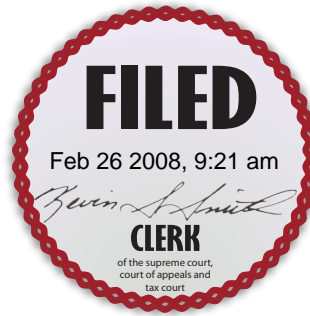


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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STATE OF INDIANA, )  
 )  
 Appellant-Plaintiff, )  
 )  
 vs. )  
 )  
 RENDA HALL, )  
 )  
 Appellee-Defendant. )

No. 09A04-0709-CR-545

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APPEAL FROM THE CASS SUPERIOR COURT  
The Honorable Thomas C. Perrone, Judge  
Cause No. 09D01-0705-FD-106

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**February 26, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

The State appeals the granting of Renda Hall's motion to suppress. We affirm.

### **Issue**

The State raises one issue, which we restate as whether the trial court properly granted Hall's motion to suppress.

### **Facts**

On May 17, 2007, State Trooper Robert Burgess was involved in the execution of a search warrant of two apartments in Cass County. During the execution of the search warrant the two residents of the apartments and a visitor, Hall's husband, Martin Hall, were arrested and taken to jail. The police officers also ran a license plate check on one of the cars parked outside the apartments. The car belonged to Martin, and the check showed that Hall had obtained a restraining order against Martin.

Approximately an hour and a half after the search began, Hall arrived in the hallway of the upstairs apartment looking for Martin. When Trooper Burgess identified himself, she looked "puzzled." Tr. p. 15. Trooper Burgess explained that he was executing a search warrant and asked who she was and what she was doing there. Hall identified herself and stated she was there to see Martin. The two discussed the protective order she had against Martin. Trooper Burgess asked if Hall had any knowledge of the illegal drug activity that was alleged to have occurred at the apartments. Hall denied any knowledge of drug-related activity and expressed concern for her eight-year-old daughter who was waiting in the car. Trooper Burgess observed Hall become "noticeably nervous" when he started talking about drugs. Id. at 24. At one point,

Trooper Burgess asked Hall to show him the contents of her pockets. She complied. Hall continued to deny any involvement in drug-related activity and repeatedly expressed concern for her daughter. Trooper Burgess told her to “wait right there.” *Id.* at 54. He asked her to consent to a search of her car. She declined and requested an attorney. Hall remained in the hallway with Trooper Burgess for seven to eight minutes.

Trooper Burgess then told Hall that she could go downstairs. Hall indicated that she wanted to leave, but Trooper Burgess stated that he was not done speaking with her. Hall walked toward her car and opened the door, but another State Trooper pushed the door shut and told her she could not get in the car. Hall was permitted to remove her daughter from the car so that a canine unit could perform a drug sniff of the car. During the sniff, the dog indicated the presence of contraband in the car. Trooper Burgess again asked for permission to search the car, and Hall declined. Hall stated that she just wanted to get her purse out of the car and leave. Trooper Burgess told her she could leave but she could not take anything from the vehicle. Hall and her daughter left the scene on foot. An inventory search of Hall’s car was conducted, and a baggie of white powder and two glass pipes were recovered from the car.

On May 22, 2007, the State charged Hall with Class D felony possession of methamphetamine and Class A misdemeanor possession of paraphernalia. On July 9, 2007, Hall filed a motion to suppress the evidence obtained during the search of her car. After a hearing, the trial court granted Hall’s motion to suppress. The State now appeals.

## Analysis

On appeal, the State argues that the trial court improperly granted Hall's motion to suppress. When appealing the trial court's granting of a motion to suppress, the State appeals from a negative judgment and must show the ruling was contrary to law. State v. Augustine, 851 N.E.2d 1022, 1025 (Ind. Ct. App. 2006). We will reverse a negative judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that reached by the trial court. Id. We neither reweigh the evidence nor judge the credibility of the witnesses, and we consider only the evidence most favorable to the judgment. Id.

The State argues that the granting of the motion to suppress was improper because Trooper Burgess engaged Hall in an investigatory stop supported by reasonable suspicion.<sup>1</sup> "The Fourth Amendment to the United States Constitution prohibits 'unreasonable searches and seizures' by the Government, and its safeguards extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest." State v. Atkins, 834 N.E.2d 1028, 1032 (Ind. Ct. App. 2005) (citations omitted), trans. denied. Nevertheless, a police officer may briefly detain a person without a warrant or probable cause if, based upon specific and articulable facts together with rational inferences from those facts, the official intrusion is reasonably warranted and the officer has a reasonable suspicion that criminal activity "may be afoot." Id. (citations omitted).

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<sup>1</sup> Although Hall agrees that some initial questioning by Trooper Burgess was reasonable, neither party argues (nor does it appear) that this was a consensual encounter between Trooper Burgess and Hall.

“Reasonable suspicion is a ‘somewhat abstract’ concept, not readily reduced to ‘a neat set of legal rules.’” Id. (citations omitted). When making a reasonable suspicion determination, we examine the totality of the circumstances of the case to see whether the detaining officer had a “‘particularized and objective basis’” for suspecting legal wrongdoing. Id. (citations omitted). The reasonable suspicion requirement is met when 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 criminal activity has occurred or is about to occur. Id. Our review of a trial court’s ultimate determination regarding reasonable suspicion is de novo. Id.

The State claims that Trooper Burgess was permitted to briefly detain Hall because he had a reasonable suspicion that she was engaged in visiting a common nuisance, which is defined as knowingly or intentionally visiting a building, structure, vehicle, or other place that is used by any person to unlawfully use a controlled substance. Ind. Code § 35-48-4-13. Indeed, based on the search warrant Trooper Burgess reasonably concluded that the apartment was a common nuisance. As the State points out, “The only question was whether Defendant knew the location was a place where drugs could be used.” Appellant’s Br. p. 6.

Here, there is no evidence that at the moment of the stop Trooper Burgess had reasonable suspicion that Hall knew that the apartment was a place where people used controlled substances. Atkins, 834 N.E.2d at 1032. In fact, at the suppression hearing, Trooper Burgess repeatedly stated that he questioned Hall regarding her knowledge. For example, he testified, “I was questioning her about why she was there to see if she had

knowledge for possibly visiting a common nuisance.” Tr. p. 21. At one point, the following dialog took place between Trooper Burgess and Hall’s attorney:

Q And what specifically did you have reason to believe she knew about what was going on at the 1, uh . . . 1135 Pleasant Hill?

A That’s what I was trying to find out. What she knew.

Q She already told you she didn’t know anything right?

A Well that’s pretty common for people not to tell me the truth at first.

Q Besides that general experience of people not telling you the truth at first, did you have any specific reason to believe she was committing a crime?

A Yes she was at a house where drugs were sold that’s visiting a common nuisance.

Q And then you talked to her for about five minutes?

A She became noticeably nervous when I started talking to her about drugs. That’s when she really started bringing up about her daughter. Prior to that she didn’t really say anything about it until I brought it up, do you know what’s going on here, do, about methamphetamine and that’s when she brought up, I need to get downstairs my daughter’s alone in the car.

Q Isn’t it true she answered your questions of that variety as you’ve already testified to by saying no, she had no knowledge.

A That’s what I testified to.

Q Besides her nervousness was there anything that made you believe that she uh . . . was committing a crime herself or about to commit a crime?

A I believe if you visit a house where drugs are kept, sold or used that's a crime in visiting a common nuisance.

Q Don't you have to know that those drugs are being used at that time?

A Which is the reason I was questioning her.

Q And she told you that she had no knowledge.

A Right, and like I said many times people, when you ask em [sic] a simple question they're going to deny it and then as you question them further, that's called interviewing and many times you're able to get to the bottom, or get to the truth or at least find inconsistencies in their story.

Tr. pp. 23-25 (ellipses in original) (alteration in original).

Hall's nervousness, which was not apparent until after Trooper Burgess detained her, is not in and of itself a basis for establishing reasonable suspicion that Hall had committed the crime of visiting a common nuisance. In fact, most people who happen upon State Troopers executing a search warrant while looking for their estranged spouse would likely become nervous. Further, we are unwilling to say that, as a matter of law, the arrival at an apartment where a search warrant is being executed based on allegations of the presence of controlled substances creates a reasonable suspicion that the person is knowingly or intentionally visiting a common nuisance. At the moment of the stop, Trooper Burgess did not have reasonable suspicion to detain Hall.

Moreover, the purpose of an investigatory stop is not to establish reasonable suspicion, but to briefly detain a person when reasonable suspicion already exists. Here, by his own testimony, Trooper Burgess detained Hall in an effort to establish reasonable

suspicion. This detention violated Hall's Fourth Amendment rights.<sup>2</sup> The State has not established that the trial court's ruling was contrary to law. The trial court properly granted Hall's motion to suppress.

### **Conclusion**

The State has not shown that the trial court improperly granted Hall's motion to suppress. We affirm.

Affirmed.

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

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<sup>2</sup> Based on our conclusion that the detention of Hall was unlawful under the Fourth Amendment, we need not determine whether the drug sniff was illegal or whether the encounter between Hall and Trooper Burgess violated Hall's Indiana constitutional rights.