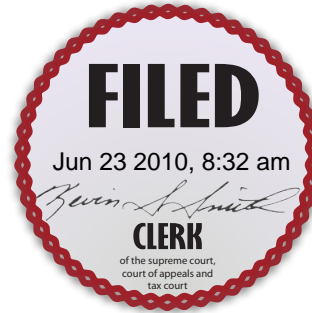


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

I.S.,)
)
Appellant-Respondent,)
)
vs.) No. 49A02-0909-JV-861
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary K. Chavers, Judge Pro Tempore
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-0906-JD-1633

June 23, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

I.S. appeals his adjudication as a juvenile delinquent, upon the State's allegation that he committed Possession of Marijuana, as a Class A misdemeanor,¹ if committed by an adult. We affirm.

Issue

I.S. raises one issue on appeal: Whether the juvenile court erred in admitting into evidence the marijuana found on I.S.'s person during a search by police.

Facts and Procedural History

On the evening of May 19, 2009, Indianapolis Metropolitan Police responded to a call concerning a reported green van in a church parking lot in which four males were allegedly smoking marijuana. The caller provided the license plate of the vehicle. When Officers Beniam Kumbi and John Schweers arrived at the location, the vehicle identified by the caller was the only car parked in the otherwise vacant church parking lot. When the officers exited their vehicles, they both detected a strong smell of marijuana coming from the van. The officers approached the van, spoke with the driver and asked all of the occupants to exit the vehicle. The officers then performed a pat down of the four males. During the pat down of I.S., Officer Schweers felt what he believed to be a bag of marijuana in I.S.'s pocket. Officer Schweers removed the bag that indeed contained marijuana. Testing confirmed that the bag contained 19.69 grams of marijuana.

¹ Ind. Code § 35-48-4-11.

On June 2, 2009, the State alleged that I.S. had committed an act of possession of marijuana, as a Class A misdemeanor, had it been committed by an adult. On August 20, 2009, the Marion County Juvenile Court conducted a denial hearing on the allegation and found I.S. to be a juvenile delinquent. I.S. was placed on probation until February 20, 2010. I.S. now appeals.

Discussion and Decision

On appeal, I.S. alleges that the trial court erred in admitting the marijuana because the search of his person was in violation of his rights under the federal Fourth Amendment and Article 1, Section 11 of the Indiana Constitution. A trial court has broad discretion in ruling on the admissibility of evidence. Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). We will reverse such a decision only when the trial court abuses that discretion. Id. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. Id.

The issue before us is whether the pat-down search of I.S. violated the protections of the federal Fourth Amendment and Article 1, Section 11 of the Indiana Constitution, both of which protect the right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. There are exceptions to the general prohibition against warrantless searches under these constitutional provisions. One such exception is when an officer has probable cause adequate to support a warrantless arrest. Kyles v. State, 888 N.E.2d 809, 812 (Ind. Ct. App. 2008).

Here, the facts support the conclusion that police had probable cause to arrest I.S. at

the time he was searched. “Probable cause to arrest exists where the officer has knowledge of facts and circumstances that would warrant a man of reasonable caution to believe that a suspect has committed the criminal act in question.” Sebastian v. State, 726 N.E.2d 827, 830 (Ind. Ct. App. 2000), trans. denied. When the officers approached the parked van, they both detected the strong odor of burnt marijuana coming from it. “[A]n officer’s detection of the smell of marijuana, together with the reasonable inferences arising therefrom, would permit an ordinary prudent person to believe that criminal activity has or was about to occur.” Miller v. State, 846 N.E.2d 1077, 1082 (Ind. Ct. App. 2006), trans. denied. Thus, the officers had probable cause² to search both the vehicle and the persons therein. See Sebastian, 726 N.E.2d at 831. Such is true under both the federal Fourth Amendment as well as under Article 1, Section 11 of the Indiana Constitution. See State v. Hawkins, 766 N.E.2d 749, 752 (Ind. Ct. App. 2002), trans. denied. Therefore, the juvenile court did not abuse its discretion in admitting the marijuana into evidence.

Affirmed.

MAY, J., and BARNES, J., concur.

² I.S. also alleges that the State did not prove that the officers were qualified by training or experience to detect the odor of burnt marijuana. However, I.S. did not raise this issue at trial. Therefore, the issue is waived. Howard v. State, 818 N.E.2d 469, 477 (Ind. Ct. App. 2004) (“The failure to raise an issue at trial waives the issue for appeal.”), trans. denied.