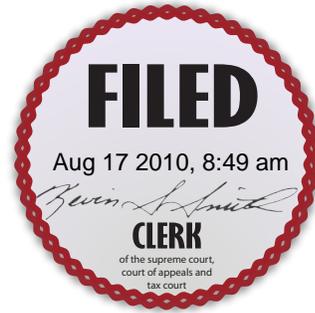


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

CARA SCHAEFER WIENEKE
Wieneke Law Office, LLC
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

KENNETH RAMEY,)
)
Appellant-Defendant,)
)
vs.) No. 49A04-1001-CR-5
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
Cause No. 49G23-0812-FA-282037

August 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Kenneth Ramey appeals his conviction for dealing in cocaine, as a Class A felony, following a bench trial. Ramey raises a single issue for our review, namely, whether his federal and state constitutional rights to be free from unreasonable search and seizure were violated when State officers initiated a traffic stop, patted him down, and found cocaine on his person. We hold that his rights were not violated. As such, we affirm his conviction.

FACTS AND PROCEDURAL HISTORY

On December 10, 2008, Indianapolis Metropolitan Police Department officers arranged a controlled drug buy using a confidential informant (“C.I.”). Officers arrived at the buy location, and Ramey arrived shortly thereafter. The C.I. identified Ramey’s vehicle when he arrived. The C.I., at the officers’ direction, placed a phone call to Ramey and the officers watched Ramey receive the call. The C.I. told Ramey to change the location of the drug deal, and Ramey headed toward the new location.

Sergeant Paul McDonald followed Ramey. Sergeant McDonald witnessed Ramey speed, change lanes without using his signal, and tailgate other vehicles. After a short distance, Sergeant McDonald activated his emergency lights and Ramey pulled his vehicle over. Sergeant McDonald then walked to the passenger’s side of Ramey’s vehicle, explained to Ramey why he had been pulled over, and asked him to step out of the vehicle. Sergeant McDonald noticed that Ramey’s hands were shaking, his lips were quivering, he was looking around, and he was agitated. After being asked to exit the vehicle, Ramey “looked around, hesitated, put his hand on the door then took it off.”

Transcript at 29-30. Sergeant McDonald “thought he was going to flee at that point in the vehicle, so I raised my voice” and asked him again to step out of the car. Id. at 30.

Eventually, Ramey complied and exited the vehicle, and Sergeant Charles Butler arrived on the scene to assist Sergeant McDonald. Sergeant Butler began a pat-down, but Sergeant McDonald interrupted the frisk “because they were actually standing in the lane of traffic.” Id. at 31. Although “Sergeant Butler had initiated the pat-down,” he had not finished it “because it was obvious he didn’t get to the coat.” Id. Sergeant McDonald then conducted a new pat-down, but “asked [Ramey] for his permission” first. Id. Ramey responded by “put[ting] his arms out to the side.” Id. Sergeant McDonald immediately touched Ramey’s “jacket pocket[,] which had a big large ball of what [was] immediately apparent to me . . . [as] crack cocaine.” Id. Ramey turned and fled; Sergeant Butler tackled him; and the officers placed him under arrest. The officers seized cocaine from inside Ramey’s coat pocket.

On December 11, the State charged Ramey with dealing in cocaine, as a Class A felony, among other charges. Prior to his trial, Ramey moved to exclude the cocaine as the fruit of an illegal search. The trial court denied Ramey’s motion. At the ensuing bench trial, Ramey renewed his objection to the State’s evidence.¹ The court overruled Ramey’s objection and found him guilty of the Class A felony allegation. This appeal ensued.

¹ The parties do not cite where in the record Ramey’s trial objection may be found. Nonetheless, the State does not suggest that Ramey waived the issues he raises on appeal by not properly preserving his objections.

DISCUSSION AND DECISION

Ramey contends that the State's evidence, namely, the cocaine, was obtained in violation of his right to be free from unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution and Article I, Section 11 of the Indiana Constitution. Ramey is appealing from the trial court's admission of that evidence following a completed trial. A trial court is afforded broad discretion in ruling on the admissibility of evidence, and we will reverse such a ruling only upon a showing of an abuse of discretion. Washington v. State, 784 N.E.2d 84, 587 (Ind. Ct. App. 2003). An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. Id. We will not reweigh the evidence, and we consider conflicting evidence in the light most favorable to the trial court's ruling. Cole v. State, 878 N.E.2d 882, 885 (Ind. Ct. App. 2007).

Ramey first contends that Sergeant McDonald "had no reasonable suspicion that criminal activity was afoot when he ordered Ramey to exit the car." In Terry v. Ohio, 392 U.S. 1, 30 (1968), the United States Supreme Court held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when, based on a totality of the circumstances, the officer has a reasonable, articulable suspicion that criminal activity is afoot. Hardister v. State, 849 N.E.2d 563, 570 (Ind. 2006). A Terry stop is a lesser intrusion on the person than an arrest and may include a request to see identification and inquiry necessary to confirm or dispel the officer's suspicions. Id. (citing Hiibel v. Sixth Judicial Dist. Court of Nev., 542 U.S. 177, 185-89 (2004)). Reasonable suspicion entails some minimal level of objective justification for making a

stop, something more than an unparticularized suspicion or hunch, but less than the level of suspicion required for probable cause. Wilson v. State, 670 N.E.2d 27, 29 (Ind. Ct. App. 1996) (citing United States v. Sokolow, 490 U.S. 1, 7 (1989)). Even if the stop is justified, a reasonable suspicion only allows the officer to temporarily freeze the situation for inquiry and does not give him all the rights attendant to an arrest. Burkett v. State, 736 N.E.2d 304, 306 (Ind. Ct. App. 2000). To evaluate the validity of a stop, the totality of the circumstances must be considered. Id. Although the standard of review of a trial court's decision to admit evidence is whether there was an abuse of discretion, the determination of reasonable suspicion is reviewed de novo. Id.

Sergeant McDonald's request for Ramey to exit the vehicle easily meets the requirements of Terry. It is well-settled that a law enforcement officer may stop a vehicle when he observes a minor traffic violation. See State v. Quirk, 842 N.E.2d 334, 340 (Ind. 2006). Here, Sergeant McDonald witnessed Ramey commit several traffic violations. And Sergeant McDonald observed that Ramey was nervous or agitated. Thus, both Sergeant McDonald's initiation of the traffic stop and his request for Ramey to exit the vehicle were supported by reasonable suspicion.

Ramey next asserts that neither Sergeant Butler's pat-down nor Sergeant McDonald's pat-down was supported by reasonable suspicion. We do not consider the reasonableness of Sergeant Butler's pat-down. Assuming it was unreasonable, Sergeant Butler discovered no evidence in the course of his limited pat-down and, therefore, any unlawfulness was harmless to Ramey.

As for Sergeant McDonald's pat-down, we note that generalized concerns of officer safety will not support a lawful frisk. N.W. v. State, 834 N.E.2d 159, 162 (Ind. Ct. App. 2005), trans. denied. Instead, an officer must have a reasonable belief that the particular individual is presently armed and dangerous before that individual may be patted down for weapons. Id.

That said, consent is a clear exception to warrantless searches. Pinkney v. State, 742 N.E.2d 956, 959 (Ind. Ct. App. 2001), trans. denied. "The theory underlying this exception is that, when an individual gives the State permission to search either his person or property, the governmental intrusion is presumably reasonable." Id. In Pinkney, we held that an officer's search of the defendant's person during a routine stop did not violate the defendant's Fourth Amendment rights because the defendant had consented to the search upon the officer's request. Id. at 959-61.

As we stated in Pinkney:

When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, freely and voluntarily given. The voluntariness of a consent to search is a question of fact to be determined from the totality of the circumstances, and a trial court's determination with regard to the validity of a consent is a factual matter which will not be set aside unless it is clearly erroneous. A consent to search is valid except where it is procured by fraud, duress, fear, intimidation, or where it is merely a submission to the supremacy of the law.

Id. at 959-60 (citations, quotations, and alteration omitted).

Here, before Sergeant McDonald conducted the frisk that resulted in the discovery of the cocaine, he "asked [Ramey] for his permission." Transcript at 31. Ramey responded by "put[ting] his arms out to the side," which Sergeant McDonald interpreted

as Ramey's grant of the request to search him. Id. Thus, Ramey's consent to the search was freely and voluntarily given. And there are no facts in the record to suggest that Ramey's consent was procured by fraud, duress, fear, or intimidation. Further, Ramey does not argue or suggest in this appeal that his consent was "merely a submission to the supremacy of the law." Pinkney, 742 N.E.2d at 960. We will not advocate that position on his behalf. Ind. Appellate Rule 46(A)(8)(a); see also Barrett v. State, 837 N.E.2d 1022, 1030 (Ind. Ct. App. 2005) ("We will not become a party's advocate Failure to put forth a cogent argument acts as a waiver of the issue on appeal.") (citations omitted), trans. denied.

Finally, Ramey contends that his right under Article I, Section 11 of the Indiana Constitution was also violated. For the reasons stated above, we cannot agree. See, e.g., Sowers v. State, 724 N.E.2d 588, 591-92 (Ind. 2000) (holding that the defendant's claims under Article I, Section 11 of the Indiana Constitution failed "[f]or the same reasons" the defendant's claims under the Fourth Amendment failed).

In sum, Sergeant McDonald's search and seizure did not violate either the Fourth Amendment of Article I, Section 11. Accordingly, the trial court did not abuse its discretion in admitting the cocaine into evidence. Hence, we affirm Ramey's conviction.

Affirmed.

BAKER, C.J., and MATHIAS, J., concur.