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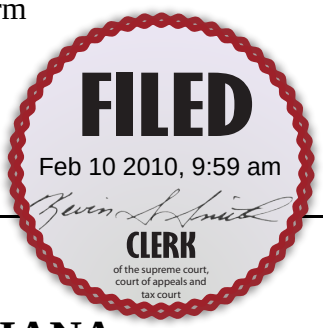

IN THE
COURT OF APPEALS OF INDIANA

STATE OF INDIANA,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 19A01-0908-CR-376
	)	
GREGORY W. FUHRMAN,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DUBOIS SUPERIOR COURT
The Honorable Mark R. McConnell, Judge
Cause No. 19D01-0903-CM-145

February 10, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

The State of Indiana appeals from the trial court's order suppressing evidence discovered after police officers, who were investigating a complaint about an underage drinking party, approached a building, knocked on the door, and once the door was opened saw minors in possession of alcohol inside. Gregory F. Fuhrman (Fuhrman), one of the minors inside the building who was charged with illegal consumption of an alcoholic beverage, filed a motion to suppress arguing that the officers' conduct violated the Fourth Amendment of the United States Constitution and the prohibition against illegal search and seizure of the Indiana Constitution. The trial court agreed and granted the motion to suppress. The State appeals and raises the following restated issue: Did the trial court err by finding the State did not present evidence to show that a warrantless entry was reasonable or necessary under the circumstances or that there were specific or articulable facts to justify the officers' intrusion on the property where Fuhrman was located?

We reverse.

On March 1, 2009, Indiana State Trooper Brock Werne received a call from dispatch advising him to call in to his post and at which time he was advised to contact Trooper Mark Green. After speaking with Trooper Green, Trooper Werne, along with DuBois County Sheriff's Deputy Jonathan Pierce, accompanied Trooper Green to investigate a location where minors were reported to be consuming alcohol. The officers drove to the address where a garage-like building was located between two houses. The officers saw multiple cars parked along a driveway and heard loud music coming from the garage. After parking their vehicle in an adjacent driveway, which actually belonged to a neighboring property

owner but was nearest to the garage, the officers crossed a yard to approach the garage. The officers heard loud music coming from inside the garage, observed two persons leave the garage and then return inside, and observed another person come out of the garage to urinate outside. They were unable to identify the people they had observed or determine their ages.

Trooper Werne knocked on the door to the garage at approximately the same time a female inside the garage opened the door. The female was still engaged in conversation with persons inside the garage. Once the door was open, the officers looked past the girl and saw multiple, under-aged people with beers in their hands. The officers then entered the garage to determine which of the minors had been consuming alcohol.

Fuhrman was one of the minors charged with illegal consumption of alcohol. Fuhrman and other defendants moved to suppress the evidence against them claiming that the officers' entry was unlawful. After a hearing on the motion, the trial court granted the motion to suppress, finding that the officers had no authority to approach the garage in which the minors were located. The State now appeals.

In this case, the State appeals from a negative judgment and must show that the trial court's ruling on the suppression motion was contrary to law. *State v. Fridy*, 842 N.E.2d 835 (Ind. Ct. App. 2006). This court will reverse a negative judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that of the trial court. *Id*. Generally, we review a trial court's decision to grant a motion to suppress as a matter of sufficiency. *Id*. When conducting such a review, we will not reweigh evidence or

judge witness credibility, but will consider only the evidence most favorable to the judgment. *State v. Estep,* 753 N.E.2d 22 (Ind. Ct. App. 2001).

Fuhrman challenged the admissibility of evidence obtained by the officers after their entry into the garage based on a violation of both the federal and state constitutions. "When a defendant challenges the admissibility of evidence based on a violation of the federal or state constitution, the State bears the burden of proving the evidence was admissible." *State v. Hanley*, 802 N.E.2d 956, 958 (Ind. Ct. App. 2004). In this case, the trial court found "[n]ot only did the State not have a warrant, but it did not present evidence to show that a warrantless entry was reasonable or necessary under the circumstances[,]" and concluded that "[t]he intrusion here was unreasonable and violated the Fourth Amendment to the Constitution of the United States and Article 1, Section 11 of the Indiana Constitution." *Appellant's Appendix* at 21.

The Fourth Amendment protects persons from unreasonable search and seizure, and this protection has been extended to the states through the Fourteenth Amendment. U.S. Const. amend. IV; *Krise v. State,* 746 N.E.2d 957 (Ind. 2001). Generally, a search warrant is a prerequisite to a constitutionally proper search and seizure. *Halsema v. State,* 823 N.E.2d 668 (Ind. 2005). When a search or seizure is conducted without a warrant, the State bears the burden of proving that an exception to the warrant requirement existed at the time of the search or seizure. *Id.*

"While almost identical to the wording in the search and seizure clause of the federal constitution, Indiana's search and seizure clause is independently interpreted and applied."

Baniaga v. State, 891 N.E.2d 615, 618 (Ind. Ct. App. 2008). Under the Indiana Constitution, the legality of a governmental search turns on an evaluation of the reasonableness of the police conduct under the totality of the circumstances. *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005). Although other relevant considerations under the circumstances may exist, our Supreme Court has determined that the reasonableness of a search or seizure turns on a balance of the "Litchfield" factors: 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. *Baniaga v. State*, 891 N.E.2d 615. The burden is on the State to show that under the totality of the circumstances, the intrusion was reasonable. *Id.*

The State argues that the level of investigation involved here implicated no Fourth Amendment interest, claiming that the officers' actions constituted a "knock and talk" investigation and was a "consensual encounter." *Appellant's Brief* at 5. This court addressed the knock-and-talk procedure as a matter of first impression in *Hayes v. State*, 794 N.E.2d 492 (Ind. Ct. App. 2003). We stated as follows:

> It is axiomatic that the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." A principal protection against unnecessary intrusions into private dwellings is the warrant requirement imposed by the Fourth Amendment on agents of the government who seek to enter a residence for purposes of search or arrest. Thus, searches and seizures inside a home without a warrant are presumptively unreasonable. But there are "'a few . . . and carefully delineated'" exceptions to the warrant requirement.
>
> A knock and talk investigation "involves officers knocking on the door of a house, identifying themselves as officers, asking to talk to the occupant about a criminal complaint, and eventually requesting permission to search the house."

> "If successful, it allows police officers who lack probable cause to gain access to a house and conduct a search." Both federal and state appellate courts which have considered the question, including the United States Court of Appeals for the Seventh Circuit, have concluded that the knock and talk procedure does not per se violate the Fourth Amendment.
>
> "Though the 'knock and talk' procedure is not automatically violative of the Fourth Amendment, it can become so." The constitutional analysis begins with the knock on the door. The prevailing rule is that, absent a clear expression by the owner to the contrary, police officers, in the course of their official business, are permitted to approach one's dwelling and seek permission to question an occupant.

794 N.E.2d 495-96 (internal citations omitted).

Under Fourth Amendment analysis, the officers were investigating a complaint about an underage drinking party when they observed a driveway lined with cars and heard loud music coming from the garage. The officers walked through a yard and approached the garage. When the officers knocked on the door, the door was opened almost contemporaneously with the knock by a partygoer, who was still engaged in conversation with others inside. From that vantage point, the officers were able to observe, in plain view, minors in possession of alcohol. We find no Fourth Amendment violation here.

Under the Indiana Constitution, we focus on the actions of the police officers, and may conclude that a search is legitimate where it is reasonable under the totality of the circumstances. *Redden v. State*, 850 N.E.2d 451 (Ind. Ct. App. 2006). We consider the "Litchfield" factors when assessing the reasonableness of a search. *Litchfield v. State*, 824 N.E.2d 356.

Here, the officers' entry onto the property was for a legitimate reason, the investigation of an underage drinking party. The officers stayed in places where visitors

would be expected to go. In the process of knocking on the door of the garage, a person inside opened the door, and from that vantage point the officers were able to see minors in possession of alcohol. We find that the officers' conduct did not violate article 1, section 11.

Judgment reversed.

NAJAM, J., and BRADFORD, J., concur.