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IN THE COURT OF APPEALS OF INDIANA

Peter D. Juan Dontrell Parker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 22, 2022

Court of Appeals Case No. 21A-CR-1643

Appeal from the Vanderburgh Superior Court

The Honorable Robert J. Pigman, Judge

Trial Court Cause No. 82D03-2001-F4-551

Tavitas, Judge.

Case Summary

[1] In this interlocutory appeal, Peter D. Juan Dontrell Parker challenges the trial court's order denying his motion to suppress, claiming that: (1) the trial court erred by failing to find that defensive collateral estoppel applied and had

preclusive effect, and (2) the evidence, nonetheless, should have been suppressed because it was seized in violation of the Fourth Amendment of the U.S. Constitution and Article 1, Section 11 of the Indiana Constitution. We conclude that collateral estoppel does not apply and that the seizure of the evidence in question did not violate Parker's constitutional rights. Accordingly, we affirm.

Issues

[2] Parker presents two issues for review, which we restate as follows:

I. Whether the ruling of a federal district court in a case arising out of the same encounter as the present case in which the federal district court granted Parker's motion to suppress has preclusive effect in this state criminal case.

II. Whether the traffic stop of Parker's vehicle, during which police found Parker in possession of a handgun, was supported by reasonable suspicion as required under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution.

Facts and Procedural History

[3] At approximately 11:06 p.m. on January 16, 2020, a home-invasion burglary occurred in Evansville, Indiana. The victims of the burglary described the perpetrators as a white male and a biracial male. During the burglary, the perpetrators "pistol whipped and threatened [the occupants] with a knife." Tr. Vol. II pp. 36-37.

[4] Evansville Police Department ("EPD") Officer Samuel Shahine had just ended his patrol shift and was beginning his work as a security officer with Lawman Tactical, a private security company. Officer Shahine was beginning his security shift at Berry Plastics at around 10:59 p.m. As he patrolled, Officer Shahine drove a truck visibly marked with Lawman Tactical's logo on the side; however, the truck did not have a police light bar on the roof.

[5] Officer Shahine heard a transmission giving the description of the vehicle involved in the burglary, which was "[a] silver four-door passenger car with damage to the driver[-]side rear door and at least two occupants," but no make or model was given. Exhibit Vol. I p. 56. The dispatch information included a more detailed description of the assailants, i.e., a white male in his late twenties with light brown or blond hair, and a biracial male in his mid-twenties with short black hair and no facial hair, but Officer Shahine did not hear this transmission. Because he was in the security vehicle and not his patrol vehicle, he was unable to read the "run card," which captures information about incidents and specific descriptions. Tr. Vol. II p. 68. The run card in this instance reflected that there were at least two occupants of the car. Officer Shahine knew that the location given for the burglary was "fairly close" to Berry Plastics, or "within two miles," so he kept a lookout for the car while patrolling the nearby parking lots. Tr. Vol. II pp. 38, 60.

[6] While listening to the broadcast, Officer Shahine turned his vehicle onto an adjoining street with public parking next to Berry Plastics and headed northbound. At around 11:40 p.m., he saw a silver or gray car legally parked

on the street facing north. Employees of Berry Plastics sometimes parked along the street. In Officer Shahine's opinion, the vehicle matched the suspect-vehicle description in that it was silver and had "damage on the side of the vehicle," though he later testified that he was "sure there's a lot of silver 4 door passenger cars in Evansville Indiana." Tr. Vol. II. p. 44; Appellant's App. Vol. II p. 130.

[7] Officer Shahine came upon the vehicle from the back and drove slowly past it, trying to get a look at the vehicle's sole occupant. As he passed, "the driver kind of ducked down to conceal his identity[.]" Tr. Vol. II. p. 44. Officer Shahine saw very little of the driver, but he did observe "like maybe a dark hooded sweatshirt and partial of a face, but it was so dark [he] couldn't tell if it was a dark skinned male or a light skinned male." *Id.* at 48. Officer Shahine made a second attempt to view the driver from a different vantage point in a parking lot, using the high beams of his vehicle by directing them at the driver; however, he could not get any better information on the driver because the driver "ducked down even further." *Id.* at 44. He testified that the driver's behavior was "a red flag in our profession that shows that somebody is up to nefarious activities or something to investigate further." *Id.* Officer Shahine radioed his location, and on-duty officers arrived to conduct the traffic stop. Officer Shahine said that he "possibly had their vehicle involved from the robbery," when giving his location. *Id.* He gave the license plate number and a description of the vehicle.

[8] As Officer Shahine began driving southbound, Parker pulled into the nearby parking lot and changed direction such that he followed southbound in his

vehicle directly behind Officer Shahine. The two vehicles continued driving southbound until they reached a four-way stop. Officer Shahine proceeded southbound through the intersection. Parker's vehicle came to a complete stop at the intersection and, after signaling, turned east, travelling "at a high rate of speed." *Id*. at 47. Officer Shahine, however, had no way to determine exactly how fast. No speeding citation was issued.

[9] On-duty officers turned on their lights and sirens to signal Parker to pull his vehicle over to the side of the road, and Parker complied. When Parker's vehicle came to a stop, uniformed officers conducted a "felony car stop." *Id.* at 51. Officer Shahine testified that the term "felony car stop" means that there are "a minimum of two [police] cars," because it is a "high risk situation" in that the "driver of the vehicle [is] being stopped" because they are "either armed and dangerous or [have] committed some kind [of] high level felony." *Id.* at 51. During such stops, officers have their weapons drawn on the driver, and such occurred here. In this case, there were five officers conducting the felony stop.[1] A canine officer was also present. The felony stop procedure involved having Parker open the car door using the outside handle, walking backwards toward the officers while placing his hands on his head, during which officers had their weapons drawn on him.

[1] EPD Officer Adam Steppro, who participated in the felony stop of Parker's vehicle, stated that there were between eight to twelve responding officers. On appeal, however, we construe conflicting evidence in the light most favorable to the trial court's ruling. *Lundquist v. State*, 179 N.E.3d 1051, 1054 (Ind. Ct. App. 2021) (citing *Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019)).

[10] During the stop, Parker followed the officers' directions and off-duty Officer Shahine placed him in handcuffs. Parker responded to Officer Shahine's questions, indicating that no one else was in the car and informing him that he had a pistol on his hip. The officers then secured the handgun. Because Parker had a previous conviction for a serious violent felony, his possession of a firearm was illegal, and he was placed under arrest.

[11] Parker was identified as a black male aged forty-three. Police eventually cleared Parker of any involvement in the burglary, discovering that he had just left work at Berry Plastics. His shift at work ended around 11:30 p.m. that night. EPD Officer Adam Steppro, who participated in the felony stop of Parker's vehicle, testified that, though they were ultimately proven wrong after the stop was complete, they believed at the time that they were stopping one of the burglary suspects.

[12] Based on that traffic stop, the State charged Parker with one count of unlawful possession of a firearm as a serious violent felon, a Level 4 felony. Parker was also charged in federal district court with possession of a firearm by a felon based on those same facts. Parker was on federal probation at the time of the stop.

[13] Parker filed motions to suppress in both state court and federal court to challenge the lawfulness of the stop and the seizure of evidence. The federal litigation ended first with the district court granting Parker's motion to suppress. The district court held that the officers did not have a reasonable

suspicion to conduct the traffic stop, that their mistake was unreasonable, and even if the stop was lawful, the use of the felony stop procedure amounted to an arrest without probable cause. *See* Appellant's App. Vol. II pp. 218-36 (federal district court's order granting motion to suppress).

[14] Upon receiving this ruling, Parker amended his state-court motion to suppress. He included the argument that the trial court was bound by the district court's ruling and, thus, was compelled to grant the state-court motion. The trial court denied the motion to suppress in two separate orders. The first order denied the use of defensive collateral estoppel because "the State of Indiana was not a party to the federal prosecution and never had the opportunity to litigate the issue of the lawfulness of the stop." *Id.* at 239. The court in its second order denied the motion, specifically finding Officer Shahine's and Officer Streppo's testimony credible, that Parker's vehicle sufficiently matched the dispatched suspect-vehicle description to justify the stop, and that the felony stop was a *Terry* stop, justified by the factors of "officer safety," "the possibility of the presence of a weapon," and "the nature of the violent offense that the officers were called to investigate in this case." *See* Appellant's App. Vol. III p. 24.

[15] The trial court certified its order for interlocutory appeal, this Court accepted it, and the case is now before us.

Discussion and Decision

I. Defensive Use of Collateral Estoppel

[16] Parker claims that the trial court erred by failing to give preclusive effect to the federal district court's decision granting Parker's motion to suppress in the federal case. A trial court's decision regarding the use of collateral estoppel will be reversed only for an abuse of discretion. *See Wilcox v. State*, 664 N.E.2d 379, 381 (Ind. Ct. App. 1996). "An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law." *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013) (citations omitted).

[17] The doctrine of res judicata, which acts to prevent repetitious litigation of disputes that are essentially the same, is divided into two branches: (1) claim preclusion and (2) issue preclusion, also known as collateral estoppel. *Angelopoulos v. Angelopoulos*, 2 N.E.3d 688, 696 (Ind. Ct. App. 2013), *trans. denied*. Parker's claims sound in collateral estoppel. Parker seeks to prevent the State from re-litigating the issue of the lawfulness of the traffic stop that the federal government already litigated and lost in the federal court action. Thus, the "defensive" collateral estoppel analysis is appropriate. *See Reid v. State*, 719 N.E.2d 451, 455 (Ind. Ct. App. 1999); *Small v. Centocor, Inc.*, 731 N.E.2d 22, 28 (Ind. Ct. App. 2000), *trans. denied*.

[18] There are three requirements for the doctrine of collateral estoppel to apply: (1) a final judgment on the merits in a court of competent jurisdiction; (2) identity

of the issues; and (3) the party to be estopped was either a party or had privity of a party in the prior action. *See Small*, 731 N.E.2d at 28. Furthermore, two additional considerations are relevant here; namely "whether the party against whom the judgment is pled had a full and fair opportunity to litigate the issue, and whether it would be otherwise unfair under the circumstances to permit the use of collateral estoppel." *Id.*; *Nat'l Wine & Spirits, Inc. v. Ernst & Young, LLP*, 976 N.E.2d 699, 704 (Ind. 2012). The burden is upon the party asserting collateral estoppel to show they are entitled to its use. *Reid*, 719 N.E.2d at 456.

[19] As for the first requirement, there is no dispute the federal district court was a court of competent jurisdiction. Moreover, the federal district court's ruling is a final judgment because the ultimate effect of the order was to preclude further prosecution of Parker at the federal level. *See Jennings v. State*, 714 N.E.2d 730, 734 (Ind. Ct. App. 1999) (holding that, although a ruling on a motion to suppress is generally not a final judgment, such a ruling can be a final judgment where its ultimate effect is to preclude further prosecution of the defendant). Accordingly, both components of the first requirement have been met.

[20] Turning to the second requirement—identity of the issues—neither party claims that the issues presented in the present state court action differ from those in the federal court action. Parker's motions to suppress in both courts challenged the constitutionality of the stop and the ensuing search. *See* Appellant's App. Vol. II pp. 30, 57, 71, 163. Thus, the second requirement has been met.

[21] As for the third requirement, Parker argues that, though the State was not a named party to the federal litigation, the State, and its interests, were nonetheless otherwise fairly represented by the federal government. We find our earlier decision in *Reid* to be controlling here.

[22] In *Reid*, this Court first addressed the concept of prosecution by the same sovereign when analyzing the use of nonmutual defensive collateral estoppel. *See* 719 N.E.2d at 455. We concluded that "nonmutual collateral estoppel has no applicability in criminal cases," and that in criminal cases, "mutuality of estoppel and identity of the parties" is required. *Id.* at 456 (citing *Standefer v. United States*, 447 U.S. 10, 24 (1980) (rejecting the use of nonmutual defensive collateral estoppel in trial of accessory where the principal was acquitted due to concerns that the government did not have full and fair opportunity to present its case); *Ashe v. Swenson*, 397 U.S. 436, 445, 90 S. Ct. 1189, 1195 (1970) (holding that collateral estoppel applied in second state-court action where the identification evidence was weak and defendant was acquitted in prior state-court action on same evidence); *United States v. Lahey*, 55 F.3d 1289, 1296 (7th Cir. 1995) ("A criminal defendant convicted by a jury on one count cannot attack that conviction simply because it was inconsistent with the jury's verdict of acquittal on another count.")).

[23] Our Supreme Court denied transfer in *Reid*, and other decisions have followed *Reid*'s conclusion that the use of nonmutual defensive collateral estoppel was unavailable in criminal cases. *See, e.g.*, *Olson v. State*, 135 N.E.3d 988, 993 (Ind. Ct. App. 2019) (holding that State was not barred from prosecuting defendants

under doctrine of collateral estoppel because neither defendant was a party in juvenile court case in which the court determined that there was insufficient evidence to prove that juvenile was involved in the same robbery as the defendants), *trans. denied*; *Martin v. State*, 740 N.E.2d 137, 142 (Ind. Ct. App. 2000) (holding that post-conviction petitioner could not avail himself of collateral estoppel based on successful post-conviction petition of another petitioner who was also involved in the same kidnapping, murder, and rape for which petitioner was convicted because there was no identity of parties), *trans. denied*; *see also Lahey*, 55 F.3d at 1296 ("[N]onmutual *offensive* collateral estoppel cannot be applied against the government in criminal cases.") (emphasis added).

[24] Accordingly, a defendant cannot avail himself the rulings in another case involving another party in his own criminal case. There must be an identity of parties or their privies and mutuality of estoppel for another ruling to have preclusive effect in a criminal case.

[25] Nevertheless, Parker urges us to look "beyond the nominal parties and treat[ ] those whose interest[s] are involved as the real parties." *See* Appellant's Br. p. 19 (quoting *Becker v. State*, 992 N.E.2d 697, 701 (Ind. 2013)). In *Becker*, we held that, if a party's interests were adequately represented by another entity in the prior case, the party can be estopped from asserting the claim. In that case, however, our Supreme Court compared the privity between the Department of Correction and the State and found privity regarding an adverse ruling on sex offender registry compliance.

[26] In contrast, here we are presented with two different governments, federal and state, and charges brought under statutes that are unique to each. *See* Ind. Code § 35-47-4-5(c); 18 U.S.C. § 922(g)(1). Though the facts and issues necessary to both are the same or similar, the sovereigns are not. "It is well established that states are separate sovereigns with respect to the federal government because each State's power to prosecute is derived from its own inherent sovereignty, not from the Federal Government." *Jackson v. State*, 563 N.E.2d 1310, 1311 (Ind. Ct. App. 1990) (internal quotations omitted). "The dual sovereignty doctrine is founded on the common-law conception of crime as an offense against the sovereignty of a government. When a defendant in a single act violates the 'peace and dignity' of two sovereigns by breaking the laws of each, he has committed two distinct offences." *Heath v. Alabama*, 474 U.S. 82, 88, 106 S. Ct. 433, 437 (1985) (citation and internal quotations omitted); Loretta H. Rush, *A Constellation of Constitutions: Discovering and Embracing State Constitutions as Guardians of Civil Liberties*, 82 Alb. L. Rev. 1353, 1358 (2018-2019) (noting that results reached under state constitutions derive from a different source of sovereign authority).

[27] Parker, whose possession of a firearm was illegal under both state and federal law, committed two distinct offenses against two sovereigns.[2] Because there is neither identity of parties nor mutuality of estoppel as between the parties to the

[2] Because we conclude that the party bound by the prior judgment must be the same or in privity with the party in the subsequent suit, we decline to follow Parker's argument regarding interstate issue preclusion.

federal-court action and the state-court action, Parker is not entitled to the preclusive effect of the use of defensive collateral estoppel. Accordingly, the trial court did not abuse its discretion by declining to give preclusive effect to the federal district court's decision granting Parker's motion to dismiss in the federal court action.

II. Fourth Amendment

[28] Parker also argues that, even if the federal court's ruling does not have preclusive effect, the federal court's conclusion that the stop of Parker's car violated the Fourth Amendment was nevertheless correct, and the trial court here improperly concluded otherwise. Thus, Parker argues that the trial court erred by denying his motion to suppress the handgun found during the stop.

[29] On appeal from an order denying a defendant's motion to suppress, we review the trial court's decision deferentially, construing conflicting evidence in the light most favorable to the ruling. *Lundquist v. State*, 179 N.E.3d 1051, 1054 (Ind. Ct. App. 2021) (citing *Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019)). We also consider any substantial and uncontested evidence favorable to the defendant. *Id.* We review the trial court's factual findings for clear error, and we decline invitations to reweigh evidence or judge witness credibility. *Id.*

A. Investigatory Stops under the Federal Constitution

[30] The Fourth Amendment prohibits warrantless searches and seizures unless the State can prove that an exception to the warrant requirement existed at the time of the search. *Smith v. State*, 121 N.E.3d 669, 673 (Ind. Ct. App. 2019) (citing

Marshall, 117 N.E.3d at 1259), *trans. denied*. A police officer may, however, without warrant or probable cause, briefly detain a suspect for investigatory purposes if, based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity may be afoot. *Id*. (citing *Terry v. Ohio*, 392 U.S. 1, 27, 88 S. Ct. 1868, 1884 (1968)). Such *Terry* stops "must be both justified at its inception and reasonably related in scope to the circumstances which justified it at its inception." *Id*. (citing *Terry*, 392 U.S. at 18-19, 88 S. Ct. at 1878). The "basic principle of *Terry*—originally espoused in the context of an officer stopping persons on foot who appeared to be preparing to commit a crime," has been expanded to include stops of persons in automobiles and to investigations of completed, rather than ongoing, criminal activity. *United States v. Jones*, 187 F.3d 210, 216 (1st Cir. 1999) (citing *United States v. Hensley*, 469 U.S. 221, 227-29, 105 S. Ct. 675, 679-80 (1985); *Berkemer v. McCarty*, 468 U.S. 420, 439-40, 104 S. Ct. 3138, 3150 (1984)).

[31] "Although reasonable suspicion requires more than inchoate and un-particularized hunches, it is a less demanding standard than probable cause and requires considerably less proof than that required to establish wrongdoing by a preponderance of the evidence." *State v. Lefevers*, 844 N.E.2d 508, 515 (Ind. Ct. App. 2006); *see also United States v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581, 1585 (1989) (holding that the Fourth Amendment requires "some minimal level of objective justification" for a stop and that an officer "must be able to articulate something more than an 'inchoate and unparticularized suspicion or 'hunch'") (quoting *Terry*, 392 U.S. at 27, 88 S. Ct. at 1883). "Taking into account the

totality of the circumstances or the whole picture, the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Scisney v. State*, 55 N.E.3d 321, 324 (Ind. Ct. App. 2016) (addressing Fourth Amendment) (*citing* Clark v. State, 994 N.E.2d 252, 263 (Ind. 2013) (addressing Fourth Amendment)). We must examine the facts as known to the officer at the moment of the stop. *Id*. The trial court's conclusion of whether an officer had reasonable suspicion is reviewed de novo, but any factual determinations are to be made by the trial court; we will not reweigh the evidence, and we consider conflicting evidence in the light most favorable to the trial court's ruling. *Kelly v. State*, 997 N.E.2d 1045, 1050 (Ind. 2013).

B. The Stop of Parker's Car Was Supported by Reasonable Suspicion

[32] In the case before us, the facts known to Officer Shahine at the time of the initial stop gave rise to more than inchoate and unparticularized hunches. The police were searching for two suspects in an armed and violent home invasion and burglary. One suspect was described as being a white male and the other as a "biracial male." Ex. Vol. I p. 103. The radio dispatch also gave a description of a vehicle suspected to be involved in the burglary as a silver four-door passenger car with damage to the driver's side rear door area of the car.

[33] Minutes after the radio dispatch, Officer Shahine observed a silver, four-door passenger car with damage to the driver's side rear of the car, located two miles or less from the location of the burglary. Although Officer Shahine was not in a marked patrol car, he was in a marked security truck and wearing his police

uniform. When he shined his lights on the car, the occupant slouched down as if to hide. The car then began to follow Officer Shahine's security truck, but it soon turned left at an intersection and proceeded at what the officer described as a high rate of speed. These facts form the basis of a reasonable suspicion supported by specific, articulable facts that justified an investigatory stop of Parker's vehicle.

[34] Our Supreme Court reached a similar conclusion in *Baker v. State*, 485 N.E.2d 122 (Ind. 1985). In that case, the defendant argued that, under *Terry*, the police did not have reasonable suspicion to stop the vehicle in which he was an occupant. Our Supreme Court noted that the officer who stopped the vehicle in question was "aware that a robbery had recently occurred. He had been apprised that a particular model and color of vehicle was possibly involved." *Baker*, 485 N.E.2d at 124. The Court held that this was sufficient to justify the stop of the vehicle: "[i]f a police officer has a description of a vehicle, he is justified in making a stop of a similar vehicle." *Id.* The Court further held that the fact that the dispatch reported that there were "possibly two males," whereas the vehicle pulled over by the police had three occupants, did not render the stop unreasonable because it is relatively easy for people to enter a vehicle. *Id.*

[35] A similar result was reached in *Coates v. State*, 534 N.E.2d 1087 (Ind. 1989).[3] In that case, our Supreme Court held that there was reasonable suspicion to support an investigatory stop of the defendant's vehicle because it matched the description of the vehicle given by the victim and the victim's description of her attacker matched that of the defendant. *Id*. at 1092; *see also Brown v. State*, 497 N.E.2d 1049, 1051 (Ind. 1986) (holding that investigatory stop of a vehicle was supported by reasonable suspicion where the vehicle matched the description of one possibly involved in a recent robbery). Nor does the vehicle in question have to perfectly match the description of the suspect vehicle. In *United States v. Jones*, 187 F.3d 210, 216-17 (1st Cir. 1999), the Court upheld an investigatory stop of a white Lexus even though the suspect vehicle was described as a white or light-colored car, possibly a Buick or Oldsmobile.

[36] Here, as in *Baker*, the officer who stopped the car was aware that an armed home invasion and burglary had recently occurred, and he observed a vehicle that generally matched the description of a vehicle that was possibly involved in the burglary. There were two suspects, but the officer saw only one person in the car. As in *Baker*, this does not render the stop unreasonable. Just as another person could easily enter the vehicle in *Baker*, the second suspect could have easily exited the vehicle in the present case.

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[3] Although the Court in *Coates* did not directly cite the Fourth Amendment or *Terry*, the cases it cited did rely on *Terry* and an analysis under the Fourth Amendment. *See* 534 N.E.2d at 1092 (citing *Florida v. Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319, 1325 (1983); *United States v. Sharpe,* 470 U.S. 675, 686 105 S. Ct. 1568, 1575 (1985)).

[37] Additionally, when Officer Shahine shined his lights into the car, the driver, later identified as Parker, attempted to hide by ducking down into the car. Although this alone might not support reasonable suspicion to stop the car, nervous and evasive behavior are pertinent factors in determining reasonable suspicion. *Gaddie v. State*, 10 N.E.3d 1249, 1256 (Ind. 2014) (citing *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676 (2000)). In *United States v. Garcia-Barron*, 116 F.3d 1305, 1308 (9th Cir. 1997), the Court upheld an investigatory stop of a vehicle that was on a road frequently used to circumvent a border-crossing checkpoint after the occupants of the vehicle ducked as if to hide when the officers shined a flashlight on the vehicle. And in *United States v. Bridges*, 626 Fed. Appx. 620, 624-25 (6th Cir. 2015), the Court upheld an investigatory stop of a defendant where the police saw the defendant inside a vehicle during a cold evening and the defendant slouched down as if to avoid police detection. Here too, there was evidence that Parker attempted to avoid being seen in the car. This, combined with the other factors, such as Parker's car generally matching the description of the suspect car, supports the conclusion that Officer Shahine had reasonable suspicion to conduct an investigatory stop of Parker's vehicle.

[38] Parker argues that the police did not determine if he matched the description of the suspects. Parker is Black, and the suspects were described as being a white male and a biracial male. We cannot fault the officers in this case for not taking it upon themselves to determine, at the time of the traffic stop, whether a given individual is actually biracial as opposed to Black. The term biracial is not

particularly descriptive. The racial or ethnic description of one of the suspects was vague so as not to exclude Parker as a suspect. This is especially true given that Parker ducked down to avoid being seen by the police. Parker cannot argue that the police should have done more to identify him before conducting a stop when his own actions thwarted their efforts to do so.

[39] Under a *Terry* analysis, we are to consider the evidence and circumstances as a whole. *Scisney*, 55 N.E.3d at 324 (*citing* Clark, 994 N.E.2d at 263). Considering the totality of the circumstances, the detaining officer had a reasonable, particularized, and objective basis for suspecting that the car and driver he observed were involved in the home invasion and burglary that had occurred shortly before and relatively close by. The vehicle stop did not violate Parker's Fourth Amendment rights. We, therefore, affirm the trial court's decision that the police had reasonable suspicion that supported an investigatory stop of Parker's vehicle.

C. The Stop Was Not an Arrest

[40] Parker also argues that the stop of his car became an arrest that required probable cause because several police officers ordered Parker out of the car at gunpoint and placed him in handcuffs. We addressed the same argument in *Smith,* in which the defendant argued that his traffic stop went beyond the permissible scope of a *Terry* stop and became an arrest because the "the police approached him with weapons drawn, ordered him out of the vehicle, and handcuffed him during the search of the vehicle." 121 N.E.3d at 675. In rejecting this argument, we noted:

> An investigatory *Terry* stop may be converted to an arrest depending on the totality of the circumstances. However, as part of a valid *Terry* stop, the investigating officer is entitled to take reasonable steps to ensure his own safety, including ordering a detainee to exit the vehicle. Moreover, although handcuffing a suspect during a search for weapons should be the rare case there are a limited set of circumstances in which handcuffs are appropriate without converting a *Terry* stop into a full arrest. Chief among those reasons is officer safety and the possibility of the presence of a weapon.

Smith, 121 N.E.3d at 675 (citations and internal quotations omitted).

[41] In *Smith*, the police had reasonable suspicion to believe a person or persons in the vehicle driven by Smith were shooting guns out of the vehicle and were, therefore, armed and dangerous. *Id.* We held that "the officers' actions in drawing their guns, ordering Smith and the passengers out of the vehicle, and handcuffing them while conducting the search of the vehicle were reasonable steps the officers took to ensure their safety." *Id.* "Those steps were reasonably related to the justification for the *Terry* stop—i.e., to investigate alleged dangerous, criminal activity involving firearms—and did not convert the *Terry* stop into an arrest." *Id.* (citing *United States v. Vaccaro*, 915 F.3d 431, 436 (7th Cir. 2019)); *see also United States v. Shoals*, 478 F.3d 850, 853 (7th Cir. 2007) ("The cases are clear, however, that police officers do not convert a *Terry* stop into a full custodial arrest just by drawing their weapons or handcuffing the subject[.]") (citations omitted).

[42] The same is true here. The police were investigating a violent home invasion in which the suspects were armed with both a pistol and a knife. The suspects pistol-whipped the victims and threatened to stab them. The officers' concern for their safety therefore justified their caution in stopping Parker. *See Smith*, 121 N.E.3d at 675; *Billingsley v. State*, 980 N.E.2d 402, 407-08 (Ind. Ct. App. 2012) (holding, in a Fourth Amendment analysis, that an officer's use of a firearm to detain the suspect did not convert the stop into an arrest where the officer had reasonable belief suspect was armed); *Vaccaro*, 915 F.3d 431 (holding that, given the officer's concerns that the suspect armed himself when they observed furtive movements while the suspect was inside the vehicle, it was reasonable for the police to draw their guns, order him out of the vehicle, and handcuff him in order to conduct a pat-down search as part of a *Terry* stop); *United States v. Askew*, 403 F.3d 496, 507 (7th Cir. 2005) (holding that FBI executed a *Terry* stop, not an arrest, even though the agents blockaded the defendant's car and approached with their weapons drawn because the agents had a reasonable suspicion that one of the people in the car was preparing to commit a drug offense).

[43] Once the officers detained Parker, they almost immediately found that he was in possession of a firearm, which ultimately led to Parker's arrest. The duration of the investigatory stop was, therefore, brief. *Cf. Coates*, 534 N.E.2d at 1092 (holding that half-hour length of stop did not amount to a de facto arrest where defendant's lack of proper identification extended the length of his detention).

[44] In summary, the stop of Parker's vehicle was an investigatory stop that was supported by reasonable suspicion. The stop did not become an arrest simply because the officers drew their weapons and handcuffed Parker. For these reasons, the stop of Parker's car did not violate his rights under the Fourth Amendment.

III. Article 1, Section 11

[45] Parker also claims that the stop of his car violated Article 1, Section 11 of the Indiana Constitution. Although Article 1, Section 11 contains language nearly identical to the Fourth Amendment, Indiana courts interpret Article 1, Section 11 independently. *Hardin v. State*, 148 N.E.3d 932, 942 (Ind. 2020). In cases involving Article 1, Section 11 of the Indiana Constitution, the State must show that the challenged police action was reasonable based on the totality of the circumstances. *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014). "The totality of the circumstances requires consideration of both the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search or seizure." *Litchfield v. State*, 824 N.E.2d 356, 360 (Ind. 2005). In *Litchfield*, our Supreme Court summarized this evaluation as follows:

> [A]lthough we recognize there may well be other relevant considerations under the circumstances, we have explained reasonableness of a search or seizure as turning on a balance of: 1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizens' ordinary activities, and 3) the extent of law enforcement needs.

824 N.E.2d at 361.

A. Investigatory Stops Under the Indiana Constitution

[46] "Investigatory stops invoke the Article 1, Section 11 protections of the Indiana Constitution." *State v. Renzulli*, 958 N.E.2d 1143, 1146-47 (Ind. 2011) (citing *Rutledge v. State*, 426 N.E.2d 638, 642 (Ind. 1981)). "[O]ur courts gauge the reasonableness of an investigatory stop by striking a balance between the public interest [behind the investigation] and the individual's right to personal security free from arbitrary interference from law officers." *Id.* (citations and internal quotations omitted). Just as under the Fourth Amendment, an investigatory stop by a police officer does not violate the suspect's constitutional rights under the Indiana Constitution if the officer has a reasonable articulable suspicion of criminal activity. *Id.* (citing *Lampkins v. State*, 682 N.E.2d 1268, 1271 (Ind. 1997)).

B. The Stop of Parker's Car was Reasonable

[47] The *Litchfield* test applies broadly to governmental searches and seizures: "its application is comprehensive." *Watkins v. State*, 85 N.E.3d 597, 600 (Ind. 2017). Applying the *Litchfield* factors to the facts of the present case leads to a conclusion that the officers' actions were reasonable under the totality of the circumstances. First, the degree of concern, suspicion, or knowledge weighs in favor of a finding of reasonableness. The police located a vehicle generally matching the description of the suspect vehicle fairly close to where the home invasion occurred shortly after the police dispatch went out informing other

officers of the crime and the suspects. Parker was also evasive when Officer Shahine drove by in an attempt to identify the driver of the vehicle. This weighs in favor of the State.

[48] The degree of intrusion was not insignificant, but it was necessary to protect the investigating officers and to determine whether Parker's vehicle was the one involved in the burglary and determine if Parker matched the description of the suspects. The officers stopped Parker's car and ordered him out of the car so that they could determine whether he had been involved in the recent, violent home invasion. Although the actions of the police in ordering Parker out of his car with their weapons drawn was a significant intrusion, given the violent nature of the crime and possibly armed suspects, it was not unreasonable. Once stopped, the officers had the authority to determine whether Parker was armed. *See Bell v. State*, 81 N.E.3d 233, 238-39 (Ind. Ct. App. 2017) (holding that pat-down of suspect was reasonable under Article 1, Section 11 because the officer had a reasonable belief that suspect might be armed). The duration of the detention based on reasonable suspicion was not unnecessarily long—the police quickly found a handgun on Parker that led to his arrest. This also weighs in favor of the State.

[49] Lastly, the extent of law enforcement needs was high. The police were investigating a violent home invasion in which the suspects were armed with a knife and a handgun; the suspects pistol-whipped the victims and threatened to stab them with a knife. *See Pugh v. State*, 52 N.E.3d 955, 966 (Ind. Ct. App. 2016) (concluding that the extent of law enforcement needs were great where

police were investigating a violent home invasion and were trying to locate suspect as quickly as possible), *trans. denied*.

[50] Considering all the *Litchfield* factors, the trial court properly concluded that the actions of the police were reasonable under the totality of the circumstances. We find support for this conclusion in *Glasgow v. State*, 99 N.E.3d 251 (Ind. Ct. App. 2018), in which we upheld an investigatory stop of two men who were standing on the side of the road near their vehicles. Although the men had suspended drivers' licenses, they were not operating their vehicles. The men were acting nervous, and one of the men behaved in a suspicious manner by bending down behind the car as if to tie his shoe. When the officers looked in the area where the man had bent down, they located a box containing what was later determined to be heroin. We held that this relatively innocuous behavior, considered as a whole, justified a brief investigatory stop of the defendants and that the officers acted in a reasonable manner under Article 1, Section 11. *Glasgow*, 99 N.E.3d at 259.

[51] Here, the police here were looking for suspects and a car involved in a recent, violent crime. Parker's car matched the description given over the radio, and Parker attempted to avoid being seen. The police action of stopping Parker's car to determine if he was involved in the burglary was reasonable under the totality of the circumstances. We expect police officers to stop a vehicle matching the description of a vehicle used in a robbery. We cannot expect officers to investigate all details before stopping a possible getaway car. This is not reasonable when responding to violent crimes and apprehending fleeing

suspects. Just because it was ultimately determined that Parker was not involved in the robbery does not negate the fact that the officers had reasonable articulable suspicion to effectuate a traffic stop of Parker's vehicle in a manner to protect police officers' lives. We, therefore, conclude that the stop of Parker did not violate his rights under Article 1, Section 11 of the Indiana Constitution.

Conclusion

[52] The trial court properly concluded that the federal district court's decision was not entitled to preclusive effect in Parker's state-court criminal case. The trial court also properly concluded that the stop of Parker's car was an investigatory stop that was based on reasonable suspicion supported by articulable facts. The stop did not become an arrest requiring probable cause simply because the officers drew their weapons and handcuffed Parker. The actions of the police here, therefore, did not violate Parker's rights under the Fourth Amendment. The actions of the police were also reasonable for purposes of Article 1, Section 11, under the totality of the circumstances. Accordingly, we affirm the judgment of the trial court.

[53] Affirmed.

Baker, Sr.J., and Najam, Sr.J., concur.