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IN THE
COURT OF APPEALS OF INDIANA

Jamesley Paul,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 15, 2022

Court of Appeals Case No. 21A-CR-1704

Appeal from the Allen Superior Court

The Honorable Frances C. Gull, Judge

Trial Court Cause No. 02D05-2003-MR-9

Tavitas, Judge.

Case Summary[1]

[1] Jamesley Paul appeals his convictions for murder, two counts of felony murder, and attempted robbery. Paul was convicted after a jury trial. Paul now claims that the trial court erroneously admitted evidence stemming from a traffic stop of a vehicle in which Paul was a passenger and that the trial court erred in issuing certain jury instructions. We disagree with both of Paul's contentions and, thus, affirm.

Issues

[2] Paul raises two issues for our review:

I. Whether the trial court abused its discretion in admitting evidence found pursuant to a traffic stop.

II. Whether the trial court abused its discretion in its jury instructions pertaining to accomplice liability.

Facts

[3] On the night of February 25, 2020, Meng Kem opened his door to find Kyaw Hlang, a friend and former roommate. Hlang indicated that he wanted to talk, and Kem let Hlang into the house. Two more men—wearing bandanas over their faces—entered. Hlang and one of the other men, later identified as

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[1] This case was selected for our "Appeals on Wheels" oral argument program. We commend counsel for their advocacy and thank the Wabash College's faculty, staff, and students for their warm reception and hospitality.

Jamesley Paul, ordered Kem and the other two occupants of the living room, Mon Ong, Kem's roommate, and Brooke Wendel, Kem's girlfriend, to get down on the floor. Accounts differ as to whether each of the men was carrying a gun or whether there was only one gun.

[4] The men asked Kem where he kept his money. Kem indicated that a gold box under his coffee table contained drugs and $1,500.00 in cash. Hlang then fatally shot Wendel in the head. One of the masked men fatally shot Ong in the chest. The same masked man who killed Ong then shot Kem through the neck; Kem survived though he was temporarily paralyzed. The robbers then absconded with the gold box.

[5] Shortly thereafter, Kem's friend arrived, discovered the gruesome scene, and called 911. Kem, injured but still conscious, reported to police that Hlang was one of the assailants and gave partial descriptions of the other two men to the police. Kem also provided an address on Victoria Drive that he believed was associated with Hlang.

[6] Later that night, at approximately 2:30 a.m., Detective Jean Paul Gigli of the Fort Wayne Police was surveilling the Victoria Drive residence. Detective Gigli was parked approximately one block away and observed an SUV pull up in front of the home and park in the middle of the street. Suspicious of the vehicle, Detective Gigli pulled out and approached in his fully marked squad car. The SUV headed in the opposite direction, and the two cars passed one another. The SUV turned around at a dead end, and the vehicles passed one

another again. Detective Gigli radioed dispatch for backup and then conducted a traffic stop.

[7] Detective Gigli later stated that the SUV had committed no traffic violations and that he stopped the vehicle because he found it suspicious that the car had stopped in front of the home that he was surveilling. Three people were in the SUV, including Paul, who was in the front passenger seat. Paul's cousin—Kerwins Lewis—was also in the car and was alleged to have been the third robber, though he had disappeared by the time of Paul's trial.[2] Detective Gigli smelled marijuana[3] and searched the vehicle with the consent of the driver, referred to in the record as Eddyson Francois. Drugs were recovered, and a nine-millimeter-handgun holster was discovered in the glove compartment. Paul was released at the scene.

[8] The following morning, Detective Shane Heath was surveilling the Victoria Drive address at approximately 8:00 a.m. when he observed a silver Honda pull into the driveway and park in the garage. A Nissan pulled in behind the Honda in the driveway. The driver of the Honda got into the Nissan, which pulled out and drove away, while fishtailing down the street. Officers conducted a traffic stop of the Nissan, and Hlang was located in the car. A search of the vehicle revealed a nine-millimeter-handgun, which was later confirmed to have been

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[2] The parties refer to the third robber as "Lewis" and "Louis," but we opt to use "Lewis" throughout.

[3] Police did not discover any marijuana during the ensuing search.

used during the home invasion.[4] Hlang was detained and agreed to speak with police. During that conversation, Hlang admitted to police that he had been with Paul at the time of the crimes. Hlang eventually entered into a plea agreement after the State filed charges related to the robbery and homicides.[5]

[9] Paul was located and detained shortly after Hlang reported Paul's involvement in the shootings. Initially, Paul denied all knowledge of the crimes, but eventually he admitted that he was present. Paul claimed that he initially went to Kem's house to purchase cannabis and that he ran away when "everything went wrong." St. Ex. 105 at 13:40. On March 3, 2020, the State charged Paul with two counts of murder, a felony; two counts of felony murder, felonies; and attempted robbery, a Level 5 felony. Additionally, the State alleged the use of a firearm during the commission of the offenses.

[10] On December 9, 2020, Paul filed a motion to exclude "testimony or evidence that Jamesley Paul was stopped as a passenger in a motor vehicle on Kenwood Avenue on February 26, 2020[,] at approximately 2:33 A.M. because the stop by police was not based on reasonable suspicion and because Mr. Paul was subject to an illegal search and seizure." Appellant's App. Vol. II p. 64. After a hearing, the trial court denied Paul's motion. The trial court found:

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[4] Specifically, the evidence showed that the handgun matched some of the cartridges found at the crime scene. Tr. Vol. II pp. 174-75, 209-22, 235; Tr. Vol. III pp. 32-33, 86.

[5] The record suggests that Hlang's aggregate sentence was one hundred years. Tr. Vol. III p. 64.

> Based on the totality of the circumstances, Office[r] Gigli had reasonable suspicion to act. He was aware of a very recent on-going homicide investigation and that a potential suspect in that investigation was connected to the residence at 4210 Victoria Drive. He proceeded to the area of that residence, which he described as a quiet, middle-class neighborhood, not too many calls for service, with not much traffic at that time of night (approximately 2:30 a.m.). He observed unusual activity when he set up surveillance with a vehicle (SUV) that pulled up to the residence at 4210 Victoria and stopped in the middle of the street. No one exited or entered the vehicle or any residence in the area. The officer testified that given the time of night, the area, and the vehicle stopping in front of the suspect [sic] residence (of the homicide) he maintained surveillance for several minutes. When he pulled out of his location to get behind the SUV, the SUV pulled away. Officer Gigli testified he believed the vehicle moved when occupants saw the squad car. The Officer then testified that the SUV engaged in "avoidance behavior." Based upon the officer's experience, his familiarity with the neighborhoods, and the quite-recent information regarding a homicide, Officer Gigli had specific and articulable facts giving him reasonable suspicion to stop the vehicle.

Id. at 93.

[11] Paul's trial began on June 8, 2021. Prior to the beginning of Detective Gigli's testimony, Paul's attorney asked for a bench conference and stated: "I'm gonna [sic] raise an objection for the same reasons as the suppression hearing." Tr. Vol. II p. 137. The trial court responded: "[C]an we just show this as a continuing objection, so you don't have to keep popping up every time? . . . I'll just show this is a continuing . . . objection, which I will overrule based on the hearing that we had already." *Id*. at 138. Detective Gigli testified consistently

with the trial court's prior findings and conceded that the driver of the SUV did not commit any traffic violations.

[12] Bobby Revel—a "jailhouse snitch"—testified that Paul revealed details of the home invasion and shootings over a period of several weeks in a series of jail conversations. Revel learned from Paul that Hlang entered the home first and, after an argument, shot Wendel in the head. Because Kem and Ong were witnesses, they needed to be eliminated. Paul took the gun[6] and shot Kem and Ong. The State argued that Revel knew details of the crimes that he could have known only from Paul.

[13] Hlang, who had already been convicted and sentenced by this point, testified that he had falsely accused Paul of being involved in the crimes and that he had done so out of spite. Hlang claimed responsibility for all of the shootings.

[14] During the jury instructions conference, prior to the conclusion of the State's case, Paul did not object to any of the jury instructions. After closing arguments, the trial court asked Paul and the State if they had any objections to the jury instructions, and both parties replied, "No." Tr. Vol. III p. 158.

[15] The trial court issued, *inter alia*, the following jury instructions:

> Court's Instruction No. 2: The crime of Murder is defined by law as follows:

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[6] In Revel's version of events there was only one gun.

A person who knowingly or intentionally kills another human being, commits Murder, a felony.

Before you may convict the Defendant, the State must prove each of the following beyond a reasonable doubt:

1. The Defendant, Jamesley, Paul, *while acting in concert* with Kyaw Hlang and/or Kerwins Louis,

2. knowingly or intentionally,

3. killed,

4. Mon Ong.

If the State does not prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty.

If the State did prove each of these elements beyond a reasonable doubt, you may find the Defendant guilty on Count I, Murder, a felony.[7]

* * * * *

Court's Instruction No. 15: Aiding, inducing or causing an offense is defined by statute as follows:

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[7] The State correctly points out that Instructions one, three, four, five, and six are "substantially similar to this instruction with respect to the use of the words 'acting in concert.'" Appellee's Br. p. 33. Instruction No. 1 laid out the contents of the charging information; Instructions 2 through 6 set forth the elements of the different crimes with which Paul was charged.

> A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person has not been prosecuted for the offense, has not been convicted of the offense, or has been acquitted of the offense.
>
> * * * * *
>
> Court's Instruction No. 16: Under accomplice liability theory, the evidence need not show that the accomplice personally participated in the commission of each element of a particular offense; rather, an accomplice is criminally responsible for all acts committed by a confederate which are a probable and natural consequence of their *concerted actions*, even though the acts may not have been originally conceived or intended in the plan.
>
> Neither mere presence at the scene of the crime nor negative acquiescence, standing alone, is sufficient to permit an inference that one participated in a crime[.]
>
> In determining whether a defendant aided another in the commission of a crime the jury may consider the following (1) presence at the scene of the crime; (2) companionship with [a]nother engaged in the criminal activity; (3) failure to oppose the commission of the crime; and (4) the course of conduct before, during, and after the occurrence of the crime.

Appellant's App. Vol. II pp. 150-56, 165-66 (emphasis added).

[16] After several hours of deliberation, the jury submitted questions regarding the trial court's instructions on the meaning of "acting in concert with." *Id*. at 160. The trial court ordered additional legal arguments from both the State and

defense counsel to the jury. After the arguments, the jury sent more questions regarding the *mens rea* requirements in the murder counts, and whether one instruction should outweigh another when determining whether the State had established *mens rea* on those counts. The parties agreed to the trial court instructing the jury to re-read the jury instructions carefully.

[17] The jury returned a guilty verdict on one count of murder, two counts of felony murder, and the attempted robbery charge, but acquitted Paul of the second count of murder.[8] The jury further concluded that Paul used a firearm in the commission of the offenses. The trial court sentenced Paul to an aggregate sentence of one hundred and forty-six years. Appellant's App. Vol. II pp. 206-07. This appeal ensued.

Analysis

I. Traffic Stop

[18] Paul argues his rights under the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution were violated during the first traffic stop in which Paul was a passenger, and therefore, the trial court erred by admitting evidence resulting from the stop.[9] Specifically, Paul sought to suppress evidence of a gun holster, compatible with a nine-millimeter-handgun found in the glove box. We ordinarily review

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[8] Count II charged Paul with the murder of Wendel. Appellant's App. Vol. II p. 24.

[9] Contrary to the State's briefing, Paul is not challenging the search, but rather the initial stop of the vehicle.

challenges to the admission of evidence for an abuse of the trial court's discretion. *Fansler v. State*, 100 N.E.3d 250, 253 (Ind. 2018) (citing *Williams v. State*, 43 N.E.3d 578, 581 (Ind. 2015)). In those instances, we will reverse only when the decision is clearly against the logic and effect of the facts and circumstances. *Id.* Paul challenges the traffic stop under both the federal and Indiana constitutions.

A. Federal Constitutional Challenge

[19] The Fourth Amendment to the United States Constitution "permits an officer to initiate a brief investigative traffic stop when he has 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Kansas v. Glover*, 140 S. Ct. 1183, 1187 (2020) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690 (1981)); *see also Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868 (1968). Police may conduct a brief stop based on "reasonable suspicion" pursuant to *Terry*. "'Although a mere "hunch" does not create reasonable suspicion, the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.'" *Glover*, 140 S. Ct. at 1187 (quoting *Navarette v. California*, 572 U.S. 393, 397, 134 S. Ct. 1683 (2014)). Even if an officer lacks probable cause, he may effect a stop for investigative purposes if he "has a reasonable suspicion supported by articulable facts that criminal activity may be afoot . . . ." *United States v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581, 1585 (1989) (internal quotation omitted).

[20] Courts must consider the "totality of the circumstances" when determining the existence or non-existence of reasonable suspicion. *See, e.g., United States v. Arvizu,* 534 U.S. 266, 273, 122 S. Ct. 744, 750 (2002). "This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *Id.* (quoting *Cortez*, 449 U.S. at 418). Reasonable suspicion "depends on the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Navarette*, 572 U.S. at 402, 134 S. Ct. 1683 (quoting *Ornelas v. United States*, 517 U.S. 690, 695, 116 S. Ct. 1657 (1996)). We do not insist on "scientific certainty" but rather permit officers to make "commonsense judgments and inferences about human behavior." *Illinois v. Wardlow*, 528 U.S. 119, 125, 120 S. Ct. 673 (2000).

[21] Paul argues that: (1) "turning away from police, even in a high crime neighborhood, is not sufficient, individually or collectively, to establish reasonable suspicion of criminal activity"; (2) the SUV did nothing illegal; (3) Detective Gigli did not clearly identify himself as a law enforcement officer; (4) the SUV was not obstructing traffic; and (5) the Victoria Drive residence did not belong to Hlang, but rather it belonged to Hlang's relatives.[10] Appellant's Br. p. 16.

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[10] The record shows that Detective Gigli was aware that the house belonged to the suspect's relatives and not the suspect, but does not reveal that Detective Gigli knew that the suspect's name was Hlang.

[22] We do not find Paul's arguments persuasive. Rather, we conclude that, under the totality of the circumstances, Detective Gigli had "reasonable suspicion supported by articulable facts that criminal activity may be afoot." *Sokolow*, 490 U.S. at 7, 109 S. Ct. at 1585. Thus, under the facts presented here, Detective Gigli had reasonable suspicion to stop the vehicle in which Paul was riding.

[23] First, we note that the location of a *Terry* stop is a factor to consider under the totality of the circumstances. An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime. *Brown v. Texas,* 443 U.S. 47, 99 S. Ct. 2637 (1979). "But officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation." *Wardlow*, 528 U.S. at 124, 120 S. Ct. at 676. The United States Supreme Court has "previously noted the fact that the stop occurred in a 'high crime area' among the relevant contextual considerations in a *Terry* analysis." *Id*. (citing *Adams v. Williams*, 407 U.S. 143, 144, 147-48, 92 S. Ct. 1921 (1972)). Thus, the location of the activity resulting in a *Terry* stop is one factor which we consider.

[24] Here, the location in which Detective Gigli first encountered the vehicle contributes to reasonable suspicion. He was surveilling a house connected to a suspect in an ongoing homicide investigation. A vehicle pulled up directly in front of the house at 2:30 a.m. on a street with little traffic for that time. No one entered or exited the vehicle.

[25] Next, we note that flight from police officers can also be a factor in the reasonable suspicion analysis. In *Wardlow*, the Court held:

> In this case, moreover, it was not merely respondent's presence in an area of heavy narcotics trafficking that aroused the officers' suspicion, but his unprovoked flight upon noticing the police. Our cases have also recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. *United States v. Brignoni-Ponce*, 422 U.S. 873, 885, 95 S. Ct. 2574, 45 L.Ed.2d 607 (1975); *Florida v. Rodriguez*, 469 U.S. 1, 6, 105 S. Ct. 308, 83 L.Ed.2d 165 (1984) (per curiam); *United States v. Sokolow*, *supra*, at 8-9, 109 S. Ct. 1581. Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such. In reviewing the propriety of an officer's conduct, courts do not have available empirical studies dealing with inferences drawn from suspicious behavior, and we cannot reasonably demand scientific certainty from judges or law enforcement officers where none exists. Thus, the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior. *See United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690, 66 L.Ed.2d 621 (1981).

Wardlow, 528 U.S. at 124-125, 120 S. Ct. at 676.

[26] Similarly, our own Supreme Court has also addressed the issue of flight in the reasonable suspicion analysis. In *Platt v. State*, our Supreme Court wrote:

> The whole picture shows that Deputy Ruch pulled up behind a motorist by the side of a country road in the dead of night. The motorist immediately fled—with great haste—before the deputy even had a chance to get out of his car and see what was going on. These facts alone were sufficient to give rise to a reasonable

> suspicion in the mind of a trained police officer that some further investigation was warranted.
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> Flight at the sight of police is undeniably suspicious behavior. As the Supreme Court of Wisconsin has noted, "suspicious conduct by its very nature is ambiguous, and the principle function of the investigative stop is to quickly resolve that ambiguity." *State v. Anderson*, 155 Wis.2d 77, 84, 454 N.W.2d 763, 766 (1990). Deputy Ruch was attempting to resolve the ambiguity created by Platt's suspicious behavior when he temporarily detained him. We will not proscribe such a reasonable response to an inherently suspicious activity. Indeed, the citizens of Whitley County would not have been well served had Ruch ignored his common sense reaction in the face of Platt's abrupt departure and allowed him to ramble down the highway with a BAC that turned out to be nearly two times the legal limit.

589 N.E.2d 222, 226 (Ind. 1992); s*ee also Hailey v. State*, 521 N.E.2d 1318 (Ind. 1988). "'Flight invites pursuit and colors conduct which hitherto has appeared innocent . . . . [F]light from a clearly identified law enforcement officer may furnish sufficient ground for a limited investigative stop.'" *Platt*, 589 N.E.2d at 226 (quoting *United States v. Pope*, 561 F.2d 663, 668-69 (6th Cir. 1977)).

[27] Once Detective Gigli turned on his headlights and approached in his fully marked squad car, the SUV abruptly engaged in "avoidance behavior." Appellant's App. Vol. II p. 93. The SUV headed in the opposite direction, and the two cars passed one another. The SUV turned around at a dead end, and the vehicles passed one another again. Detective Gigli then conducted a traffic stop. The vehicle's evasive behavior was a pertinent factor in determining reasonable suspicion.

[28] Detective Gigli was surveilling the house precisely because he anticipated the arrival of a suspect and sought to gather information in an ongoing homicide investigation. Given the totality of the circumstance, especially the location of the stop and the vehicle's evasive behaviors, we conclude that Detective Gigli had reasonable suspicion of criminal activity and was warranted in conducting a brief investigatory stop. Accordingly, the trial court did not err in admitting evidence stemming from the stop under the Fourth Amendment.

B. Indiana Constitutional Challenge

[29] Our Indiana Constitution, as well, provides protection against unreasonable searches and seizures. *See* Ind. const. art. 1 § 11. Although Article 1, Section 11 contains language nearly identical to the Fourth Amendment, Indiana courts interpret Article 1, Section 11 independently. *Hardin v. State*, 148 N.E.3d 932, 942 (Ind. 2020). In cases involving Article 1, Section 11 of the Indiana Constitution, the State must show that the challenged police action was reasonable based on the totality of the circumstances. *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014). "The totality of the circumstances requires consideration of both the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search or seizure." *Litchfield v. State*, 824 N.E.2d 356, 360 (Ind. 2005).

[30] In *Litchfield*, our Supreme Court summarized this evaluation as follows:

> [A]lthough we recognize there may well be other relevant considerations under the circumstances, we have explained reasonableness of a search or seizure as turning on a balance 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.

824 N.E.2d at 361. The *Litchfield* test applies broadly to governmental searches: "its application is comprehensive." *Watkins v. State*, 85 N.E.3d 597, 600 (Ind. 2017).

[31] "Investigatory stops invoke the Article 1, Section 11 protections of the Indiana Constitution." *State v. Renzulli*, 958 N.E.2d 1143, 1146-47 (Ind. 2011) (citing *Rutledge v. State*, 426 N.E.2d 638, 642 (Ind. 1981)). "[O]ur courts gauge the reasonableness of an investigatory stop by striking a balance between the public interest [behind the investigation] and the individual's right to personal security free from arbitrary interference from law officers." *Id.* (citations and internal quotations omitted). Just as under the Fourth Amendment, an investigatory stop by a police officer does not violate the suspect's constitutional rights under the Indiana Constitution if the officer has a reasonable and articulable suspicion of criminal activity. *Id.* (citing *Lampkins v. State*, 682 N.E.2d 1268, 1271 (Ind. 1997)).

[32] The totality of the circumstances test is used to determine whether Detective Gigli had "articulable individualized suspicion" to stop the SUV. *Litchfield,* 824 N.E.3d at 360; *see also Renzulli*, 958 N.E.2d at 1146. Reasonable suspicion is determined based upon the objective perspective of a reasonable person placed in the position of the officer who effected the stop. *Renzulli*, 958 N.E.2d at

1146-47 (citing *Kellems v. State*, 842 N.E.2d 352 (Ind.2006), *rev'd on other grounds*, 849 N.E.2d 1110 (Ind. 2006). Facts that lead an officer to have reasonable suspicion include facts from all sources, including outside sources like dispatch and other officers or informants, *see, e.g.*, *Pawloski v. State*, 269 Ind. 350, 380 N.E.2d 1230 (1978); *Jamerson v. State*, 870 N.E.2d 1051, 1057 (Ind. Ct. App. 2007);[11] and the direct knowledge and observations of the officer conducting the traffic stop. The time at which information is obtained by an officer may also be a factor with respect to whether that information can justify a *Terry* stop. *See, e.g., Jacobs v. State*, 76 N.E.3d 846, 851 (Ind. 2017) (holding that two-day gap between information that suspect was wearing a red shirt and the initiation of the stop was not supportive of reasonable suspicion).

[33] Applying the *Litchfield* factors to the facts of the present case leads to a conclusion that the officer's actions were reasonable under the totality of the circumstances. With respect to the first *Litchfield* factor, we conclude that the degree of knowledge that a violation had occurred is high. Police were already aware that homicides had been committed and were actively investigating the

[11] Here we note that Detective Gigli was aware of the address and the fact that it may be connected to a suspect in an ongoing homicide investigation. If any information beyond that was conveyed to Detective Gigli, it does not appear in the record, and we do not consider him to be in possession of information known to the police but not specifically communicated to Detective Gigli. *State v. Murray*, 837 N.E.2d 223, 224-26 (Ind. Ct. App. 2005). A detective learned from Kem that Hlang was one of the shooters and that the Victoria Street address was associated with Hlang. That detective then relayed the information to homicide detectives. The record suggests, but does not definitively establish, that the homicide detectives then relayed that information to dispatch. The record does not contain the specifics about precisely which information was relayed. For that reason, we rely on the testimony of Detective Gigli with respect to what he learned from the dispatch call.

crimes. Detective Gigli received information from his police radio regarding "information of a possible suspect location and where he might be, relative's house." Tr. Vol. II p. 141. Detective Gigli was aware, based on the dispatch call, that the suspect was related to an ongoing homicide investigation. As a result, Detective Gigli travelled to and began to surveil the Victoria Street address. The witness who discovered the victims testified that he called 911 shortly after midnight. Detective Gigli testified that he proceeded to the Victoria Street address at approximately 2:30 a.m. The vehicle in which Paul was riding stopped in front of the house at issue and parked in the street. When Detective Gigli approached in his fully marked squad car, the vehicle drove away. Given the ongoing homicide investigation and the vehicle's evasive behavior, this factor weighs in favor of the State.

[34] Paul concedes that the second *Litchfield* factor—the degree of intrusion—does not weigh in his favor. The stop was short in duration, and Paul was then free to go.

[35] The third factor—the extent of law enforcement needs—favors the State. Detective Gigli was surveilling the house for a particular reason: to locate a suspect or obtain information in an ongoing homicide investigation. We consider the stop of a suspicious vehicle for investigation of such a significant crime to be a substantial State interest, particularly where the police have reason to believe that the suspect could have been in the vehicle and could flee.

[36] The *Litchfield* factors weigh in favor of the State. We conclude that the totality of the circumstances objectively establishes that a reasonable officer had articulable individualized suspicion to stop the SUV under the Indiana Constitution. Accordingly, the trial court did not err in admitting evidence stemming from the stop under the Indiana Constitution.

II. Jury Instructions

[37] Next, Paul challenges the trial court's use of several jury instructions. "'The trial court has broad discretion as to how to instruct the jury, and we generally review that discretion only for abuse.'" *Spencer v. State*, 129 N.E.3d 209, 211 (Ind. Ct. App. 2019) (quoting *McCowan v. State*, 27 N.E.3d 760, 763 (Ind. 2015)). "To determine whether a jury instruction was properly refused, we consider: (1) whether the tendered instruction correctly states the law; (2) whether there was evidence presented at trial to support giving the instruction; and (3) whether the substance of the instruction was covered by other instructions that were given." *Id*. (citing *McCowan*, 27 N.E.3d at 763-64). "In doing so, we consider the instructions as a whole and in reference to each other and do not reverse the trial court for an abuse of discretion unless the instructions as a whole mislead the jury as to the law in the case." *Id*. "The failure to tender an instruction or to object at trial to the omission of an instruction generally waives any claim of error on appeal." *Abd v. State*, 120 N.E.3d 1126, 1136 (Ind. Ct. App. 2019) (citing *Franklin v. State*, 715 N.E.2d 1237, 1241 (Ind. 1999)). We also note that Indiana Criminal Rule 8(B) provides:

> The court shall indicate on all instructions, in advance of the argument, those that are to be given and those refused. After the court has indicated the instructions to be given, each party shall have a reasonable opportunity to examine such instructions and to state his specific objection to each, out of the presence of the jury and before argument, or specific written objections to each instruction may be submitted to the court before argument. No error with respect to the giving of instructions shall be available as a cause for new trial *or on appeal*, except upon the specific objections made as above required.

(emphasis added).

[38] Paul argues that the jury was confused by the instructions because, though the charges required proof of accomplice liability, none of the instructions defined "'acting in concert'" or explained the *mens rea* that applied to "'acting in concert[.]'" Appellant's Br. p. 19. Specifically, Paul argues:

> It is probable that the jury was confused by the words "acting in concert" and their relationship to Instruction 16 because Instruction 16 provides the rule for accomplice liability, but never uses the words "acting in concert[.]" So, what is the rule? Does the State have to show they merely acted in concert on something; or, does the State have to show a common plan and [that the] the murder was the natural and probable consequence of that common plan? Instructions 2, 3, 4, 5, and 6 pointed one way and Instruction 16 pointed the other way. By failing to instruct the jury that they were required to apply the rule as stated in Court's Instruction 16 and not the rule as watered down to "acting in concert[,]" the Court left the jury asking questions.

Id. at 23. Accordingly, Paul contends that the trial court abused its discretion by issuing its jury instructions. Paul's briefing, however, does not address the question of waiver or the doctrine of fundamental error.

[39] The State argues: "Not only did Paul waive his claim by failing to object to the trial court's final instructions, but he overlooks the fact that appellate review looks to jury instructions as a whole and not in isolation." Appellee's Br. p. 31. The State further argues that Paul has waived any argument that he might have with respect to fundamental error; Paul did not raise any such arguments in his brief, and even if not waived, Paul has not shown that the trial court abused its discretion with respect to the jury instructions. The State points out that the language of instruction number 15 includes the pertinent statutory language with respect to accomplice liability. Finally, the State argues that Paul's counsel actually explained away any potential discrepancies in the jury instructions during the supplemental closing, and, therefore, there was no risk that the jury was confused by the instructions.

[40] We agree with the State. Paul has waived the issue by failing to object. We find, also, that the use of the jury instructions did not constitute fundamental error. Fundamental error occurs only when the error "makes a fair trial impossible or constitutes clearly blatant violations of basic and elementary principles of due process presenting an undeniable and substantial potential for harm." *Strack v. State*, 186 N.E.3d 99, 103 (Ind. 2022). Paul cannot show that fundamental error resulted from the instructions given here. The instructions, when taken as a whole rather than in isolation, contain the pertinent language

regarding accomplice liability to instruct the jury. Furthermore, the jury was afforded ample opportunities to ask questions about the instructions. Accordingly, we conclude that the trial court did not err in issuing the jury instructions.

Conclusion

[41] The traffic stop did not violate either the federal or state constitutions, and thus, the admission of any evidence resulting from the stop was not error. Furthermore, we find no error associated with the jury instructions. Accordingly, we affirm.

[42] Affirmed.

Riley, J., and May, J., concur.