

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

K.S.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

August 6, 2021

Court of Appeals Case No.
21A-JV-313

Appeal from the Marion Superior
Court

The Honorable Mark Jones, Judge

The Honorable Ryan Gardner,
Magistrate

Trial Court Cause No.
49D15-2008-JD-722

May, Judge.

[1] K.S. appeals following his adjudication as a delinquent for committing an act that, if committed by an adult, would constitute the offense of carrying a handgun without a license.¹ K.S. raises one issue, which we restate as two:

1. Whether the officer, who stopped the vehicle in which K.S. was a passenger, initiated the traffic stop based on an objectively reasonable interpretation of a city ordinance governing the hours of operation for city parks, as required by the Fourth Amendment; and
2. Whether the traffic stop and subsequent search and detention were reasonable under the totality of the circumstances as required by Article 1, Section 11 of the Indiana Constitution.

We affirm.

Facts and Procedural History

[2] While on patrol before dawn on August 30, 2020, Officer Mitchele Harris and Officer G. Milburn² of the Indianapolis Metropolitan Police Department saw two vehicles parked with their headlights off in a parking lot located inside Brookside Park. Officer Harris drove the officers' patrol car into the parking lot, and each of the vehicles illuminated its headlights. The two vehicles then started driving away from the parking lot, and Officer Harris initiated a traffic

¹ Ind. Code § 35-47-2-1.

² Officer Milburn's full first name is not listed in the record.

stop of the trailing vehicle. Officer Harris believed the occupants of the vehicle had violated a local ordinance prohibiting entry into public parks when the parks are closed.

[3] K.S. was one of five individuals inside the stopped vehicle. As Officer Harris approached the vehicle, he smelled an odor that he believed was marijuana. He asked the occupants if there were any drugs or guns in the car, and the occupants indicated there were none. Officer Harris then asked the occupants of the vehicle to exit the vehicle so that he and Officer Milburn could search it. At this point, a female passenger in the back seat started to have an “anxiety attack” and told the officers that a gun was under her leg. (Tr. Vol. II at 26.) The officers searched the vehicle and discovered a gun where the female passenger had been sitting. Officer Harris had all the occupants of the vehicle sit down on a curb, and when he started to question another passenger, K.S. admitted that the gun belonged to him. K.S. also relayed details regarding the brand of the gun and the number of bullets in the gun.

[4] On August 31, 2020, the State filed a petition alleging K.S. to be a delinquent child for committing an act that, if committed by an adult, would constitute carrying a handgun without a license.³ The trial court held a dispositional hearing on January 28, 2021. K.S. orally moved to suppress the firearm found during the traffic stop on the ground that the traffic stop was unconstitutional,

³ The State also alleged K.S. was delinquent for committing dangerous possession of a firearm, in violation of Indiana Code section 35-47-10-5, but the State subsequently dismissed that charge for lack of jurisdiction.

and the trial court held a hearing on the motion to suppress immediately preceding the dispositional hearing.

- [5] During the suppression hearing, Officer Harris testified that he initiated the traffic stop at “[a]pproximately 6:00 AM” on August 30, 2020. (*Id.* at 7.) Officer Harris explained he was taught in his police training that park patrons “can’t be in a park after dusk or before dawn.” (*Id.* at 8.) He stated that it was “[p]itch black” when he initiated the traffic stop. (*Id.* at 15.) K.S. argued that the traffic stop was unconstitutional because Officer Harris was mistaken about when the public park opened. K.S. argued that pursuant to Marion County Municipal Code 631-102 the park opened at 6:00 a.m., and Officer Harris therefore initiated the stop without witnessing an actual ordinance violation. The State asked the court to take judicial notice of the rules and regulations on the Indy Parks website, which stated that “park hours are dawn to dusk.” (*Id.* at 19.) The State argued K.S. was inside Brookside Park while the park was closed.
- [6] The trial court denied K.S.’s motion to suppress, and the matter proceeded to a dispositional hearing. K.S. renewed his objection to the stop during the dispositional hearing, and the trial court noted his objection. The trial court entered a true finding and placed K.S. on probation.

Discussion and Decision

[7] Even though K.S. originally moved to suppress the evidence gathered during the traffic stop, he appeals from a completed trial, and therefore we review the trial court's admission of the evidence at trial. *See Smith v. State*, 980 N.E.2d 346, 349 (Ind. Ct. App. 2012) (when appeal occurs after trial, court reviews admission of evidence at trial), *trans. denied*. A trial court retains broad discretion to rule on the admission of evidence, and we generally review such decisions for an abuse of discretion. *Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014). "An abuse of discretion occurs when the trial court's ruling is clearly against the logic and effect of the facts and circumstances" before the court. *Bryant v. State*, 802 N.E.2d 486, 494 (Ind. Ct. App. 2004), *trans. denied*. "But when an appellant's challenge to such a ruling is predicated on an argument that impugns the constitutionality of the search or seizure of the evidence, it raises a question of law, and we consider that question de novo." *Guilmette*, 142 N.E.3d at 40-1.

[8] K.S. contends the traffic stop was unconstitutional because he did not commit an ordinance violation. Marion County Municipal Code 631-102 provides:

(a) During the season, when so declared by the board of the department of parks and recreation, Garfield Public Park shall be open to the public from 6:00 a.m. until 10:00 p.m., and all other public parks shall be open from 6:00 a.m. until 11:00 p.m.; however, upon written order of the director or on special occasions, the hours may be changed and fixed generally different from such specified hours.

(b) It shall be unlawful for any person, other than an employee of the city in the course of his employment, or except while

traveling on an established roadway through a park, to be or remain in any park during any time it is not open, or to use any park at any time for any unlawful meetings or purposes.

K.S. relies on the language of this ordinance to argue he was legally inside the park at 6:00 a.m., and therefore, he argues Officer Harris could not lawfully stop him.

I. Fourth Amendment

[9] The Fourth Amendment to the United States Constitution protects citizens from unreasonable searches and seizures.⁴ U.S. Const. Amend. IV. However, the Fourth Amendment allows a police officer to conduct a warrantless, brief seizure of a motor vehicle if the officer has reasonable suspicion the driver committed a traffic violation or that other criminal activity is afoot. *Doctor v. State*, 57 N.E.3d 846, 853 (Ind. Ct. App. 2016). This includes a traffic stop for an ordinance violation. Ind. Code § 34-28-5-3 (“Whenever a law enforcement officer believes in good faith that a person has committed an infraction or ordinance violation, the law enforcement officer may detain that person for a

⁴ The Fourth Amendment 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.

time sufficient to: (1) inform the person of the allegation; (2) obtain the person's (A) name, address, and date of birth; or (B) driver's license, if in the person's possession; and (3) allow the person to execute a notice to appear.”).

[10] In *Heien v. North Carolina*, the Supreme Court of the United States held that if an officer initiates a traffic stop based on a mistaken interpretation of a traffic law, the stop does not run afoul of the Fourth Amendment as long as the mistake was objectively reasonable. 574 U.S. 54, 66, 135 S. Ct. 530, 539 (2014). A stop based on a mistake of law that is not objectively reasonable violates the Fourth Amendment. See *Darringer v. State*, 46 N.E.3d 464, 474 (Ind. Ct. App. 2015) (holding officer's mistaken belief that interim license plate was required to be attached to bumper was not an objectively reasonable mistake of law justifying traffic stop). K.S. argues the park ordinance unambiguously laid out the park's operating hours as from 6:00 a.m. to 11:00 p.m. Therefore, K.S.'s argument continues, Officer Harris' belief that the park was closed from dusk to dawn was not objectively reasonable.

[11] However, we need not decide whether Officer Harris' belief was objectively reasonable because he had reasonable suspicion that K.S. was in Brookside Park before it opened, whether the park opened at dawn or 6:00 a.m. Officer Harris came across the two vehicles in the Brookside Park parking lot before sunrise. The cars had their headlights off, and Officer Harris testified that they were parked “kind of deep in the parking lot.” (Tr. Vol. II at 23.) Officer Harris did not witness the vehicles enter the parking lot, so it is not clear how long the vehicles were in the parking lot before he first noticed them. However,

the vehicles were there long enough to find parking spots, park, and turn off their headlights. Therefore, if Officer Harris initiated the traffic stop at 6:00 a.m., then the vehicles had to have been in the park before 6:00 a.m. Thus, the traffic stop did not violate K.S.'s rights under the Fourth Amendment because Officer Harris had reason to believe the vehicle occupants had violated a city ordinance prohibiting park entry when the park is closed. *See Marshall v. State*, 117 N.E.3d 1254, 1261 (Ind. 2019) (holding officer had reasonable suspicion to initiate traffic stop for speeding even though officer did not record vehicle's speed), *cert. denied*, 140 S. Ct. 113 (2019).

II. Article 1, Section 11 of the Indiana Constitution

[12] Further, K.S. contends the traffic stop violated his rights under the Indiana Constitution. Article 1, Section 11 of the Indiana Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

We review the legality of a search or seizure under the Indiana Constitution by assessing the search's reasonableness under the totality of the circumstances. *Litchfield v. State*, 824 N.E.2d 356, 359 (Ind. 2005). This involves consideration 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.”
Id. at 361.

[13] Regarding the degree of concern, suspicion, or knowledge that a violation occurred, police officers are expected to “enforce and prevent the violation of all laws in force in the city.” Ind. Code § 36-8-3-10. Officer Harris came across a vehicle parked in a park before sunrise on August 30, 2020, and he initiated a traffic stop because he believed the occupants of the vehicle had violated a city ordinance. He smelled the odor of marijuana as he approached the vehicle, and he subsequently learned that there was a gun inside the car. Therefore, Officer Harris had a high degree of concern or suspicion to initiate the stop and search the vehicle. *See Alexander-Woods v. State*, 163 N.E.3d 902, 912 (Ind. Ct. App. 2021) (holding officer had high degree of concern defendant was engaged in illegal activity justifying search of vehicle when officer lawfully stopped vehicle for speeding, smelled odor of marijuana, saw incriminating evidence in plain view, and observed defendant make furtive movements), *trans. denied*.

[14] A short traffic stop generally represents a minimal degree of intrusion. *See Veerkamp v. State*, 7 N.E.3d 390, 396 (Ind. Ct. App. 2014) (holding degree of intrusion was minimal when officer initiated short traffic stop), *reh'g denied, trans. denied*. A traffic stop may be reasonably prolonged to allow for continued investigation. *See Browder v. State*, 77 N.E.3d 1209, 1218 (Ind. Ct. App. 2017) (holding officer reasonably prolonged traffic stop to question driver regarding whether vehicle was stolen), *trans. denied*. The initial stop was minimally intrusive as the vehicle pulled over almost immediately after Officer Harris

activated the patrol vehicle's lights and siren. The seizure became more intrusive when Officer Harris ordered the occupants out of the vehicle, questioned the passengers, and arrested K.S. However, these intrusions were justified by the law enforcement need to investigate the source of the odor of marijuana and the information Officer Harris learned about a gun inside the vehicle. Therefore, based on the totality of the circumstances, we hold the traffic stop and subsequent search of the vehicle was reasonable under the Indiana Constitution. *See Farris v. State*, 144 N.E.3d 814, 821-22 (Ind. Ct. App. 2020) (holding traffic stop, search, and detention of driver for possession of marijuana and carrying a handgun without a license was reasonable under Indiana Constitution), *trans. denied*.

Conclusion

[15] Whether Brookside Park opened at 6:00 a.m. or dawn, Officer Harris reasonably suspected that K.S. was in a vehicle inside the park before it opened, in violation of Marion County Municipal Code 631-102. Police officers are required to enforce the laws in effect in a city, including city ordinances, and the duration of the traffic stop was reasonably extended when the officer discovered evidence of further illegal activity. Therefore, the traffic stop of the vehicle was constitutional, and the trial court did not err in admitting into evidence the gun found during the search of the vehicle. We affirm.

[16] Affirmed.

Kirsch, J., and Vaidik, J., concur.