MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

C.J.,
Appellant-Respondent,

v.

State of Indiana,
Appellant-Petitioner.

April 17, 2024
Court of Appeals Case No.
23A-JV-1941

Appeal from the Marion Superior Court

The Honorable Danielle P. Gaughan, Judge

The Honorable Tara Y. Melton, Magistrate

Trial Court Cause No.
49D15-2305-JD-004116

Memorandum Decision by Judge Felix
Chief Judge Altice and Judge Bradford concur.

Felix, Judge.

Statement of the Case

[1] In May 2023, fifteen-year-old C.J. was a passenger in a car that was stopped for traffic violations. When law enforcement officers approached the car, they smelled raw marijuana emanating from the car, so they searched the car—without a warrant and without permission. The officers discovered baggies of what appeared to be marijuana and a firearm near where C.J. had been seated in the vehicle. The State subsequently filed a delinquency petition, and after a hearing, C.J. was adjudicated delinquent for having committed what would be Class A misdemeanor dangerous possession of a firearm if committed by an adult. C.J. now challenges his juvenile adjudication and presents one issue for our review, which we restate as follows: Whether the juvenile court erred in admitting evidence that was discovered pursuant to the search of the vehicle.

[2] We affirm.

Facts and Procedural History

[3] On May 17, 2023, Dustin Carmack, a detective with the Indianapolis Metropolitan Police Department ("IMPD"), was surveilling a gas station on the West side of Indianapolis when he observed a blue Chevrolet Impala pull into the gas station and quickly leave. As the Impala turned out of the gas station, Detective Carmack noticed the driver did not use a turn signal until after he had already turned. Moments later, the Impala failed to come to a complete stop at a stop sign.

[4] At the same time, IMPD Officer Jonathon Willey and Detective Sara Didandeh were in a marked vehicle nearby, and Detective Carmack had Officer Willey run the Impala's license plate number, which revealed the registered owner of the Impala had a suspended driver's license. Officer Willey and Detective Didandeh then stopped the Impala at a nearby grocery store. There were four people in the Impala, including C.J. who was sitting in the rear seat on the passenger side. As Officer Willey approached the driver side of the Impala, which had the windows down, he noticed the smell of what he believed to be raw marijuana coming from the Impala. After Officer Willey radioed for back up and all four people were out of the Impala, he advised them he was going to check the vehicle due to the smell of marijuana. Officer Willey searched the Impala without obtaining a warrant and without getting permission from any of the car's occupants. Officer Willey found a firearm underneath the passenger seat and a bag of what appeared to be raw marijuana in the rear floorboard behind the driver's seat.

[5] Two days later, the State filed a delinquency petition alleging C.J. had committed Class A misdemeanor dangerous possession of a firearm[1] and Class B misdemeanor possession of marijuana[2] if committed by an adult. Prior to the delinquency hearing, C.J. filed a motion to suppress any evidence discovered during Officer Willey's search of the Impala, arguing Officer Willey lacked

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[1] Ind. Code § 35-47-10-5(a) (2023).

[2] *Id.* § 35-48-4-11(a)(1).

probable cause to conduct the search. After a hearing on C.J.'s motion, the juvenile court denied it and immediately proceeded to the evidentiary hearing.

[6] During the evidentiary hearing, C.J. did not object to the admission of any testimony or exhibits based on the previously alleged illegality of the search of the Impala. The State's exhibits included (1) two photos of apparent marijuana seized from the Impala, Tr. Vol. II at 40; (2) a bag containing four separate bags of apparent marijuana that was seized from the Impala, *id.* at 42; (3) a photo of the firearm underneath the Impala's passenger seat, *id.* at 44; (4) two photos of the firearm in the floorboard of the Impala after Officer Willey moved the passenger seat forward, *id.* at 45, 54; (5) the firearm seized from the Impala, *id.* at 76–77; and (6) a photo of the seized firearm's serial number, *id.* at 78. After the State finished presenting its evidence, it dismissed the possession of marijuana charge. The juvenile court ultimately determined C.J. had committed dangerous possession of a firearm as a Class A misdemeanor if committed by an adult, imposed a commitment to the Indiana Department of Correction that is suspended to probation, and ordered C.J. to participate in certain programming and drug screens. This appeal ensued.

Discussion and Decision

The Juvenile Court Did Not Err by Admitting Evidence Discovered Pursuant to the Search of the Impala

[7] On appeal, C.J. claims only that the trial court erred by denying his motion to suppress. Because C.J. appeals following his juvenile adjudication and is not appealing the juvenile court's interlocutory order denying his motion to

suppress, the question is properly framed as whether the juvenile court abused its discretion in admitting evidence discovered pursuant to the search. *See Thomas v. State*, 81 N.E.3d 621, 624 (Ind. 2017) (citing *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014)). We review rulings on admissibility of evidence for an abuse of discretion and will reverse only "when admission is clearly against the logic and effect of the facts and circumstances." *Id.* (citing *Joyner v. State*, 678 N.E.2d 386, 390 (Ind. 1997)). "However, when a challenge to such a ruling is predicated on the constitutionality of the search or seizure of evidence, it raises a question of law that we review de novo." *Id.* (citing *Kelly v. State*, 997 N.E.2d 1045, 1050 (Ind. 2013)).

[8] C.J. specifically contends that the search violated his federal and state constitutional rights, but C.J. has waived these claims for our review. Our Supreme Court has repeatedly held that a defendant's failure to object to the admissibility of evidence at trial waives the issue for our review unless fundamental error occurred. *Halliburton v. State*, 1 N.E.3d 670, 678–79 (Ind. 2013) (citing *Treadway v. State*, 924 N.E.2d 621, 633 (Ind. 2010)). Further, "we will not review claims, even for fundamental error, when appellants expressly declare at trial that they have no objection." *Taylor v. State*, 86 N.E.3d 157, 161 (Ind. 2017) (citing *Halliburton*, 1 N.E.3d at 678–79). "The appellant cannot on the one hand state at trial that he has no objection to the admission of evidence and thereafter in this Court claim such admission to be erroneous." *Halliburton*, 1 N.E.3d at 679 (quoting *Harrison v. State*, 258 Ind. 359, 281 N.E.2d 98, 100 (1972)).

[9] At the evidentiary hearing, C.J. did not object to any testimony related to the allegedly illegal search. In fact, C.J. explicitly stated he had no objection to any of the State's six exhibits, including photos of and the actual alleged marijuana and firearm:

> [C.J.]: . . . You're moving to admit them, no objection.
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> * * *
>
> THE COURT: . . . I'll show exhibits one A through B composite exhibits one A and B admitted without objection.

Tr. Vol. II at 41–42.

> THE STATE: Judge, we would move for submission of State's Exhibit two.
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> * * *
>
> [C.J.]: So judge I don't have an objection to the exhibit coming in, but I would, just for the record object to it being characterized as marijuana as I don't believe the State has proven that it is marijuana.
>
> THE COURT: Alright. We will show . . . State[']s exhibit two entered without objection.

Id. at 75–76.

> THE STATE: Judge we would move admission of State's Exhibit three.

> [C.J.]: No objection.
>
> THE COURT: I will show State's exhibit three admitted without objection.

Id. at 45.

> THE STATE: Judge, we would move the admission of State's exhibits four A and four B.
>
> [C.J.]: No objection.
>
> THE COURT: State's exhibits four A and four B are admitted without objection.

Id. at 47.

> THE STATE: Judge we would move admission of State's exhibit five and six.
>
> [C.J.]: No objection.
>
> THE COURT: State's exhibits five and six . . . are admitted without objection.

Id. at 79–80. Because C.J. did not object to any testimony or exhibits based on the alleged illegality of the search, we will not review C.J.'s claims for error or

fundamental error.[3] *See Taylor*, 86 N.E.3d at 161 (citing *Halliburton*, 1 N.E.3d at 678–79).

[10] Even if we were to consider the merits of C.J.'s claims, we would decline his request for us to depart from this court's decision in *Moore v. State*, 211 N.E.3d 574 (Ind. Ct. App. 2023) (rejecting argument that marijuana no longer has a "distinct smell" that indicates criminal activity because legal hemp cannot be distinguished by smell from illegal marijuana), *trans. not sought*, and would thus conclude that the search of the Impala was not unconstitutional under either the United States or Indiana constitutions.

[11] Generally, the Fourth Amendment prohibits warrantless searches, but there are exceptions to this prohibition. *Moore*, 211 N.E.3d at 579 (citing *Myers v. State*, 839 N.E.2d 1146 (Ind. 2005)). "For instance, the automobile exception allows police to search a vehicle without obtaining a warrant if they have probable cause to believe evidence of a crime will be found there." *Id.* (citing *State v. Hobbs*, 933 N.E.2d 1281 (Ind. 2010)). When it is equally possible that the odor emanating from a vehicle and detected by a law enforcement officer is hemp as it is marijuana, "these circumstances create[] a fair probability—that is, 'a

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[3] For the first time on appeal, the State argues C.J. lacked standing to challenge the constitutionality of the search. The State acknowledges in its brief that it did not challenge C.J.'s standing below. Appellee's Br. at 8. It is well settled that when the State fails to "make any trial court challenge to standing, the government may not raise the issue for the first time on appeal." *Everroad v. State*, 590 N.E.2d 567, 569 (Ind. 1992) (citing *Steagald v. United States*, 451 U.S. 204, 209 (1981); *United States v. Ford*, 525 F.2d 1308 (10th Cir. 1975); *Wildberger v. State*, 536 A.2d 718, 723 n.7 (1988); *Williams v. United States*, 576 A.2d 700 (D.C. 1990)); *Bradley v. State*, 4 N.E.3d 831 (Ind. Ct. App. 2014) (quoting *Everroad*, 590 N.E.2d at 569). Thus, the State waived any standing challenge for our review by failing to raise the issue below.

substantial chance'—that the vehicle contain[s] contraband" and gives the law enforcement officer probable cause to search the vehicle. *Id.* at 581 (quoting *Eaton v. State*, 889 N.E.2d 297, 300 (Ind. 2008)). Here, Officer Willey smelled what he believed to be raw marijuana when he approached the Impala. This gave Officer Willey probable cause to search the Impala. *See id.* Therefore, the search of the Impala did not violate C.J.'s rights under the Fourth Amendment of the United States Constitution. *See id.*

[12] Article 1, Section 11 of the Indiana Constitution also protects citizens from unreasonable searches and seizures. *Moore*, 211 N.E.3d at 581 (citing *Robinson v. State*, 5 N.E.3d 362 (Ind. 2014)).

> When a section 11 claim is raised, the State must show the police conduct was reasonable under the totality of the circumstances. *Farris v. State*, 144 N.E.3d 814 (Ind. Ct. App. 2020) (quoting *Robinson*, 5 N.E.3d at 368), *trans. denied*. A determination of the reasonableness of the conduct turns on a balance of three 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 citizen's ordinary activities; and (3) the extent of law enforcement needs. *Id.*

Moore, 211 N.E.3d at 581. Regarding the first factor, "it is of no moment that legal hemp smells similar to illegal marijuana because law enforcement's conduct must be reasonable under the circumstances and such reasonableness does not require conclusive proof that a defendant committed a crime." *Id.* at 582–83.

[13] Here, the odor of raw marijuana detected by Officer Willey as he approached the Impala established a high degree of suspicion of criminal activity. *See Moore*, 211 N.E.3d at 583. The degree of police intrusion on C.J.'s ordinary activities was slight as Officer Willey and Detective Didandeh initially stopped the Impala due to multiple traffic infractions as observed by Detective Carmack. *See id.* Officer Willey and Detective Didandeh's conduct in making the stop was appropriate to the enforcement of traffic laws, and the search of the Impala was consistent with their responsibility to deter crime, intercept criminal activity, and apprehend its perpetrators. *See id.* (citing *State v. Washington*, 898 N.E.2d 1200 (Ind. 2008)). Accordingly, we conclude the warrantless search of the Impala was reasonable in light of the totality of the circumstances and thus did not violate C.J.'s rights under Article 1, Section 11 of the Indiana Constitution.

[14] In sum, C.J. waived his claims concerning the constitutionality of law enforcement officers' search of the Impala, and waiver notwithstanding, the search of the Impala did violate the Fourth Amendment of the United States Constitution and did not violate Article 1, Section 11 of the Indiana Constitution. We therefore affirm the trial court on all issues raised.

[15] Affirmed.

Altice, C.J., and Bradford, J., concur.

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