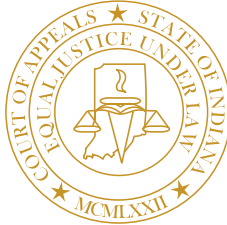


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

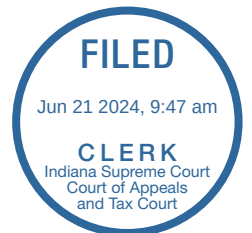


IN THE Court of Appeals of Indiana

Tabais Kenja Davis,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



June 21, 2024

Court of Appeals Case No.
23A-CR-2469

Appeal from the St. Joseph Superior Court
The Honorable Stephanie Steele, Judge

Trial Court Cause No.
71D01-2209-F5-221

Memorandum Decision by Judge Bradford
Judges Crone and Tavitas concur.

Bradford, Judge.

Case Summary

- [1] South Bend Police Officers Steven Spadafora and Andrew Jackson were on patrol when they saw a man, later confirmed to be Tabais Davis, walking in the street despite an unobstructed sidewalk being available. The officers stopped and frisked Davis, which led to the discovery of a handgun. The State charged Davis with Level 5 felony unlawful carrying of a handgun. Davis moved to suppress evidence of the handgun, arguing that the officers had stopped him without reasonable suspicion, which motion the trial court denied. After a trial, at which evidence of the handgun was admitted over Davis's objection, a jury found him guilty as charged and the trial court sentenced him to five years of incarceration, with three years served in a work-release program and two years suspended to probation. Davis argues that the trial court abused its discretion in admitting evidence of the handgun. We affirm.

Facts and Procedural History

- [2] In the early morning hours of September 9, 2022, Officers Spadafora and Jackson were on patrol in an area of South Bend where Officer Jackson had previously responded to "shootings, homicides, shots fired, violent crimes, and robberies[.]" Appellant's App. Vol. II p. 93. While on patrol, Officer Spadafora observed Davis cross the street and walk in the road, despite there being an unobstructed sidewalk available. After noticing the marked police vehicles, Davis moved toward the sidewalk. As Davis walked toward the

officers, Officer Spadafora noticed the “imprint of what appeared to be a weapon” in his waistband, which factored into Officer Spadafora’s decision to stop him. Tr. Vol. II p. 106.

[3] Twenty to thirty seconds after first observing Davis, Officer Spadafora stopped him and patted him down for “officer safety[.]” Tr. Vol. II p. 107. “Officer Spadafora informed [] Davis of the basis of the stop” and informed him that they planned to issue him a ticket.¹ Appellant’s App. Vol. II p. 98. After finding a handgun tucked in Davis’s waistband, Officer Spadafora asked him for his name and date of birth and advised him of his *Miranda*² rights. Officer Spadafora also asked about the handgun because, after consulting Bureau of Motor Vehicles records and dispatch, he learned that Davis had been prohibited from possessing a firearm. Davis admitted that he had had the handgun for his own protection.

[4] The State charged Davis with Level 5 felony unlawful carrying of a handgun. Davis moved to suppress evidence of the handgun, claiming that the officers had stopped him without reasonable suspicion. The trial court denied Davis’s motion. In reaching its conclusion, the trial court cited, *inter alia*, Indiana Code section 9-21-17-12, which notes that if “a sidewalk is provided and the sidewalk’s use is practicable, a pedestrian may not walk along and upon an

¹ While based on their investigation the officers arrested Davis for a firearm violation, there is no evidence in the record that suggests the officers ultimately issued Davis a ticket during the stop.

² *Miranda v. Arizona*, 384 U.S. 436 (1965).

adjacent roadway.” Appellant’s App. Vol. II p. 95. Consequently, the trial court concluded that the officers had had reasonable suspicion to stop Davis.

- [5] On July 24, 2023, the trial court conducted a jury trial. At trial, Davis renewed his motion to suppress evidence of the handgun as a standing objection, and the trial court admitted the evidence over his objection. A jury found Davis guilty as charged, and the trial court sentenced him to five years of incarceration, with three years executed in a work-release program and two years suspended to probation.

Discussion and Decision

- [6] Although Davis frames his argument on appeal as a claim that the trial court erred in denying his motion to suppress, he is appealing following trial, so the issue on appeal is properly framed as whether the trial court erred in admitting the challenged evidence. *See Davis v. State*, 994 N.E.2d 259 (Ind. 2013). We review a trial court’s decision on the admissibility of evidence for an abuse of discretion. *Jones v. State*, 957 N.E.2d 1033, 1037 (Ind. Ct. App. 2011), *trans. denied*. We will reverse a trial court’s decision only if that decision is clearly against the logic and effect of the facts and circumstances, not reweigh the evidence, and consider any conflicting evidence in favor of the trial court’s decision. *Id.* We will affirm the trial court’s admitting of evidence on any reasonable basis in the record, even if the trial court did not rely on it. *Johnson v. State*, 6 N.E.3d 491, 499 (Ind. Ct. App. 2014).

- [7] A law-enforcement officer is permitted to stop a person if she has reasonable suspicion that that person has violated a law or ordinance. *State v. Davis*, 143 N.E.3d 343, 346 (Ind. Ct. App. 2019). “Reasonable suspicion requires more than an officer’s own subjective believe a person might be violating the law.” *Marshall v. State*, 117 N.E.3d 1254, 1260 (Ind. 2019). “In other words, the stopping officer must be able to articulate some facts that provide a particularized and objective basis for believing that a [] violation had occurred.” *Id.* “Reasonable suspicion is a less demanding than probable cause and requires a showing considerably less than preponderance of the evidence.” *State v. Schlechty*, 926 N.E.2d 1, 7 (Ind. 2010). An officer’s subjective intent for a stop is irrelevant in our analysis to determine whether the stop was permissible under the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 815 (1996).
- [8] Davis argues that the trial court abused its discretion in admitting the challenged evidence because, after he had filed his pretrial motion to suppress it, the State had changed its theory for the stop and there had been no basis for the stop. That argument, however, does not negate the officers’ reasonable suspicion for the stop. Officer Spadafora testified that he had decided to stop Davis for “[f]ailing to use the sidewalk when one’s readily accessible and unobstructed” in violation of Indiana Code. Tr. Vol. II p. 106. Thus, the officers had reasonable suspicion for the stop that led to the discovery of the handgun, regardless of the State changing its theory for the stop in its response to Davis’s motion to suppress evidence.

[9] Additionally, in making his argument, Davis cites *Neeley v. State*, 70 N.E.3d 866 (Ind. Ct. App. 2017). In that case, we concluded that the officer had lacked reasonable suspicion to stop the defendant who had been walking in the road, despite the officer’s contention that the defendant had committed an infraction by walking on the wrong side of the road. *Id.* at 866. Davis’s reliance on that case, however, is unavailing. In *Neeley*, we reasoned that the stop was an unlawful detention because the charged conduct (intimidation and resisting law enforcement) “occurred well after the stop had progressed from what would be a lawful traffic detention to an unlawful seizure under the Fourth Amendment.” *Id.* at 874. Moreover, “Officer Sheppard was mistaken in his assessment that Neeley had committed a misdemeanor in his presence, and he was aware of no other articulable facts that would lead him to reasonably suspect criminal activity was afoot.” *Id.* at 872. Once the stop had been initiated, “none of the officers ever informed Neeley that he had been stopped for walking on the wrong side of the road.” *Id.* at 873. As a result, we concluded that the trial court had abused its discretion by admitting testimony of the arresting officers regarding events following the unlawful stop. *Id.*

[10] Here, the officers observed Davis commit an infraction when he “walked down the middle of the road.” Appellant’s App. Vol. II p. 94. Davis claims that because there was no traffic, he committed no violation. That argument does nothing to undermine Davis’s violation of Indiana Code section 9-21-17-12. Moreover, within seconds of approaching Davis, “Officer Spadafora informed [him] of the basis of the stop” and that they planned to issue him a ticket “until

the evidence [(i.e., the handgun)] they saw in plain view escalated the possible level of offense.” Appellant’s App. Vol. II p. 98. The whole encounter, from when Officer Spadafora told Davis to stop to the time Officer Jackson secured the handgun and told Officer Spadafora to place Davis in handcuffs, lasted around thirty seconds—considerably shorter than the thirteen-minute encounter in *Neeley*. 70 N.E.3d at 873. In short, the trial court did not abuse its discretion in admitting the challenged evidence. To the extent that Davis argues otherwise, his argument essentially amounts to an invitation to reweigh the evidence, which we will not do. *Jones*, 957 N.E.2d at 1037.

[11] The judgment of the trial court is affirmed.

Crone, J., and Tavitas, J., concur.

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