## MEMORANDUM DECISION




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# IN THE COURT OF APPEALS OF INDIANA

N.F.,
*Appellant-Respondent*

v.

State of Indiana,
*Appellee-Petitioner.*

November 30, 2023

Court of Appeals Case No. 23A-JV-497

Appeal from the Marion Superior Court

The Honorable Geoffrey A. Gaither, Judge

Trial Court Cause No. 49D09-2210-JD-7864

**Memorandum Decision by Judge Pyle**

Judges Vaidik and Mathias concur.

**Pyle, Judge.**

## Statement of the Case

[1] N.F. ("N.F.") appeals following his adjudication as a delinquent child for what would be Class A misdemeanor dangerous possession of a firearm[1] and Class A misdemeanor unlawful carrying of a handgun[2] if committed by an adult. N.F. argues that the trial court abused its discretion when it admitted evidence in violation of the Fourth Amendment and Article 1, Section 11 of the Indiana Constitution. Finding no error, we affirm the juvenile court's adjudication.

[2] We affirm and remand with instructions.

## Issue

> Whether the juvenile court abused its discretion when it admitted evidence.

## Facts

[3] On the evening of October 14, 2022, Indianapolis Metropolitan Police Department Officer Jonathan Willey ("Officer Willey") and Detective Sara Didandeh ("Detective Didandeh") initiated a traffic stop on an SUV with an expired license plate. Officer Willey approached the SUV on the driver's side, and Detective Didandeh approached on the passenger's side. Officer Willey and Detective Didandeh smelled raw marijuana in the car, and Officer Willey asked the driver to exit the SUV. Officer Willey handcuffed the driver and

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[1] IND. CODE § 35-47-10-5.

[2] I.C. § 35-47-2-1.5.

asked him if he had any weapons. The driver responded that he had a knife, but Officer Willey was unable to locate the knife. The driver also admitted that he had smoked marijuana an hour ago, had "half a joint" in a cigarette pack, and did not have a valid driver's license. (State's Ex. 1).

[4] At the same time, Detective Didandeh ordered N.F. out of the SUV and asked him to face the SUV. N.F. exited the SUV, but he would not turn around and face the SUV, would not allow Detective Didandeh to grab his wrists, pulled away from Detective Didandeh, and would not comply with her orders. N.F., who was on the phone with his mother, continued to pull away from Detective Didandeh. Officer Patrick Scott ("Officer Scott") then arrived and assisted Detective Didandeh with placing N.F. in handcuffs. Detective Didandeh, while patting N.F. down, found a handgun on N.F.'s right hip.

[5] The State charged N.F. with what would have been Class A misdemeanor dangerous possession of a firearm, Class A misdemeanor unlawful carrying of a handgun, and Class A misdemeanor resisting law enforcement if committed by an adult. The juvenile court held a fact-finding hearing in January 2023. The juvenile court heard the facts as set forth above. Additionally, Detective Didandeh testified that she had asked N.F. to step out of the SUV because she had detected the odor of marijuana. She also testified that she had heard the driver tell Officer Willey that he had a knife. Detective Didandeh further testified that she "was going to pat down for any narcotics or also officer safety issues. Usually when there are narcotics or drugs there are weapons." (Tr. at 30). N.F. objected to the admission of evidence that resulted from the patdown

search under the Fourth Amendment of the United States Constitution and under Article 1, Section 11 of the Indiana Constitution. The juvenile court overruled N.F.'s objection.

[6] At the conclusion of the hearing, the juvenile court entered true findings for the Class A misdemeanor dangerous possession of a firearm and Class A misdemeanor unlawful carrying of a handgun allegations. The juvenile court entered a not true finding for the Class A misdemeanor resisting law enforcement allegation. The juvenile court merged the true findings and ordered N.F. into the custody of the Department of Child Services ("DCS").

[7] N.F. now appeals.

## Decision

[8] N.F. argues that the juvenile court abused its discretion when it admitted into evidence the handgun that officers found on N.F. because the patdown was in violation of the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution. We note that N.F. appeals following a completed trial. Thus, his appeal "is best framed as challenging the admission of evidence at trial[,]" rather than a denial of a motion to suppress. *Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013). We review the admission of evidence for an abuse of discretion, which occurs only when the admission is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights. *Id.* at 260. "We neither reweigh the evidence nor reevaluate the witnesses' credibility; rather, we view the evidence in the

light most favorable to the [judgment], and we will affirm that [judgment] unless we cannot find substantial evidence of probative value to support it." *Pierce v. State*, 29 N.E.3d 1258, 1265 (Ind. 2015). "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." *K.K. v. State*, 40 N.E.3d 488, 490-91 (Ind. Ct. App. 2015).

[9] The Fourth Amendment of the United States Constitution states that:

> 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.

U.S. CONST. AMEND. IV.

[10] "The fundamental purpose of the Fourth Amendment to the United States Constitution is to protect the legitimate expectations of privacy that citizens possess in their persons, their homes, and their belongings." *Taylor v. State*, 842 N.E.2d 327, 330 (Ind. 2006). This protection has been "extended to the states through the Fourteenth Amendment." *Bradley v. State*, 54 N.E.3d 996, 999 (Ind. 2016). "As a deterrent mechanism, evidence obtained in violation of this rule is generally not admissible in a prosecution against the victim of the unlawful search or seizure absent evidence of a recognized exception." *Clark*, 994 N.E.2d at 260. "When a search is conducted without a warrant, the State

has the burden of proving that an exception to the warrant requirement existed at the time of the search." *Bradley*, 54 N.E.3d at 999 (quotation marks and citations omitted).

[11] One exception allows officers "to conduct seizures in the presence of reasonable suspicion to pat-down clothing of individuals for possible weapons." *Berry v. State*, 121 N.E.3d 633, 637 (Ind. Ct. App. 2019), *trans. denied*. "Upon review, courts 'cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest.'" *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 24 (1968)). "This narrowly drawn authority 'permit[s] a reasonable search for weapons for the protection of the police officer, where [s]he has reason to believe that [s]he is dealing with an armed and dangerous individual, regardless of whether [s]he has probable cause to arrest the individual for a crime.'" *Berry*, 121 N.E.3d at 637 (quoting *Terry*, 392 U.S. at 27). The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent [wo]man in the circumstances would be warranted in the belief that h[er] safety or that of others was in danger. *Berry*, 121 N.E.3d at 637 (internal quotation marks and citation omitted).

[12] "The search, however, must be confined 'strictly to what [is] minimally necessary to learn whether [an individual is] armed and to disarm them' once a weapon or weapons are discovered." *Id.* (quoting *Terry*, 392 U.S. at 30). "A search for weapons in the absence of probable cause to arrest, however, must, like any other search, be strictly circumscribed by the exigencies which justify

its initiation." *Berry*, 121 N.E.3d at 637 (internal citations omitted). "[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21. "Simple good faith on the part of the arresting officer is not enough." *Id.* at 22 (cleaned up). When there is evidence of drug use "and other evidence reveal[s] that the situation could be dangerous[,]" a patdown for officer safety is justified. *Johnson v. State*, 157 N.E.3d 1199, 1205 (Ind. 2020) (citing *Durstock v. State*, 113 N.E.3d 1272, 1277 (Ind. Ct. App. 2018), *trans. denied*), *cert. denied*.

[13] Here, our review of the record reveals that Detective Didandeh had the reasonable suspicion required to conduct a patdown of N.F.'s person. After conducting a lawful traffic stop at night in downtown Indianapolis, Officer Didandeh smelled raw marijuana when she approached the SUV. Further, the driver of the SUV stated that he had a knife. Also, Detective Didandeh testified that she "was going to pat down for any narcotics or also officer safety issues. Usually when there are narcotics or drugs there are weapons." (Tr. at 30). Finally, N.F. had refused to comply with Detective Didandeh's and Officer Scott's order to step out of and face the SUV. The smell of raw marijuana in the SUV, the potential presence of a weapon in the SUV, and N.F.'s reluctance to comply with Detective Didandeh's order to face the SUV taken together, appropriately formed the reasonable suspicion to conduct the patdown for officer safety. We find no violation of the Fourth Amendment.

[14] N.F. also challenges the pat down under Article 1, Section 11 of the Indiana Constitution, which also provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated[.]" IND. CONST. ART. 1, § 11. "The purpose of this section is to protect those areas of life that Hoosiers consider private from unreasonable police activity." *State v. Washington*, 898 N.E.2d 1200, 1206 (Ind. 2008), *reh'g denied*. Although Article 1, Section 11 of the Indiana Constitution contains language nearly identical to the Fourth Amendment of the United States Constitution, we interpret Article 1, Section 11 independently. *See Shotts v. State*, 925 N.E.2d 719, 726 (Ind. 2010). "[W]e focus on the actions of the police officer, and employ a totality-of-the-circumstances test to evaluate the reasonableness of the officer's actions." *Austin v. State*, 997 N.E.2d 1027, 1034 (Ind. 2013) (internal quotation and citation omitted). The reasonableness of a law enforcement officer's search or seizure requires balancing three factors: (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 citizen's ordinary activities; and (3) the extent of law enforcement needs. *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005).

[15] Here, the degree of concern, suspicion, or knowledge that a violation has occurred is high. Officer Willey and Detective Didandeh initiated a lawful traffic stop on an SUV with expired plates at night in downtown Indianapolis. When Officer Willey and Detective Didandeh approached the SUV, they smelled raw marijuana. The strong odor of marijuana establishes a high degree

of suspicion of criminal activity. *Moore v. State*, 211 N.E.3d 574, 582 (Ind. Ct. App. 2023).

[16] Next, the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities was low. Detective Didandeh patted down the outside of N.F.'s clothing for officer safety and found the handgun on N.F.'s hip. The patdown was conducted because of the odor of marijuana in the SUV and the driver's admission to having a weapon. "An ordinary pat-down of the outside of a suspect's clothing is a fairly limited intrusion for the purposes of the Indiana Constitution." *Berry*, 121 N.E.3d at 639 (internal quotation marks and citations omitted).

[17] Finally, the extent of law enforcement needs was high. Officers detected the odor of raw marijuana in the SUV in which N.F. was a passenger, the driver had admitted to a weapon being present, and N.F. had refused to cooperate with Detective Didandeh's orders. The totality of the circumstances weighs in favor of the State. Accordingly, we hold that the patdown of N.F.'s clothing did not violate the Indiana Constitution. Thus, because the patdown did not violate either the Fourth Amendment to the United States Constitution or Article 1, Section 11 of the Indiana Constitution, the juvenile court did not err when it admitted into evidence the handgun found on N.F.'s hip during the patdown search.

[18] Lastly, we note that the juvenile court entered the true findings for both Class A misdemeanor dangerous possession of a firearm and Class A misdemeanor

unlawful carrying of a handgun, then merged the Class A misdemeanor unlawful carrying of a handgun finding. However, merging true findings alone does not remedy double jeopardy violations. *Gregory v. State*, 885 N.E.2d 697, 703 (Ind. Ct. App. 2008) (holding that vacating one of the convictions cures double jeopardy violations), *trans. denied*. Thus, we remand to the juvenile court to amend its sentencing order by vacating the Class A misdemeanor unlawful carrying of a handgun finding.

[19] Affirmed and remanded with instructions.

Vaidik, J., and Mathias, J., concur.