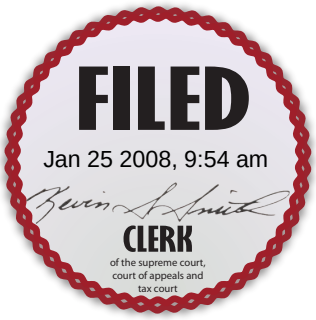

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IN THE
COURT OF APPEALS OF INDIANA

DARRIN P. STOGSDILL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 55A01-0705-CR-245
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MORGAN SUPERIOR COURT III
The Honorable Jane Spencer Craney, Judge
Cause No. 55D03-0606-FD-177

January 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Darrin Stogsdill appeals his conviction for Class D felony possession of methamphetamine, for which the trial court entered judgment as a Class A misdemeanor. We reverse.

Issue

The sole issue is whether the trial court properly admitted into evidence methamphetamine recovered from Stogsdill's car that he claims was seized during an illegal stop.

Facts

On the night of June 30, 2006, Officer Annette Downing of the Mooresville Police Department was on duty when a citizen approached her at a gas station. The citizen, who was unidentified, told Officer Downing that he believed he might have witnessed a drug deal occurring across the street in a parking lot outside a restaurant called Joe's Bar and Grille. Specifically, the citizen saw a white car and several motorcycles parked there, and he saw one of the motorcyclists enter the car and get back out after a brief period of time. He also saw one of the motorcyclists hand something to a person in the car. Joe's Bar and Grille was not an operating business at the time.

After talking to this citizen, Officer Downing received a dispatch concerning a 911 call from a CVS store near Joe's Bar and Grille, which is off of State Road 67. The CVS employee said that she had observed a white car and several motorcycles parked nearby, and that they had moved their vehicles and changed locations several times. The employee requested that a police officer check on the vehicles, saying "CVS hasn't . . .

had the best luck lately," and, "We just want to make sure he's not watching, you know." Tr. pp. 14-16.

Officer Downing spoke with other officers about the dispatch. It was agreed that she would stop the white car, and other officers would stop the motorcyclists. The evidence is muddled as to what occurred next; the evidence most favorable to the trial court's ruling is that when Officer Downing and the other officers arrived, the motorcyclists were already proceeding out of the parking lot; the white car, driven by Stogsdill, was just beginning to drive away from a parking space. Officer Downing activated her lights and stopped Stogsdill from proceeding any further. She then requested Stogsdill's consent to search his vehicle, which he gave. In the glove compartment, Officer Downing found what turned out to be .24 grams of methamphetamine.

The State charged Stogsdill with Class D felony possession of methamphetamine. Stogsdill moved to suppress the methamphetamine, arguing that Officer Downing recovered it during the course of an illegal investigative stop. The trial court denied the motion to suppress and also denied certification of that ruling for interlocutory appeal. Following a bench trial, Stogsdill was convicted as charged but the trial court entered judgment as a Class A misdemeanor. Stogsdill now appeals.

Analysis

The sole issue is whether the trial court should have suppressed the methamphetamine found in Stogsdill's car. Because this case proceeded to trial after denial of Stogsdill's suppression motion, the issue is whether the trial court abused its

discretion by admitting the evidence at trial. See Bentley v. State, 846 N.E.2d 300, 304 (Ind. Ct. App. 2006), trans. denied. We will consider any foundational evidence from the trial as well as the evidence from the motion to suppress hearing that is not in direct conflict with the trial testimony. Kelley v. State, 825 N.E.2d 420, 427 (Ind. Ct. App. 2005). Additionally, we will consider uncontradicted evidence from the motion to suppress hearing that is favorable to the defendant and that has not been countered or contradicted by any foundational evidence offered at the trial. Id. at 426. Here, all of the evidence related to Officer Downing's stop of Stogsdill was presented during the motion to suppress hearing. No different or conflicting foundational evidence was presented during trial.

The Fourth Amendment to the United States Constitution prohibits unreasonable seizures. Powell v. State, 841 N.E.2d 1165, 1167 (Ind. Ct. App. 2006). Police officers may briefly detain a person for investigatory purposes if they have a reasonable suspicion that criminal activity may be afoot. Id. (citing Terry v. Ohio, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968)). Reasonable suspicion exists if the facts known to the officer at the moment of the stop, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe that criminal activity has occurred or is about to occur. Id. Determining whether there was reasonable suspicion for a stop is fact-sensitive and determined on a case-by-case basis and requires looking at the totality of the circumstances. Id. We review a trial court's determination regarding reasonable suspicion de novo. See Ornelas v. U.S., 517 U.S. 690, 699, 116 S. Ct. 1657, 1663 (1996). Evidence recovered as a direct result of an illegal seizure generally must be suppressed as

"fruit of the poisonous tree." See Moore v. State, 827 N.E.2d 631, 639 (Ind. Ct. App. 2005), trans. denied.

If Officer Downing and the other officers had arrived at the parking lot and Stogsdill and the motorcyclists were not already in the process of leaving, they could have approached Stogsdill and his friends and initiated conversation with them about what they were doing there without technically "stopping" them and without having to have reasonable suspicion of criminal activity. See State v. Lefevers, 844 N.E.2d 508, 513 (Ind. Ct. App. 2006), trans. denied. Such action would have been completely reasonable police work. Once Officer Downing had to activate her emergency lights to prevent Stogsdill's exit from the parking lot, however, reasonable suspicion was required to justify that step. Cf. id. We conclude such suspicion was lacking.

Officer Downing's stop of Stogsdill primarily was prompted by two citizen reports of suspicious activity, and not by independent police observation. Generally, an anonymous tip from a citizen does not constitute the reasonable suspicion necessary for a valid stop unless police corroborate "significant aspects" of the tip. See Powell v. State, 841 N.E.2d 1165, 1168 (Ind. Ct. App. 2006). The tips here, however, were not completely anonymous. As for the person who spoke to Officer Downing in the gas station parking lot, although his identify was and is unknown, Officer Downing had the opportunity to assess the tipster's credibility first-hand by observing facial expressions and body language, unlike with a phoned-in anonymous tip. See State v. Glass, 769 N.E.2d 639, 643 (Ind. Ct. App. 2002), trans. denied. As for the CVS employee, she likely did provide enough identifying information to the 911 dispatcher so that she could

have been held legally responsible for making a false report to police, which increases her credibility. See id. at 642-43.

Even if we were to assume that the statements provided by the citizen-tipsters were completely truthful and required no corroboration by police, we cannot say they amounted to reasonable suspicion to stop Stogsdill. Essentially, the information Officer Downing had when she stopped Stogsdill was: (1) a car and several motorcyclists were parked in a parking lot outside a closed business late at night; (2) one of the motorcyclists handed something to someone in the car; (3) one of the motorcylists sat in the vehicle for a short period of time; (4) the car and motorcycles moved around in the parking lot a few times; and (5) the motorcycles were leaving the parking lot, and the car was just beginning to leave the parking lot, when Officer Downing and the other officers arrived on the scene.[1]

We first note that general reports of a "suspicious" vehicle are not enough by themselves to create reasonable suspicion and justify stopping that vehicle. Finger v. State, 799 N.E.2d 528, 534 (Ind. 2003). Additionally, observing someone hand something to someone else, and then observing those persons walk away in separate directions after noticing a nearby police officer, has been held to be not enough to create reasonable suspicion for a stop. See Williams v. State, 745 N.E.2d 241, 245 (Ind. Ct.

[1] There has been some mention of the possibility that Joe's Bar and Grille was a "high-crime area." However, this assertion apparently was based on the fact that drunk patrons of the restaurant sometimes wandered into the nearby CVS and caused problems. There is no other explanation in the record as to any other criminal activity connected to restaurant patrons. The restaurant was out of business at the time when Stogsdill and the motorcyclists were parked outside of it. Thus, the reason for the restaurant being called a "high-crime area" did not exist at the time of the stop. Stogsdill claims that he had agreed to meet his motorcyclist friends at Joe's Bar and Grille but did not realize it had been closed.

App. 2001). It is true, however, that a set of individually innocent facts, when observed in conjunction, can be sufficient to create reasonable suspicion of criminal activity. Finger v. State, 799 N.E.2d 528, 534 (Ind. 2003).

In Finger, our supreme court held there was sufficient reasonable suspicion of criminal activity to detain a driver of a car stopped by the side of the road based on a combination of the following: the car was reported as "suspicious"; during a consensual encounter with police, the occupants of the car appeared nervous; the officer was able to determine that the driver was lying about being out of gas; and the driver told other "inconsistent stories" to the officer. Id. at 534-35. The court placed most of its emphasis upon the lies and "inconsistent stories," and little upon the report of a "suspicious" car and the driver's nervousness. See id. In another case, this court held there was reasonable suspicion of criminal activity where the defendant was in a high crime area; the defendant made a transaction of some kind; the defendant sped off in a different direction from a police officer; and the defendant was seen carrying something unusual in his hand. Ross v. State, 844 N.E.2d 537, 542 (Ind. Ct. App. 2006).

We believe this case does not rise to the level of Finger or Ross, and is more like Williams. The evidence that Stogsdill was in a "high-crime area" is lacking, as we have noted. The report of a "suspicious" car in the parking lot, which essentially is what the call from CVS amounted to, counts for very little towards reasonable suspicion, per Finger. There was no consensual, face-to-face interaction between police and Stogsdill prior to the stop, as occurred in Finger. The fact that Stogsdill and his friends were parked in front of a closed business at night does not add much to the equation. There is

no dispute that the parking lot was a public area, just off of a well-traveled thoroughfare, and near two business that were in fact open at the time, the CVS and a gas station. The evidence that Stogsdill and his friends "fled" from the police upon their arrival is equivocal at best; it appears that they already were on their way out of the parking lot when police arrived. There is nothing inherently criminal in a group of friends gathering in a public parking lot, even late at night, nor in one of those persons handing something to someone else. In sum, reasonable suspicion to stop Stogsdill or his companions was lacking. As we observed, it would have been appropriate for Officer Downing to initiate a consensual encounter with Stogsdill, but there was not enough to justify a non-consensual investigative detention. The trial court abused its discretion in admitting the methamphetamine into evidence at trial.

Conclusion

The methamphetamine found in Stogsdill's car was the fruit of an illegal seizure and, therefore, should have been suppressed. There is no question that admission of this evidence was prejudicial. We reverse Stogsdill's conviction.

Reversed.

SHARPNACK, J., and VAIDIK, J., concur.