, under police authority French continued to be confined in the police cruiser once she exercised her right to decline to a consensual search of her vehicle, and the police had conducted the brief investigation permitted under *Terry*.

**{¶34}** In suggesting that French's continued seizure beyond the point that she did not consent to the search of her vehicle was permissible, my colleagues rely in part on *Sharpe*. However, in *Sharpe*, in assessing the scope of the detention in that case, a twenty-minute stop was deemed permissible, in part, because the defendant, who had led the police on a car chase, had contributed to the cause of the delay. *Sharpe*, 470 U.S. at 687. Thus, had the defendant pulled over when signaled to do so, the stop would have been very brief. Id. at 688. ("Except for Savage's maneuvers, only a short and certainly permissible pre-arrest detention would likely have taken place.") In the instant matter, French did not attempt to evade the police, rather, she cooperated from the inception of the stop. Under *Terry* and absent probable cause, the police were permitted to briefly detain her and use the least intrusive means available to obtain more information. See *Terry*, 392 U.S. at 28. While French was confined in the police car speaking to her husband, this is precisely what the police did. They ran her social security number and made inquiries in the CVS. These actions were precisely the type of brief investigation envisioned under a *Terry* stop and constituted the diligent pursuit of investigation required under *Sharpe*. When a *Terry* stop does not reveal the evidence that the police might have hoped for, *Terry* does not authorize a prolonged seizure, and hence a greater intrusion upon an individual, tantamount

to an arrest, in the hope of establishing probable cause. See e.g., *United States v. Richardson* (C.A.6, 1991), 949 F.2d 851, 857-858 (after refusing to consent to search of storage locker, placing defendant in back of police car went beyond the bounds of *Terry* and, under the circumstances, crossed the line into an arrest). As stated above, the reason that *Terry* permitted a warrantless search and seizure was because a very brief detention was considered a minimal intrusion upon an individual's liberty. See *Place*, 462 U.S. at 709. When police are not able to confirm their suspicions upon engaging in the brief investigation sanctioned under *Terry*, the individual must be free to leave. *Sharpe*, 470 U.S. at 698 (Marshall, J., concurring). Police needs for further investigation do not warrant a more extensive and intrusive seizure that could only be had upon a showing of probable cause. *Royer*, 460 U.S. 510-511 (Brennan, J., concurring) ("any suggestion that the *Terry* reasonable suspicion standard justifies anything but the briefest of detentions or the most limited of searches finds no support in the *Terry* line of cases"). Thus, in light of the limited intrusion upon liberty permitted under *Terry* and its progeny, here, the information gathered while detaining French in the police car did not establish further grounds to detain her: she had no warrants, she had legally purchased the Sudafed and she was on a general list of all persons who purchased Sudafed. None of these facts demonstrated that French had committed an illegal act and thus could not warrant her continued seizure without probable cause. While the police were suspicious (especially in light of listening to the secretly taped conversation) and may have had a logical reason for wanting to obtain the canine unit to sniff the vehicle, the desire for a fuller or more complete investigation cannot be had through a constitutionally impermissible seizure.

**{¶35}** The majority also suggests that stronger suspicion warrants a longer intrusion. However, in *Royer*, the police had very strong suspicions that Royer was transporting narcotics,

and Royer's explanations did not dispel their suspicions but instead their suspicions were further aroused. However, these strong suspicions did not justify a prolonged and overly intrusive detention. See *Royer*, 460 U.S. at 502-503. In this case, the observations of the officer: French's nervousness, untruthfulness, and the CVS report that two individuals had attempted to purchase Sudafed at another location, were precisely the facts that were needed to justify a *Terry* stop itself. The fact that there are many strong facts which the officer can point to as establishing a reasonable articulable suspicion to stop an individual does not grant a license to engage in a prolonged and overly intrusive seizure absent consent or probable cause. Id. A warrantless seizure under *Terry* is permissible because, due to its brevity and limited scope, it is deemed to be minimally intrusive and thus justifiable on less than probable cause. *Brignoni-Ponce*, 422 U.S. at 880 ("Because of the limited nature of the intrusions, stops of this sort may be justified on facts that do not amount to the probable cause required for an arrest."). Further, upon making the permissible inquires described above, with the exception of the illegally taped conversation, the police did not learn anything that could arguably have provided stronger suspicion, given that the police merely confirmed that French had legally purchased Sudafed.

**{¶36}** "[W]hile it may be tempting to relax [the requirements of the Fourth Amendment] when a defendant is believed to be guilty, the standards we prescribe for the guilty define the authority of the police in detaining the innocent as well." *Sharpe*, 470 U.S. at 719 (Brennan, J., dissenting). For the reasons set forth above, I would reverse the decision of the trial court.

APPEARANCES:

NEIL AGARWAL, attorney at law, for appellant.

SHERRI BEVAN WALSH, prosecuting attorney, and HEAVEN DIMARTINO, assistant prosecuting attorney, for appellee.