MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

T.B.,

Appellant-Respondent,

v.

State of Indiana,

Appellee-Petitioner

July 28, 2023

Court of Appeals Case No. 22A-JV-1611

Appeal from the Marion Superior Court

The Honorable Pauline A. Beeson, Magistrate

Trial Court Cause Nos. 49D16-2112-JD-10767 49D16-2203-JD-2294, - 2298

Memorandum Decision by Judge Crone
Judge Kenworthy and Senior Judge Robb concur.

Crone, Judge.

Case Summary

[1] In a consolidated appeal of three separate juvenile matters, T.B. challenges his delinquency adjudication for committing an act that, if committed by an adult, would constitute class A misdemeanor carrying a handgun without a license. In addition, he appeals his commitment to the Department of Correction (DOC), which was ordered by the court at the conclusion of a combined disposition. We affirm.

Facts and Procedural History

[2] On December 14, 2021, Josiah Anderson was working at Indy Pawn as a clerk and security employee. On break, he walked past various open businesses toward a gas station. Before Anderson reached his destination, a black Dodge Nitro, driven by fourteen-year-old T.B., pulled up near him. The Dodge's passenger (Passenger), who was wearing a mask, jumped out of the vehicle. T.B., holding a gun, also exited the Dodge and approached Anderson from behind. Anderson turned toward T.B., saw the gun, and stated, "[D]on't." Tr. Vol. 3 at 147. T.B., who was smiling, pointed the gun, hesitated, and glanced at Passenger. Passenger commanded, "[D]o it." *Id.*

[3] Anderson pulled out his own pistol that he used for his security work, and he and T.B. exchanged shots. T.B. fired all the bullets from his gun, while Anderson fired all but two bullets. Witness Glenda Pineda was driving in the area with her three children when she saw T.B. emerge from a black car with a gun. From about one hundred meters away, Pineda observed both Anderson

and T.B. shooting. One of the bullets hit her vehicle's door next to her two-year-old daughter. Anderson fled, hid behind a tree, and phoned 911 as shots were fired in his direction. T.B. was hit by a bullet. Passenger helped him back inside the Dodge, which Passenger then drove away from the scene. Thereafter, authorities were called to a crash site; the Dodge had smashed into a tree. T.B., suffering from a gunshot wound, was found outside the Dodge.

[4] On December 16, 2021, the State filed delinquency petition 49D16-2112-JD-10767 (JD-10767), alleging T.B. committed armed robbery, four counts of criminal recklessness, dangerous possession of a firearm, and carrying a handgun without a license. Shortly after being taken into detention, T.B. requested release to his parents due to his extremely limited mobility and the level and intensity of care required as he recovered from gunshot injuries to his colon and spinal disc. On December 22, 2021, the juvenile court granted T.B.'s request and ordered him released to probation with GPS electronic monitoring and adult supervision at all times. Appellant's App. Vol. 2 at 51.

[5] On March 17, 2022, T.B.'s GPS electronic monitoring equipment registered a "tamper alert" indicating that the device had been cut. Tr. Vol. 3 at 9-10. T.B.'s parents were notified. A welfare check was attempted, but no one answered. At some point, T.B.'s mother returned the damaged GPS monitoring device to the authorities.

[6] On March 18, 2022, Officer Erica Eder of the Indianapolis Metropolitan Police Department responded to a dispatch report of an anonymous tip that "there

were three black males in a white vehicle on the side of a gas station, and the three males had guns on their hips." *Id*. at 37, 38. Upon arriving at the gas station on North German Church Road, Officer Eder pulled in behind a parked white vehicle displaying a temporary license plate. She shined her marked police vehicle's "spotlight on the driver's side mirror and window of the vehicle" and ran a quick search to discern whether the plate matched the vehicle. *Id*. at 38. Her search revealed that the plate did not belong to the vehicle, which struck Officer Eder as odd because it was a "relatively nice vehicle" that was "probably pretty new." *Id*. at 39. In addition, Officer Eder knew the area to be "very high crime" and that "cars [are] stolen from that gas station all the time." *Id*. The combination of these factors indicated to Officer Eder the "potential [that the car] could be stolen[.]" *Id.*

[7] By the time Officer Eder received the information about the mismatched plate, almost-fifteen-year-old T.B. and another black male "had already gotten out of the vehicle." *Id.* at 41. Officer Eder contacted Officer Dante Granger via police radio and instructed him to stop the two individuals who had left the white car and "were walking away." *Id*. at 24. Officer Granger and another uniformed officer arrived in a second marked police vehicle and commanded T.B. and the other individual to "put their hands up." *Id*. at 50. Officer Granger "got them to comply[.]" *Id*. at 51. Officer Granger and the other officer patted down and handcuffed T.B. and the second individual. *Id*. at 52.

[8] Meanwhile, a third black male had emerged from the white car and entered the gas station. Officer Eder followed him into the gas station and patted him

down. Officer Granger and the other officer were "mov[ing] everybody in [the gas station] to all be together to begin processing[.]" *Id.* at 51. As Officer Granger grabbed T.B. by the upper torso to escort him into the gas station, he felt a gun "tucked under [T.B.'s] underarm." *Id.* A vehicle identification number check revealed the white car to be stolen. "None of [the three individuals] had an operator's license and none of them had a license to carry a firearm." *Id.* at 46. All three were juveniles.

[9] Thereafter, the State filed two delinquency petitions: 49D16-2203-JD-2294 (JD-2294), alleging that T.B. committed escape, and 49D16-2203-JD-2298 (JD-2298), alleging that he committed auto theft, dangerous possession of a firearm, carrying a handgun without a license, and unauthorized entry of a motor vehicle. On April 13, 2022, the court held a factfinding hearing and found the escape allegation of JD-2294 true. That same day, the court began a two-day[1] hearing regarding JD-2298, during which the court stated that it was taking a recently filed defense "motion to suppress under advisement pending the rest of the testimony." *Id.* at 25. Ultimately, the court denied the suppression motion and entered a true finding for class A misdemeanor carrying a handgun without a license. An April 25, 2022 factfinding hearing regarding JD-10767 resulted in a true finding of class A misdemeanor carrying a handgun without a license and two level 5 felony criminal recklessness counts.

[1] The hearing regarding JD-2298 concluded on April 25, 2022.

[10] In early June 2022, the court held a disposition hearing regarding all three delinquency petitions. At the conclusion of the hearing, the court committed T.B. to the DOC for six months, recommended counseling and/or a GED program, and ordered him to participate in Transition from Restrictive Program (TRP) as a special condition.

[11] In November 2022, the probation department's juvenile services division (Probation) notified the court that T.B. was scheduled for release on December 28, 2022, and reiterated the TRP requirement. Appellee's App. Vol. 2 at 2. Probation also requested that the court reassume jurisdiction, schedule a hearing, and determine whether GPS monitoring would be needed. In early January 2023, the court held a review hearing, modified the dispositional decree, ordered T.B. to be placed on probation under JD-10767, and closed the other matters. *Id.* at 3, 4.[2] The court also ordered Probation to submit a request for discharge upon T.B.'s successful compliance within five months or else request a review hearing of the dispositional order. *Id*. at 4.

[12] Our review of the Odyssey Case Management System reveals that T.B. was discharged from probation in June 2023.

[2] The State points out, and T.B. does not disagree, that the court's order inadvertently omits a reference to JD-2298 and instead lists a different cause number (49D16-2110-JD-8837), which was neither part of this appeal nor included in Probation's request. Because T.B. was adjudicated not delinquent in JD-8837, no disposition would have been entered and thus no modification considered.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion when it admitted evidence of the handgun in JD-2298.

[13] T.B. seeks reversal of the adjudication in JD-2298 that he carried a handgun without a license. He contends that he was "unlawfully stopped and detained and the resulting search of his person violated the Fourth Amendment to the U.S. Constitution and Article 1, section 11 of the Indiana Constitution." Appellant's Br. at 10. Because he views his detention as unconstitutional, T.B. maintains that the court should not have admitted evidence of the gun that was found on his person.

[14] "The trial court has broad discretion to rule on the admissibility of evidence." *Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014). We review its rulings "for abuse of that discretion and reverse only when admission is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights." *Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013); *see also Johnson v. State*, 992 N.E.2d 955, 957 (Ind. Ct. App. 2013) (applying abuse of discretion standard where court "essentially held a hearing on Johnson's motion to suppress in conjunction with his trial and seemed to rule on the matter as a question of admissibility of evidence."), *trans. denied*. However, where, as here, "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."

Guilmette, 14 N.E.3d at 40-41 (citing *Kelly v. State*, 997 N.E.2d 1045, 1050 (Ind. 2013)).

[15] We have explained:

> The Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution generally prohibit warrantless seizures subject to a few well-delineated exceptions. *M.O. v. State*, 63 N.E.3d 329, 331-32 (Ind. 2016). The State has the burden of proving that one of the well-delineated exceptions applies. *Randall v. State*, 101 N.E.3d 831, 837 (Ind. Ct. App. 2018), *trans. denied*. Further, the Indiana Constitution requires any search or seizure be reasonable under the totality of the circumstances. *Litchfield v. State*, 824 N.E.2d 356, 359 (Ind. 2005). Evidence obtained pursuant to an unconstitutional search or seizure is subject to exclusion and may not be used as evidence against the defendant at trial. *Clark v. State*, 994 N.E.2d 252, 266 (Ind. 2013). This exclusion extends to "evidence directly obtained by the illegal search or seizure as well as evidence derivatively gained as a result of information learned or leads obtained during that same search or seizure." *Id*.

State v. Serrano, 136 N.E.3d 249, 253 (Ind. Ct. App. 2019), *trans. denied* (2020).

[16] One exception to the Fourth Amendment's warrant requirement is the *Terry* stop, a brief investigatory stop falling short of a traditional arrest. *Terry v. Ohio*, 392 U.S. 1, 27 (1968). A *Terry* stop permits an officer to stop and briefly detain a person for investigative purposes if the officer has reasonable suspicion supported by articulable facts that criminal activity may be afoot, even if the officer lacks probable cause. *Clark*, 994 N.E.2d at 263. The reasonable suspicion requirement is satisfied when "the facts known to the officer, together with the

reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe that criminal activity has occurred or is about to occur." *Crabtree v. State*, 762 N.E.2d 241, 246 (Ind. Ct. App. 2002). It "entails something more than an inchoate and unparticularized suspicion or hunch but considerably less than proof of wrongdoing by a preponderance of the evidence." *Id.* "[A] set of individually innocent facts, when observed in conjunction, can be sufficient to create reasonable suspicion of criminal activity." *Finger v. State*, 799 N.E.2d 528, 534 (Ind. 2003). "What constitutes reasonable suspicion is determined on a case-by-case basis, and the totality of the circumstances is considered." *Polson v. State*, 49 N.E.3d 186, 190 (Ind. Ct. App. 2015)*, trans. denied* (2016). We must strike a balance between the interests of public safety and an individual's right to be free of arbitrary law enforcement interference. *Id.*

[17] T.B. asserts that the anonymous tip that there were three black males with handguns on their hips in a white vehicle at the side of a particular gas station was insufficient to create reasonable suspicion. We agree with the general rule that "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)), *on reh'g*, 685 N.E.2d 698. We also agree that a "suspect's mere possession of a firearm, without more, cannot provide reasonable suspicion for an investigatory stop." *Bell v. State*, 144 N.E.3d 791, 799 (Ind. Ct. App. 2020) (citing *Pinner v. State*, 74 N.E.3d 226, 230 (Ind. 2017)). However, T.B.'s case involved far more.

[18] The anonymous tip concerned multiple armed black individuals and a white car at a certain business address. Officer Eder, the first officer on the scene, described the area as one of "very high crime," specifically noting that cars were stolen "all the time" at that particular gas station. Tr. Vol. 3 at 39. Upon arrival, Officer Eder pulled up in her fully marked police vehicle behind a nice, newer white car with a temporary license plate, which in her experience was odd. She shined her police vehicle's spotlight on the white car and ran a search of the plate. Officer Eder observed the car's occupants exit the white car and begin walking away from both the car and the gas station as her search revealed the mismatched plate. The combination of these factors reasonably pointed to a possible stolen car and prompted Officer Eder to radio Officer Granger to stop two of the individuals to learn more. Officer Granger and another officer successfully stopped T.B. and the second individual.

[19] In deciding to admit the evidence of the handgun, the court cited Officer Eder's testimony that she "believed that there was potential for an auto theft, [thus a] reason to investigate." *Id*. at 57. The court further relied upon the corroborating testimony of Officer Granger, who helped effectuate the stop when Officer Eder radioed him. We have held that "routine license plate checks showing potential improper plate registration are enough to create a reasonable suspicion." *State v. Bouye*, 118 N.E.3d 22, 25 (Ind. Ct. App. 2019) (citing *Smith v. State*, 713 N.E.2d 338, 342 (Ind. Ct. App. 1999) (holding that when license plate check reveals mismatched plate, officer has reasonable suspicion to believe that theft has

occurred), *trans. denied*). Here, the *Terry* stop to investigate ownership of the potentially stolen car was more than justified.

[20] Upon 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. The purpose of this protective search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence. 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. To determine whether an officer acted reasonably, we consider the specific, reasonable inferences that the officer, in light of his experience, can draw from the facts.

Johnson v. State, 157 N.E.3d 1199, 1205 (Ind. 2020) (citations and quotation marks omitted), *cert. denied* (2021). Although handcuffing a suspect during a search for weapons should be rare, there are a "limited set of circumstances in which handcuffs are appropriate without converting a *Terry* stop into a full arrest." *Smith v. State*, 121 N.E.3d 669, 675 (Ind. Ct. App. 2019) (citations and internal quotations omitted), *trans. denied*. "Chief among those reasons is officer safety and the possibility of the presence of a weapon." *Id*.

[21] Here, the facts supported the reasonableness of the patdown and handcuffing. The original anonymous tip referenced three black individuals who were armed and in a white car at the specified address. The area was described as very high crime, and the gas station was known to be the site of multiple prior car thefts.

The temporary plate on the car did not match the vehicle. When a fully marked police vehicle pulled up behind the car and shone its spotlight on it, two of its occupants exited and began walking away from the premises. No guns had been seen yet, though it is hardly a stretch to connect weapons with facilitating theft of an auto, especially when the original tip mentioned three armed individuals. A reasonably prudent person in these circumstances conducting a brief investigatory stop would be warranted in fearing for his or her safety or that of others.

[22] As Officer Granger ushered T.B. into the gas station with the other officers and the two other individuals to begin sorting out ownership of the vehicle, he felt the handgun tucked under T.B.'s underarm. Although Officer Granger felt the gun after the initial patdown and handcuffing, it was still during the brief investigative *Terry* stop. Indeed, the situation happened so quickly, the officers had yet to see licenses (had there been any) or a registration. Officer Granger was in a lawful position performing a permissible stop when he felt the handgun, which he immediately recognized as a weapon. Accordingly, seizure of the deadly weapon on the grounds of safety was appropriate, and the Fourth Amendment was not violated.

[23] We next turn to T.B.'s state constitutional challenge. "Although Article 1, Section 11 of the Indiana Constitution contains language nearly identical to the Fourth Amendment," we interpret it independently. *Hardin v. State*, 148 N.E.3d 932, 942 (Ind. 2020). The burden is on the State to show that police conduct was reasonable under the totality of the circumstances, which turns on the

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 citizen's ordinary activities, and 3) the extent of law enforcement needs." *Litchfield*, 824 N.E.2d at 361.

[24] Here, we reiterate, the officers were responding to a dispatch noting multiple armed individuals and a white car at a gas station, where vehicles were stolen frequently, in a very high-crime area. When the first officer shone the police vehicle's spotlight on the car, two of its occupants exited it and began walking away. It was quickly determined that the plate did not match the vehicle. Together, these facts led to a medium-to-high degree of suspicion that the car's occupants had stolen the vehicle. As for the degree of intrusion, briefly stopping T.B. and his cohorts, securing them with a patdown, and escorting them into the gas station to examine driver's license, registration, etc., constitutes a low degree of intrusion. Handcuffing raises the degree of intrusion. However, given the report of armed individuals and the circumstances leading to a reasonable belief that the individuals had stolen the car, the officers had legitimate safety and law enforcement needs to justify their actions. Therefore, no violation of Article 1, Section 11 occurred. Absent a violation of either the aforementioned federal or state constitutional provisions, the court did not abuse its discretion when it admitted evidence of the handgun.

Section 2 – T.B.'s challenge to his placement in the DOC is moot.

[25] T.B. contends that the trial court abused its discretion by committing him to the DOC rather than placing him at home with a multifaceted, highly structured community release plan. Citing Indiana Code Section 31-37-18-6, he argues that the disposition in DOC was not the least restrictive option consistent with both the safety of the community and his best interests. He focuses on his youth, trauma, lack of previously offered services, and his current support system.

[26] We do not reach the merits of T.B.'s disposition argument because the issue is moot. "Mootness arises when the primary issue within the case 'has been ended or settled, or in some manner disposed of, so as to render it unnecessary to decide the question involved.'" *In re M.B.*, 51 N.E.3d 230, 233 (Ind. 2016) (quoting *In re Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991)). In other words, "[w]hen a court is unable to render effective relief to a party, the case is deemed moot and usually dismissed." *In re J.M.*, 62 N.E.3d 1208, 1210 (Ind. Ct. App. 2016). Indeed, we have dismissed a juvenile's appeal as moot because he was "released from the DOC since he initiated [his] appeal." *C.J. v. State*, 74 N.E.3d 572, 573-77 (Ind. Ct. App. 2017), *trans. denied*.

[27] T.B. was released to probation in January 2023 and discharged from probation in June 2023. Therefore, we are unable to render relief, and it is unnecessary for us to decide his disposition issue. Moreover, T.B. has not argued, and we cannot say, that the issue of his prior placement with the DOC involves a

question of great public interest that ought to be addressed despite mootness. In fact, "[t]here is already Indiana case law providing guidance on this issue[.]" *Id.* at 575 n.2 (citing *D.P. v. State*, 783 N.E.2d 767 (Ind. Ct. App. 2003) and *E.H. v. State*, 764 N.E.2d 681 (Ind. Ct. App. 2002), *trans. denied*.).

[28] Affirmed.

Kenworthy, J., and Robb, Sr.J., concur.