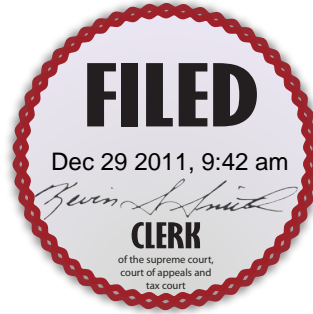


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

D.B.,)
)
Appellant-Defendant,)
)
vs.) No. 49A05-1106-JV-338
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge Pro Tempore
Cause No. 49D09-1104-JD-827

December 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

D.B. appeals his adjudication as a delinquent child for having committed carrying a handgun without a license, as a Class A misdemeanor if committed by an adult. D.B. raises two issues for our review, which we restate as the following dispositive issue: whether the trial court abused its discretion when it admitted evidence seized from D.B.'s person during a Terry stop. We affirm.¹

FACTS AND PROCEDURAL HISTORY

On April 2, 2011, uniformed Indianapolis Housing Police Officers Stephen Golden and Joseph Barney responded to a dispatch call of juveniles fighting near 10 West Market Street. Officer Golden is the Chief of the Office of Special Investigations for that department. The dispatch call stated that the juveniles were possibly armed with weapons. The officers parked their vehicles near the intersection of Illinois Street and Ohio Street and proceeded from there on foot. En route, they observed D.B. and another juvenile walking quickly away from the location of the disturbance. Officer Golden then observed a man he knew² “walking briskly” toward them. Transcript at 9. The man was “talking loudly and pointing to the two young men who were walking and he was saying, ‘them, them.’ ” Id.

In response to these circumstances, Officer Golden approached D.B. and Officer Barney approached the other juvenile. The other juvenile then fled from Officer Barney. Officer Golden ordered D.B. to “stop” because, based on his “body motion[,] body

¹ D.B. also asserts that, without the allegedly illegal evidence, the State did not present sufficient evidence to support his conviction. Because we affirm the trial court's admission of the evidence, however, we need not consider D.B.'s derivative argument.

² Officer Golden did not identify the man in his subsequent testimony.

language” and Officer Golden’s “prior experience and training as a police officer for thirty-seven years,” Officer Golden “believed that [D.B.] was getting ready to run.” Id. at 18. Without waiting for a response from D.B., Officer Golden immediately “grab[bed] onto [D.B.] and place[d] him up against the CVS door.” Id. Officer Golden later testified that he physically restrained D.B. “[f]or officer safety because of the movements that he was making with his hands and his body . . . and the fact that the other individual took off.” Id. Once Officer Golden had restrained D.B., he “did a cursory pat-down search.” Id. That search revealed a firearm in D.B.’s pants.

On April 5, the State charged D.B. with carrying a handgun without a license, as a Class A misdemeanor if committed by an adult, and dangerous possession of a firearm, as a Class A misdemeanor if committed by an adult. The juvenile court held a fact-finding hearing on April 27, at which D.B.’s counsel objected to the admission of the firearm. The trial court overruled D.B.’s objection and entered a true finding on the State’s allegation that he had carried a handgun without a license. This appeal ensued.

DISCUSSION AND DECISION

D.B. appeals the juvenile court’s admission of the firearm into evidence. 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).

D.B. contends that Officer Golden's seizure of the firearm violated D.B.'s rights under the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution. 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.

Officer Golden's stop and search of D.B. was justified by reasonable suspicion. Officer Golden had responded to a dispatch call of juveniles fighting, possibly armed. Upon his arrival, he immediately noticed D.B. walking quickly away from the scene of the alleged incident. At the same time, Officer Golden observed a man he knew following D.B. while pointing at D.B. and loudly saying, "them, them," indicating D.B. and his acquaintance. Transcript at 9. D.B.'s acquaintance then fled from the officers, and, based on D.B.'s body language, Officer Golden believed D.B. was also about to flee.

At this point, based on the totality of those circumstances, Officer Golden had an objectively justified reason to suspect that D.B. was involved in the reported incident. Accordingly, Officer Golden did not violate D.B.'s federal constitutional rights when he briefly restrained D.B. And neither did Officer Golden violate D.B.'s federal constitutional rights when the officer did a quick pat-down of D.B.'s person for officer safety, during which he discovered the firearm. See, e.g., United States v. Burton, 228 F.3d 524, 528 (4th Cir. 2000) (noting that, once an officer is presented with objective facts to justify a Terry stop, the officer is then "entitled to allay his safety concerns and conduct a protective search"). For the same reasons, D.B.'s claim under Article I, Section 11 of the Indiana Constitution must fail. E.g., Sowers v. State, 724 N.E.2d 588, 591-92 (Ind. 2000).

On appeal, D.B. focuses on each fact individually and explains, piecemeal, why any one of the given facts is insufficient to establish reasonable suspicion for the Terry stop and pat-down. For example, among other cases D.B. cites Segar v. State, 937 N.E.2d 917, 922 (Ind. Ct. App. 2010), in which this court held that a police officer did

not have reasonable suspicion to support a Terry stop of the defendant. But the only information relied on by the officer in Segar was “a tip from an anonymous caller whose identity was never ascertained . . . [and whose description of suspect] was quite generic and lacking in detail.” Id. Further, the defendant’s “observed actions before and during the stop were not suspicious.” Id. Here, in contrast, an individual known by Officer Golden near the scene of the incident specifically identified D.B. to Officer Golden once Officer Golden had arrived at the scene, and D.B.’s behavior immediately before and during the Terry stop indicated his intention to flee from Officer Golden. Indeed, Officer Golden’s decision to pat-down D.B. was not based on the dispatch call but, rather, was in response to D.B.’s behavior at the scene.

D.B.’s piecemeal approach is not the test before us. The test is based on the totality of the circumstances. Here, the totality of the circumstances objectively justified Officer Golden’s Terry stop and search of D.B.’s person. Accordingly, the trial court did not abuse its discretion in the admission of this evidence, and we affirm D.B.’s adjudication.

Affirmed.

ROBB, C.J., and VAIDIK, J., concur.