## MEMORANDUM DECISION





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# IN THE COURT OF APPEALS OF INDIANA

J.B.,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff.*

December 5, 2023

Court of Appeals Case No. 23A-JV-108

Appeal from the Huntington Circuit Court

The Honorable Amy C. Richison, Magistrate

Trial Court Cause No. 35C01-2208-JD-33

**Memorandum Decision by Judge Kenworthy**
Judges Bailey and Tavitas concur.

**Kenworthy, Judge.**

## Case Summary

[1] J.B. appeals his delinquency adjudication for dealing in marijuana,[1] a Class A misdemeanor if committed by an adult, and dangerous possession of a firearm,[2] a Class A misdemeanor. J.B. raises one issue for our review: Did the trial court admit evidence in violation of his rights under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution? Discerning no violation, we affirm.

## Facts and Procedural History

[2] Police received a report of juveniles smoking marijuana at a skatepark. The skatepark was known as a place where juveniles "d[id] illegal activity, as in drugs." *Tr. Vol. 2* at 141. Officer Cody Egner with the Huntington City Police Department was dispatched and arrived at the skatepark within minutes. There, he first spoke with a group of juveniles situated in the center of the skatepark. A.S.—a juvenile in this first group—denied having marijuana and "directed and pointed [Officer Egner's] attention to some kids behind a skate ramp[.]" *Id.* at 57. A.S. informed Officer Egner those juveniles had marijuana.

[3] Officer Egner quickly located this second group—including J.B.—and explained to them why he was there and what he was investigating. Officer Egner asked whether the group had marijuana, and J.B. mentioned the group

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[1] Ind. Code § 35-48-4-10(a)(2) (2018).

[2] I.C. § 35-47-10-5(a) (2014).

had already smoked their marijuana. Then, Officer Egner and J.B. stepped "roughly ten yards away from the other juveniles" and had a one-on-one conversation. *Id.* at 145. Officer Egner did not tell J.B. he was being detained or otherwise physically restrict his movement. During this conversation, J.B. "seemed calm, but a little bit nervous" and provided Officer Egner with his mother's phone number. *Id.* at 144. Officer Egner called J.B.'s mother from his cell phone, but she did not answer.

[4] Around this time, Officer Egner's colleague—Officer Clayton Moore—arrived at the skatepark. After Officer Egner briefly filled him in, Officer Moore remained with J.B. and noticed he "was kind of shaky," "holding his backpack straps very tightly," and acting like "he had something to hide[.]" *Id.* at 161. Because of J.B.'s body language, Officer Moore asked J.B. whether he had "anything illegal in his backpack." *Id.* Officer Moore repeated his question two or three times. Each time, J.B. did not answer.

[5] While standing with Officer Moore, J.B. contacted his mother using his own cell phone. Officer Moore spoke with J.B.'s mother on J.B.'s cell phone and "gave her a rundown of what the situation was, why [the officers] were there, and . . . asked her if she would be okay with [Officer Moore] searching [J.B.'s] backpack." *Id.* at 188. J.B.'s mother gave Officer Moore consent to search her son's backpack. Once he finished his conversation with J.B.'s mother, Officer Moore instructed J.B. to take "a couple more steps away" from the rest of the group. *Id.* at 83. Officer Moore informed J.B. of his mother's consent and "asked him one more time if he had anything illegal in his backpack." *Id.* at 84.

This time, J.B. told Officer Moore he had a firearm in his backpack. As instructed, J.B. took off his backpack and placed it on the ground. By this point, about ten to fifteen minutes had passed since Officer Egner first arrived on scene and Officer Moore had been with J.B. for "probably five minutes or less." *Id.* at 151.

[6] When searching J.B.'s backpack, Officer Moore immediately located an unloaded, holstered firearm laying on top of a smell-proof "stash bag." *Id.* at 172. Inside the "stash bag" were four plastic bags, containing a total of about sixteen grams of marijuana. Additionally, Officer Moore found a scale with "greenish brown plant material residue," a balaclava face mask, and close to one hundred empty "sandwich baggies." *Id.* at 175–76. The officers took J.B. into custody and searched him. They recovered J.B.'s cell phone, an electronic smoking device, and a "large amount" of cash from J.B.'s person. *Id.* at 153. J.B.'s interaction with the police lasted roughly twenty-five minutes from start to finish.

[7] The State filed a petition alleging J.B. was delinquent for committing two acts: dealing in marijuana and dangerous possession of a firearm. J.B. moved to suppress all evidence obtained from the search of his backpack. The trial court denied his motion. At the delinquency hearing, J.B. objected to the admission of his statement concerning the presence of the firearm in his backpack and any evidence derived therefrom. J.B. contended he was in custody and police

violated his constitutional rights by not providing him with *Miranda* warnings.[3] Finding J.B. was not in custody when he made his statement, the trial court overruled his objection. Following the evidentiary hearing, the trial court entered a true finding against J.B. on both allegations. The court placed J.B. on probation. J.B. now appeals.

## Admission of Evidence Did Not Violate J.B.'s Fourth Amendment or Article 1, Section 11 Rights

[8] J.B. argues the trial court erred in admitting into evidence the items seized from his backpack.[4] More specifically, J.B. claims the evidence should not have been admitted because it was obtained in violation of the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. Trial courts have discretion regarding the admission of evidence, and although "we assess claims relating to admitting or excluding evidence for abuse of discretion, to the extent those claims implicate constitutional issues, we review them de novo." *Ramirez v. State*, 174 N.E.3d 181, 189 (Ind. 2021); *see also Carpenter*, 18 N.E.3d at 1001 (noting the "ultimate determination of the constitutionality of a search or seizure is a question of law that we consider de novo").

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[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[4] Although J.B. frames his appeal as a challenge to the trial court's denial of his prehearing suppression motion, he did not seek interlocutory appeal of that decision. Thus, "we consider his appeal as what it is: a request to review the court's decision to admit the evidence at [his hearing]." *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014).

### *1. Admission of Evidence Did Not Violate the Fourth Amendment*

[9] J.B. claims the police violated his Fourth Amendment right to be free from unreasonable searches and seizures. His argument is two-fold. First, J.B. contends the police lacked reasonable suspicion to stop and question him. *See Appellant's Br.* at 13. Second, even if the police had reasonable suspicion, J.B. argues, he was in custody, so police violated his constitutional rights by not providing him with additional warnings. *See id.* at 17.

[10] The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" U.S. Const. amend. IV. Generally, the Fourth Amendment requires warrants for searches and seizures, and any "warrantless search or seizure is per se unreasonable." *Johnson v. State*, 157 N.E.3d 1199, 1203 (Ind. 2020) (quoting *Jacobs v. State*, 76 N.E.3d 846, 850 (Ind. 2017)). "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 v. State*, 994 N.E.2d 252, 260 (Ind. 2013); *see also Johnson*, 157 N.E.3d at 1203 (explaining the State can "overcome this bar to admission by proving 'that an exception to the warrant requirement existed at the time of' a warrantless search") (quoting *Bradley v. State*, 54 N.E.3d 996, 999 (Ind. 2016)).

#### *A. Police had Reasonable Suspicion J.B. was Engaged in Criminal Activity*

[11] J.B. argues the police lacked reasonable suspicion he was engaged in criminal activity. The *Terry* stop is "perhaps the most popular exception" to the warrant requirement. *Robinson v. State*, 5 N.E.3d 362, 367 (Ind. 2014); *Terry v. Ohio*, 392 U.S. 1 (1968). Under *Terry*, a law enforcement officer may briefly stop a person for investigatory purposes if the officer "observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot[.]" *Terry*, 392 U.S. at 30. Although this type of stop requires less than probable cause, an officer's reasonable suspicion must be more than a hunch: "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Id.* at 21; *see also U.S. v. Arvizu*, 534 U.S. 266, 274 (2002) (stating "the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard").

[12] The concept of reasonable suspicion "is somewhat abstract," and has not been reduced to a "neat set of legal rules." *Arvizu*, 534 U.S. at 274 (quotations omitted). Rather, an examining court "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *Id.* at 273; *see also Clark*, 994 N.E.2d at 264 ("[T]he totality of the circumstances—the whole picture—must be taken into account.") (quoting *U.S. v. Cortez*, 449 U.S. 411, 417 (1981)). In the end, determining whether reasonable suspicion exists is a "fact-sensitive inquiry." *Clark*, 994 N.E.2d at 264.

[13] Applying these principles, we determine the officers had reasonable suspicion to believe criminal activity was afoot. Police received a call reporting juveniles in the skatepark had marijuana. Although "an anonymous tip alone is not likely to constitute the reasonable suspicion necessary for a valid *Terry* stop," *Lampkins v. State*, 682 N.E.2d 1268, 1271 (Ind. 1997) (citing *Alabama v. White*, 496 U.S. 325, 329–30 (1990)), here there was more. Upon his arrival, Officer Egner spoke with A.S. who "directed and pointed [Officer Egner's] attention" to J.B.'s group. *Tr. Vol. 2* at 57. And A.S. indicated the group had marijuana. *See Johnson*, 157 N.E.3d at 1204 ("Because 'informants who come forward voluntarily are ordinarily motivated by good citizenship or a genuine effort to aid law enforcement officers in solving a crime,' *Duran v. State*, 930 N.E.2d 10, 17 (Ind. 2010), there is scant reason to doubt the veracity of [the disinterested third party's] account.")

[14] The skatepark was also known as an area where juveniles engaged in illegal activity, such as using drugs. And "presence in a high-crime area can be considered as a factor in the totality of the circumstances confronting an officer at the time of a stop." *Bridgewater v. State*, 793 N.E.2d 1097, 1100 (Ind. Ct. App. 2003), *trans. denied*. Additionally, when speaking with J.B., the officers noticed he was "a little nervous," "kind of shaky," "holding his backpack straps very tightly," and acting like "he had something to hide." *Tr. Vol. 2* at 144, 161. Although it is "not at all unusual that a citizen may become nervous when confronted by law enforcement officials," nervousness—when accompanied by other evidence of criminal activity—may indicate potential wrongdoing. *State*

*v. Quirk*, 842 N.E.2d 334, 341 (Ind. 2006). Based on the totality of the circumstances, the officers had reasonable suspicion J.B. was engaged in criminal activity.

### *B. J.B. Was Not Subject to Custodial Interrogation When Initially Questioned by Officer Egner*

[15] J.B. claims even if the police had reasonable suspicion to conduct a *Terry* stop, the police still violated his constitutional rights.[5] More specifically, J.B. argues he was "in custody" when Officer Egner first questioned him about his marijuana usage. *Appellant's Br.* at 15–16. In J.B.'s view, police were required to provide him with additional warnings before proceeding.[6]

[16] Whether J.B. was in custody is a mixed question of fact and law. *State v. E.R.*, 123 N.E.3d 675, 679 (Ind. 2019), *cert. denied*. The circumstances surrounding J.B.'s questioning are matters of fact, and whether those facts amount to *Miranda* custody is a question of law. *Id.* We defer to the trial court's factual findings and review the legal question de novo. *Id.*

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[5] Although J.B. argues police violated his Fourth Amendment rights, *Miranda* is based upon the Fifth Amendment. And to the extent J.B. argues a seizure under the Fourth Amendment is akin to custody under the Fifth Amendment, we disagree. *See Meredith v. State*, 906 N.E.2d 867, 873 (Ind. 2009) (explaining a person "seized" by police and momentarily not free to go is ordinarily not considered in custody).

[6] J.B. also briefly mentions *Pirtle v. State*, 323 N.E.2d 634, 640 (Ind. 1975) (holding "a person who is asked to give consent to search while in police custody is entitled to the presence and advice of counsel prior to making the decision whether to give such consent" and that right, if waived, must be explicitly waived). But J.B. has not made a cogent argument regarding this issue, thereby waiving any contention the search of his backpack violated *Pirtle*. *See* Ind. Appellate Rule 46(A)(8) (requiring cogent argument).

[17] Under *Miranda*, "a person questioned by law enforcement officers after being 'taken into custody or otherwise deprived of his freedom of action in any significant way' must first 'be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.'" *Stansbury v. California*, 511 U.S. 318, 322 (1994) (per curiam) (quoting *Miranda*, 384 U.S. at 444). "The trigger to require the announcement of *Miranda* rights is custodial interrogation." *State v. Brown*, 70 N.E.3d 331, 335 (Ind. 2017).

[18] Custody is "a term of art that specifies circumstances that are thought generally to present a *serious* danger of coercion." *State v. Diego*, 169 N.E.3d 113, 117 (Ind. 2021) (quoting *Howes v. Fields*, 565 U.S. 499, 508–09 (2012)), *cert. denied*. Two criteria must be met for a suspect to be in custody under *Miranda*. *Id.* First, the person's freedom of movement must be "curtailed to the degree associated with formal arrest." *Id.* (quoting *E.R.*, 123 N.E.3d at 680). And second, the person must undergo "the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Id.* (quoting *E.R.*, 123 N.E.3d at 680). With this test in mind, we resolve J.B.'s claim under the first of the two criteria: the freedom-of-movement inquiry.[7]

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[7] Clearly, for custodial interrogation to occur, there must be an interrogation. For *Miranda* purposes, "interrogation" constitutes "questions, words, or actions that the officer knows or should know are reasonably likely to elicit an incriminating response." *Brown*, 70 N.E.3d at 335. Here, we need not determine whether J.B. was subject to interrogation because we conclude he was not in custody. Therefore, his *Miranda* rights were not implicated. *See Diego*, 169 N.E.3d at 114 (emphasizing *Miranda* warnings are only required when a person is in custody).

[19] Freedom of movement is curtailed when a "reasonable person would feel not free to terminate the interrogation and leave." *Id.* (quoting *E.R.*, 123 N.E.3d at 680). The "benchmark for this inquiry is whether the level of curtailment is akin to formal arrest." *Id.* When making this determination, courts examine the totality of the circumstances surrounding the interrogation, including "the location, duration, and character of the questioning; statements made during the questioning; the number of law-enforcement officers present; the extent of police control over the environment; the degree of physical restraint; and how the interview begins and ends." *Id.* (quoting *E.R.*, 123 N.E.3d at 680). Additionally, a child's age is an individual characteristic which is appropriate for consideration under the objective custody test. *See J.D.B. v. North Carolina*, 564 U.S. 261, 277 (2011) (holding "so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test").

[20] We begin by noting J.B.'s age as part of our objective analysis. Here, Officer Egner responded to a report of juveniles smoking marijuana at the skatepark. And he knew juveniles often visited the skatepark and would partake in using illegal drugs. Additionally, Officer Egner attempted to contact the juveniles' parents and inform them of the situation—an act displaying his belief he was dealing with minors. Thus, J.B.'s age is rightfully a circumstance considered under our objective test.

[21] Officer Egner encountered J.B.—and several other juveniles—in a public skatepark. Although Officer Egner eventually spoke to J.B. individually, their initial conversation—the only one challenged by J.B. on appeal—took place while Officer Egner addressed J.B.'s entire group. Furthermore, very early in his interaction with Officer Egner, who, at this point was the only officer on scene, J.B. mentioned the group had smoked marijuana. Officer Egner did not restrain J.B. or otherwise restrict his movement. And Officer Egner did not inform J.B. he was not free to leave. Considering the totality of the circumstances, J.B.'s freedom of movement was not curtailed to the level associated with formal arrest; thus, police were not required to provide him *Miranda* warnings.[8]

***2. Admission of Evidence Did Not Violate Article 1, Section 11***

[22] J.B. also contends the search and seizure was unreasonable based on the totality of the circumstances; thereby violating his rights under Article 1, Section 11 of Indiana's Constitution. The pertinent portion of Section 11 states: "The 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.

[8] Under Indiana Code Section 31-32-5-1, a juvenile's constitutional rights may be waived by the child's parent, guardian, custodian, or guardian ad litem only if, among other things, "meaningful consultation has occurred between that person and the child." If the State fails to adhere to the statute's requirements, the State cannot use any of the statements as evidence. *B.A. v. State*, 100 N.E.3d 225, 231 (Ind. 2018). But on appeal, J.B. has not argued lack of meaningful consultation between him and his mother. J.B. has thus waived any such contention surrounding his mother's consent to the search of his backpack. *See* Ind. Appellate Rule 46(A)(8).

Although the language of Section 11 is nearly identical to its federal counterpart, our courts interpret the state provision "independently and ask whether the State has shown that a particular search or seizure was reasonable based on the totality of the circumstances." *Ramirez*, 174 N.E.3d at 191. In doing so, we use the framework set forth in *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005). We determine the reasonableness of a law enforcement officer's search or seizure by 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." *Id.* at 361. "When weighing these factors as part of our totality-of-the-circumstances test, we consider the full context in which the search or seizure occurs." *Hardin v. State*, 148 N.E.3d 932, 943 (Ind. 2020), *cert. denied*.

[23] We begin by evaluating the law-enforcement officers' "degree of concern, suspicion, or knowledge that a violation has occurred." *Litchfield*, 824 N.E.2d at 361. In doing so, we consider all the information available to the officers at the time of the search or seizure. *Hardin*, 148 N.E.3d at 943. Here, the degree of suspicion was high. Police received a call stating juveniles had marijuana in the skatepark. Once Officer Egner arrived, he spoke with A.S., who confirmed where the juveniles with marijuana were located. And, early in J.B. and Officer Egner's conversation, J.B. relayed the group had recently smoked marijuana. Therefore, law-enforcement officers' degree of concern, suspicion, or knowledge that a violation of the law occurred was high.

[24] Next, we consider "the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities." *Litchfield*, 824 N.E.2d at 361. We measure the degree of intrusion from the defendant's point of view, considering the "intrusion into both the citizen's physical movements and the citizen's privacy." *Hardin*, 148 N.E.3d at 944. Additionally, we focus on the degree of intrusion caused by the method of search or seizure. *Id.* at 945. Police encountered J.B. at the skatepark—a public place. J.B. was with three friends. Although at one point Officer Egner spoke one-on-one with J.B. "roughly ten yards away from the other juveniles," most of the conversation was in a group setting. *Tr. Vol. 2* at 145. The intrusion was also brief. Before J.B. informed Officer Moore he had a firearm in his backpack, the pair spoke for "probably five minutes or less." *Id.* at 151. In total, J.B.'s interaction with Officers Egner and Moore lasted twenty to twenty-five minutes. The degree of intrusion was minimal.

[25] Under the final *Litchfield* factor, we review the extent of law-enforcement needs "to act in a general way" and "to act in the particular way and at the particular time they did." *Hardin*, 148 N.E.3d at 946–47. Law enforcement has—and J.B. concedes—a need to protect minors and thwart crime where juveniles are likely to be.

[26] On balance, the minor intrusion here did not outweigh law-enforcement concerns and needs, and the search and seizure did not violate Article 1, Section 11 of Indiana's Constitution.

## Conclusion

[27] Because the trial court did not admit evidence in violation of J.B.'s Fourth Amendment or Article 1, Section 11 rights, we affirm.

[28] Affirmed.

Bailey, J., and Tavitas, J., concur.