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**IN THE  
COURT OF APPEALS OF INDIANA**

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D.P., )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A05-0902-JV-91  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marilyn A. Moores, Judge  
The Honorable Gary Chavers, Magistrate  
Cause No. 49D09-0810-JD-3323

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**October 8, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## STATEMENT OF THE CASE

D.P. appeals from his adjudication as a delinquent child for committing Burglary, as a Class B felony; Criminal Mischief, as a Class A misdemeanor; and Carrying a Handgun without a License, as a Class A misdemeanor, if committed by an adult. He presents two issues for our review:

1. Whether the trial court abused its discretion when it admitted evidence acquired as the result of an investigatory stop and D.P.'s subsequent arrest.
2. Whether the trial court abused its discretion when it admitted into evidence the victim's show-up identification of D.P.

We affirm.

## FACTS AND PROCEDURAL HISTORY

On the evening of October 21, 2008, Jeffrey Cooper drove from work to his home at 43 West 43rd Street in Indianapolis, and he arrived home between 5:40 and 5:45. As he was driving up Meridian Street approaching his home, he saw in his driveway a "reddish" bicycle and an African American male wearing a "reddish-blackish" coat and dark pants. Cooper "took a look at him and he took a look at me and he [the male] immediately ran towards [Cooper's] back yard." Transcript at 15. Cooper pulled into his driveway quickly and ran toward the back of his house.

When Cooper reached his back door, the person he had seen in the driveway came out of Cooper's house. Cooper grabbed the intruder "and in a moment of clarity thinking, [']why am I grabbing this guy,['] let him go and turned him around and he fell backwards." *Id.* at 16. At that point, the intruder then pulled out a "cowboy[-]looking

gun[,]” a “six[-]shooter with a fairly long barrel.” Id. Cooper shouted several times for the intruder to leave, and the intruder left on a bicycle. Cooper immediately called 911.

Cooper’s neighbor, Peter Slaymaker, saw Cooper intercept the intruder in the driveway. Slaymaker also saw a second African American male run from behind Cooper’s home, jump on a bicycle, and ride east on 43rd Street. Slaymaker then saw the first person ride away on his own bicycle, and the two bicyclists proceeded east on 43rd Street across Meridian Street.

Officers from the Indianapolis Metropolitan Police Department arrived shortly after Cooper had called 911, and Cooper followed them into his home. The glass panel in the front door above the door handle had been knocked through and was lying intact on the floor inside. Upon inspection, Cooper and his wife discovered that drawers in bedroom dressers upstairs had been opened and rummaged through and that a bedroom closet had been opened and “interfered with.” Id. at 22. Cooper gave Officer David Bolling a statement, reporting that he had seen a single African American male, wearing a black and red jacket and dark pants and riding a reddish-colored bicycle. The police officers left Cooper’s residence around 6:30 p.m.

Upon leaving Cooper’s home, Officer Bolling drove east on 43rd Street. At some point he received an updated dispatch that two African American males had left Cooper’s residence on bicycles. As Officer Bolling passed an alley west of Winthrop he looked north and “saw two youths riding bikes [n]orthbound in the alley.” Id. at 61. One of the bicyclists was wearing dark clothing. Officer Bolling parked his car, and then he and Probationary Officer Jason Palmer walked the alley and “through some yards to see

if [they] could find [where] the subjects were.” Id. at 62. They walked “from the alley rear of the homes to the street side or front of the houses.” Id. They then walked around a house and observed two bicycles, one of which was red, near one of the houses. That house was a little over nine blocks east of Cooper’s home.

Officer Bolling called “for more cars to come to that location and [to] set up a perimeter on that house that the bikes were parked in back of [sic].” Id. at 63. And he “made contact” with someone inside the residence, a woman named Ms. Peck. Id. Officer Bolling asked Ms. Peck if anyone was home, and she replied that the only person home was an adult male on house arrest. Ms. Peck then consented to the officer’s request to search the house. Officer Bolling, Officer Palmer, and Officer Matt Peats, an officer technician, searched the house. Officer Bolling and Officer Peats found two youths, D.P. and T.W., in an upstairs bedroom. Officer Bolling “secured” D.P. and T.W., then took them downstairs and explained to Ms. Peck the nature of his investigation. Id. at 71. Officer Bolling heard Ms. Peck ask D.P. where her firearm was, and he heard D.P. reply that the firearm was under a bed. With Ms. Peck’s consent, officers searched for the gun and found a loaded revolver under a bed upstairs.

Officer Bolling called for an officer to bring Cooper to the Peck house for a show-up identification. Around 7:30 that evening, when Cooper arrived, officers brought D.P. and T.W. to the front porch, one after the other. Although it was dark outside, the porch light was on, and an officer shined a spotlight on the house. An officer asked Cooper whether either boy was the one he had seen earlier that evening at Cooper’s home. Cooper identified D.P. as the boy he had seen coming out of his house.

The State filed a petition alleging that D.P. was a delinquent child for committing the following offenses, if committed by an adult: burglary, as a Class B felony; intimidation, as a Class C felony; residential entry, as a Class D felony; criminal mischief, as a Class A misdemeanor; and carrying a handgun without a license, as a Class A misdemeanor. Following a hearing, the court entered true findings as to burglary, as a Class B felony; criminal mischief, as a Class B misdemeanor; and carrying a handgun without a license, as a Class A misdemeanor. The court entered not true findings as to intimidation and residential entry.<sup>1</sup> In the dispositional order, the court made D.P. a ward of the Indiana Department of Correction for housing in any correctional facility for children, but suspended that commitment and placed D.P. on probation with special conditions. The court also made D.P. a ward of the Marion County Department of Child Services for the purpose of placement at Resource Treatment Facility. D.P. now appeals.

## **DISCUSSION AND DECISION**

### **Issue One: Admission of Evidence**

Our standard of review for the admissibility of evidence is well established. The admission or exclusion of evidence lies within the sound discretion of the trial court and is afforded great deference on appeal. J.D. v. State, 902 N.E.2d 293, 295 (Ind. Ct. App. 2009), trans. denied. We will reverse the trial court's ruling on the admissibility of evidence only for an abuse of discretion. Id. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. Id. In reviewing the admissibility of evidence, we consider only the evidence

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<sup>1</sup> The court entered a not true finding as to residential entry because that charge is a lesser included offense to the burglary charge.

in favor of the trial court's ruling and any unrefuted evidence in the defendant's favor.  
Id.

D.P. contends that the trial court abused its discretion when it admitted certain evidence at trial. Specifically, D.P. contends that the trial court admitted evidence acquired as a result of an illegal stop in violation of his rights under the Fourth Amendment to the United States Constitution.<sup>2</sup> D.P. also argues that the trial court abused its discretion when it admitted evidence obtained as the result of an arrest for which probable cause was lacking. We address each contention in turn.

### Stop

D.P. contends that Officer Bolling did not have reasonable suspicion to stop D.P. when the officer detained D.P. at the youth's home. As a result, D.P. contends that the evidence acquired as a result of his detention violates his right to unreasonable search and seizure under the Fourth Amendment. We cannot agree.

The Fourth Amendment protects citizens from unreasonable searches and seizures. Without violating the Fourth Amendment, an officer may briefly stop a person for investigative purposes if the officer has reasonable suspicion of criminal activity. Williams v. State, 754 N.E.2d 584, 587 (Ind. Ct. App. 2001) (citing Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). This is a so-called Terry stop. Reasonable suspicion exists where the facts known to the officer, along with the reasonable inferences drawn therefrom, would cause an ordinarily prudent person to

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<sup>2</sup> D.P. also contends that the admission of evidence violated his rights under the Indiana Constitution. But D.P. makes no separate analysis under the state constitution. As such, the argument is waived. Davis v. State, 907 N.E.2d 1043, 1048 n.10 (Ind. Ct. App. 2009) (citing Francis v. State, 764 N.E.2d 641, 646-47 (Ind. Ct. App. 2002)).

believe that criminal activity has or is about to occur. Id. Reasonable suspicion is determined on a case-by-case basis by examining the totality of the circumstances. Person v. State, 764 N.E.2d 743, 748 (Ind. Ct. App. 2002), trans. denied. Reasonable suspicion must be an objective determination that is more than an inchoate and unparticularized suspicion or hunch, but less than proof of wrongdoing by a preponderance of the evidence. Id.

D.P.'s entire analysis is as follows: "D.P. was in a house near where two black boys had been seen on bicycles and outside of which were seen two bicycles, one of them red. All of this occurred between a mile and a mile and a half from the incident an hour later." Appellant's Brief at 8 (citations omitted). But D.P. does not specify which evidence was obtained as a result of D.P.'s allegedly illegal seizure. Nor does he state which evidence, so obtained, should not have been admitted at trial. As such, he has failed to support his argument with cogent analysis, and the argument is waived. See Ind. Appellate Rule 46(A)(8)(a).

Waiver notwithstanding, we address the merits of D.P.'s contention. We observe that D.P.'s mother twice gave Officer Bolling permission to search her house. In the first search, the officers had permission to search for other people in the house, and they found D.P. and T.W. in an upstairs bedroom. In the second search, the officers had permission to search for a firearm, and they found a revolver under a bed in an upstairs bedroom. Evidence that D.P. was wearing a black jacket and dark pants, that officers found him in an upstairs bedroom of his home, and that officers found a loaded revolver under the bed in that same home all resulted from consensual searches of the home. D.P. has not

pointed us to any evidence obtained as a result of his detention and separate from the consensual searches. Thus, his argument that the trial court abused its discretion when it admitted evidence obtained as the result of an illegal stop must fail.

#### Probable Cause for Arrest

In a similar argument, D.P. also contends that the trial court should not have admitted evidence that was obtained as the result of his arrest because the police lacked probable cause to support his arrest. But, again, D.P. does not point to what evidence the State obtained as a result of an allegedly illegal arrest. Thus, again, he has waived the argument for review. See Ind. App. R. 46(A)(8)(a).

#### **Issue Two: Show-Up Identification**

D.P. also contends that the trial court abused its discretion when it admitted evidence of the show-up identification by Cooper at D.P.'s home. D.P. contends that the admission of that evidence violated his rights under the Fourteenth Amendment to the United States Constitution. We addressed a similar argument in N.W.W. v. State, 878 N.E.2d 506 (Ind. Ct. App. 2009), trans. denied. In N.W.W., we observed that “it is well settled that where a witness had an opportunity to observe the perpetrator during the crime, a basis for in-court identification exists, independent of the propriety of pre-trial identification.” Id. at 509 (quoting Adkins v. State, 703 N.E.2d 182, 185 (Ind. Ct. App. 1998)). N.W.W. did not challenge the sufficiency of the basis for his victim’s unequivocal in-court identification of him as the person who robbed her. Thus, we held that the evidence regarding the show-up identification was merely cumulative of the in-court identification. Id. And the erroneous admission of evidence that is merely

cumulative of other evidence in the record is not reversible error. Id.; Beach v. State, 816 N.E.2d 57, 59 (Ind. Ct. App. 2004).

Similarly, here, D.P. does not challenge Cooper's in-court identification of him in any way. And evidence of Cooper's show-up identification, made at D.P.'s home, was merely cumulative of Cooper's in-court identification of D.P. As such, D.P.'s argument that his adjudication should be reversed because of the admission of the show-up identification must fail.

Affirmed.

KIRSCH, J., and BARNES, J., concur.