MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

J.M.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 13, 2021

Court of Appeals Case No. 21A-JV-29

Appeal from the Marion County Superior Court, Juvenile Division

The Honorable Marilyn A. Moores, Judge

The Honorable Geoffrey A. Gaither, Magistrate

Trial Court Cause No. 49D09-2010-JD-854

Tavitas, Judge.

Case Summary

[1] J.M. appeals his juvenile adjudication for an act which would constitute carrying a handgun without a license if committed by an adult, a Class A misdemeanor. J.M. challenges the admission of a firearm found on J.M.'s person after he was stopped and searched by a Speedway Police Department officer. We find that the search and seizure of J.M. was not in violation of the Fourth Amendment to the United States Constitution or Article 1, Section 11 of the Indiana Constitution. Accordingly, we affirm the juvenile court's adjudication.

Issue

[2] J.M. raises one issue on appeal, which we restate as whether the juvenile court properly admitted the handgun found on J.M.'s person as a result of the officer's pat down of J.M.

Facts

[3] On October 18, 2020, Officer Nicolas May of the Speedway Police Department responded to a report of a car crash on 10th Street in Marion County. The report stated that motorists were drag racing in Ford Mustangs and that one of the Mustangs crashed. The report further specified that two males were

walking away from the crash and that one of the males was wearing a red garment.[1]

[4] Officer May, who was alone, arrived at the scene of the crash around 7:18 p.m. Although it was dark outside, Officer May saw a Mustang "off the side of the road in the grass" and two males walking eastbound at the intersection of 10th and Polco Streets. Tr. Vol. II p. 8. Officer May testified that one of the males was wearing a red sweatshirt and jeans as described by the report, and his companion was wearing a white t-shirt. The male in the red sweatshirt was later identified as eighteen-year-old Christian Trujillo, and the male in the white t-shirt was identified as sixteen-year-old J.M.

[5] Officer May activated the lights on his fully marked patrol vehicle and stepped out of the vehicle. Trujillo and J.M. approached Officer May, and as they did, Officer May observed the grip and magazine of a firearm protruding from Trujillo's right pocket. As a result, Officer May ordered Trujillo and J.M. to put their hands in the air, and they complied. Officer May secured Trujillo's firearm and placed him in handcuffs for officer safety because Officer May was the only officer at the scene. Officer May then conducted an external pat down of J.M.'s person for weapons. During the pat down, Officer May felt what he immediately

[1] At trial, Officer May testified that the report specified that one of the males was wearing a red jacket, but later in his testimony, he stated that Trujillo was "wearing a red sweatshirt as described by the [report]." Tr. Vol. II p. 8.

believed to be a firearm in J.M.'s pocket. Officer May secured the firearm and detained J.M. with handcuffs.

[6] On October 19, 2020, the State filed a petition alleging that J.M. was a delinquent child for acts committed which would constitute dangerous possession of a firearm and carrying a handgun without a license, if committed by an adult, Class A misdemeanors.

[7] On November 9, 2020, the juvenile court held a fact-finding hearing, and J.M. objected to the introduction of the firearm obtained during the pat down by Officer May. J.M. alleged that the stop and pat down violated his federal and state constitutional rights. After hearing arguments from both sides, the juvenile court overruled the objection. The juvenile court subsequently found the two alleged offenses to be true but "merge[d]" the offenses "for purposes of disposition." Tr. Vol. II p. 47.

[8] On November 18, 2020, the juvenile court dismissed the true finding for dangerous possession of a firearm in light of a recently decided Indiana Supreme Court case.[2] On December 8, 2020, the juvenile court ordered J.M. discharged to the custody of his father and placed him on probation. This appeal ensued.

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[2] The recently decided Indiana Supreme Court case was *K.C.G. v. State,* 156 N.E.3d 1281 (Ind. 2020). Our Supreme Court held that a juvenile court lacks subject matter jurisdiction to adjudicate a juvenile a delinquent for committing dangerous possession of a firearm. *K.C.G.*, 156 N.E.3d at 1285.

Analysis

[9] J.M. argues his rights under the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution were violated by Officer May's detention of J.M., and therefore, the trial court erred by denying J.M.'s motion to suppress evidence discovered on J.M.'s person during the stop. Because J.M.'s case proceeded to a fact-finding hearing, his appeal is better framed as a request to review the juvenile court's ruling on the admissibility of evidence. *Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014).

> "The trial court has broad discretion to rule on the admissibility of evidence. Ordinarily, we review evidentiary rulings for an abuse of discretion and reverse only when admission is clearly against the logic and effect of the facts and circumstances. But when a challenge to an evidentiary ruling is based "on the constitutionality of the search or seizure of evidence, it raises a question of law that we review de novo."

Johnson v. State, 157 N.E.3d 1199, 1203 (Ind. 2020) (quoting *Thomas v. State,* 81 N.E.3d 621, 624 (Ind. 2017)).

I. Federal Constitutional Challenge

[10] The Fourth Amendment to the United States Constitution protects citizens from unreasonable searches and seizures by prohibiting them without a warrant supported by probable cause. U.S. Const. amend. IV. "'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.'" *Thayer v.* State, 144 N.E.3d 843,

847 (Ind. Ct. App. 2020) (quoting *Taylor v. State,* 842 N.E.2d 327, 330 (Ind. 2006)). These Fourth Amendment protections have been made applicable 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 v. State,* 994 N.E.2d 252, 260 (Ind. 2013).

[11] While generally, a warrantless search or seizure is per se unreasonable, there are well-delineated exceptions to the warrant requirement; and the State bears the burden to show that one of them applies. *Jacobs v. State,* 76 N.E.3d 846, 850 (Ind. 2017). One such exception is "derived from *Terry v. Ohio*, which permits a brief investigatory stop 'where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot[.]'" *Id.* (quoting *Terry v. Ohio,* 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968)). "A *Terry* stop, thus is permissible without a warrant or probable cause if the officer has reasonable suspicion to justify the stop." *Kelly v. State,* 997 N.E.2d 1045, 1051 (Ind. 2013). "While this stop requires less than probable cause, an officer's reasonable suspicion demands more than just 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.'" *Johnson ,* 157 N.E.3d at 1204 (quoting *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880), *cert. denied*.

[12] J.M. argues that Officer May did not have reasonable suspicion to stop him, and therefore, the firearm obtained as a result of the stop should not have been admitted into evidence. J.M. relies in part on our Supreme Court's opinion in *Pinner v. State,* 74 N.E.3d 226 (Ind. 2017). In *Pinner*, officers received a tip from a taxi driver that after he drove a man and a woman to their destination, the couple exited the taxi, and the male passenger, Pinner, dropped a handgun either in the taxi or on the ground. *Pinner*, 74 N.E.3d at 228 The taxi driver feared he would be robbed. *Id.* The taxi driver confirmed to police that he was neither robbed nor threatened with the weapon. *Id.* The officers proceeded to the establishment at which the taxi driver dropped off Pinner and his companion in order to confront *Pinner. Id.* One of the officers asked Pinner if he had a weapon, to which Pinner nervously answered in the negative. *Id.* The officer then instructed Pinner to stand up and keep his hands up so his hands could be seen, to which Pinner complied. *Id.* The officer observed the butt of a firearm in Pinner's front pocket, secured the firearm, and detained Pinner for further investigation. *Id.*

[13] Pinner was arrested and charged with carrying a handgun without a license, a Class A misdemeanor, which was enhanced to a Level 5 felony due to a prior felony conviction. *Id.* Pinner filed a motion to suppress the admission of the handgun obtained on his person during the stop into evidence and alleged that the stop violated the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. *Id.* The trial court, however, denied the motion.

[14] Our Supreme Court noted that the taxi driver's tip only identified a person who possessed a gun with no suggestion of any illegality. *Id.* at 232. Our Supreme Court further noted that, from the taxi driver's tip, the officers had no reason to suspect that Pinner was carrying the firearm without a license and, thus, had no reasonable suspicion to stop him. *Id.* Accordingly, our Supreme Court reversed the trial court's denial of Pinner's motion to suppress.

[15] *Pinner*, however, is distinguishable from J.M.'s case. Here, as J.M. concedes, the report did allege criminal activity.[3] Namely, the report alleged: (1) drag racing, which can be charged as criminal recklessness or as a speed contest; and (2) leaving the scene of an accident, all of which are criminal offenses in this State. *See* Ind. Code § 9-26-1-1.1; Ind. Code § 35-42-2-2; Ind. Code § 9-21-6-3. J.M. claims, however, that even though the report alleged a crime, Officer May lacked reasonable suspicion to stop J.M. and Trujillo because "the report was minimal and did not allege J.M. himself participated in those activities." J.M.'s Br. p. 12. We disagree.

[16] Officer May had reasonable suspicion to stop J.M. and his companion, Trujillo, to investigate the report of the drag racing and the Mustang crash. Officer May confirmed the presence of a crashed Mustang when he arrived at the scene. Further, the report stated that two males walked away from the scene of the

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[3] In his brief, J.M. states that drag racing is a "minor offense" or a "minor violation." J.M.'s Br. pp. 6, 15. We note that drag racing is not a minor offense or violation, it is a crime that can either seriously harm or cause the death of others.

accident eastbound on 10th Street and that one of the two males was wearing a red jacket. Officer May observed J.M. and Trujillo walking away from the scene of the accident eastbound on 10th Street and saw Trujillo wearing a red sweatshirt.

[17] The only information that Officer May did not personally corroborate was that the Mustang crashed as a result of drag racing, but Officer May did corroborate: (1) the location of the crash; (2) the type of vehicle reported in the crash; (3) the number of males walking away from the crash; (4) the location and direction the males were traveling; and (5) and that one of the males was wearing a red garment. This is sufficient corroboration on Officer May's part to conduct a *Terry* stop on J.M. because Officer May had specific and articulable facts from which he could reasonably conclude that criminal activity was afoot and that J.M. and Trujillo were the persons involved in the reported criminal activity. *See Shelton v. State,* 26 N.E.3d 1038, 1044-45 (Ind. Ct. App. 2015) (holding that reasonable suspicion existed to conduct a *Terry* stop based on an anonymous tip when the information given was verifiable and specific and the officer corroborated the information).

[18] "After making a *Terry* stop, an officer may, if he has reasonable fear that a suspect is armed and dangerous, frisk the outer clothing of that suspect to try to find weapons." *Johnson,* 157 N.E.3d at 1205. "The purpose of the search 'is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence.'" *Id.* (quoting *Minnesota v. Dickerson,* 508 U.S. 366, 373, 113 S. Ct. 2130 (1993)). "'The officer need not be absolutely

certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.'" *Id.* (quoting *Terry,* 392 U.S. at 27, 88 S. Ct. 1868). To determine the reasonableness of the officer's actions, "we must consider the specific, reasonable inferences that the officer, in light of his experience, can draw from the facts." *Id.*

[19] Here, it was reasonable for Officer May to believe that J.M. was armed and dangerous. Officer May was responding to a report of multiple crimes. Moreover, he knew that J.M.'s companion was armed because, when he stopped J.M. and Trujillo, he observed a firearm protruding from Trujillo's right pocket. Lastly, it was dark outside, and Officer May was the only officer present. Officer May was in a compromising situation, as there was low visibility and he was outnumbered. Together, these facts show that Officer May had a reasonable belief that J.M. was armed and dangerous. *See Johnson,* 157 N.E.3d at 1205 (holding that an officer had a reasonable belief that the defendant was armed and dangerous when all the facts were taken together, even if the individual facts might not have been sufficient on their own). Accordingly, the trial court's admission of the handgun did not violate the Fourth Amendment.

II. State Constitutional Challenge

[20] J.M. further alleges that his rights under Article 1, Section 11 of our Indiana Constitution were violated during the stop and, therefore, the firearm obtained

as a result should have been deemed inadmissible. Our Indiana Constitution provides protection against unreasonable searches and seizures as well. *See* Ind. const. art. 1 § 11. "Even though the Fourth Amendment and Article 1, Section 11 share parallel language, they part ways in application and scope. The Indiana Constitution sometimes affords broader protections than its federal counterpart and requires a separate, independent analysis from this Court." *Marshall v. State,* 117 N.E.3d 1254, 1258 (Ind. 2019) (citing *Dycus v. State,* 108 N.E.3d 301, 304 (Ind. 2018)).

> When a defendant challenges the propriety of an investigative stop under the Indiana Constitution, the burden falls to the State to "show the police conduct 'was reasonable under the totality of the circumstances.'" *Robinson* [*v. State,*] 5 N.E.3d [362,] 368 [(Ind. 2014)] (quoting *State v. Washington,* 898 N.E.2d 1200, 1205-06 (Ind. 2008)). We decide whether a stop proved reasonable given the totality of the circumstances by applying our three-part *Litchfield* test, whereby we evaluate: "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.* (quoting *Litchfield v. State,* 824 N.E.2d 356, 361 (Ind. 2005)).

Id. at 1261-62.

[21] The degree of concern or suspicion that a violation had occurred was high because Officer May was responding to a report of multiple crimes. When he arrived at the scene, he corroborated nearly all the information in the report,

which indicated that two males were walking away from the scene of a vehicle crash involving a Mustang and that one of the males was wearing a red garment. At the scene, Officer May observed J.M. and Trujillo walking away from the scene in the direction indicated in the report, and Trujillo was wearing a red sweatshirt.

[22] The degree of intrusion was low because J.M. was only stopped for investigative purposes. Officer May then conducted a limited external pat down for weapons and immediately identified a firearm on J.M.'s person. This type of pat down is considered a limited intrusion for the purposes of our State Constitution. *See Berry v. State,* 121 N.E.3d 633, 639 (Ind. Ct. App. 2019), *trans. denied*.

[23] Law enforcement needs were high because Officer May had both a duty to investigate the drag racing and the accident, and to keep himself safe while doing so. After stopping Trujillo and J.M., law enforcement needs increased because Officer May was outnumbered at a dark scene, with at least one suspect who was confirmed to be armed.

[24] Inasmuch as the degree of suspicion or concern that a crime had occurred was high, the degree of intrusion was low, and the law enforcement needs were high, we conclude that Officer May's stop of J.M. and the seizure of the firearm were reasonable under Article 1, Section 11 of our State Constitution.

Conclusion

[25] We find that the juvenile court did not abuse its discretion by admitting the handgun found as a result of Officer May's pat down of J.M. Accordingly, we affirm.

[26] Affirmed.

Najam, J., and Pyle, J., concur.