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IN THE COURT OF APPEALS OF INDIANA

ADRIAN L. JOHNSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0703-CR-141
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0603-FC-59

November 19, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Adrian L. Johnson appeals the trial court's admission of certain drug paraphernalia and crack cocaine during a bench trial, which resulted in his conviction for Possession of Cocaine,[1] a Class C felony, and Possession of Paraphernalia,[2] a Class A misdemeanor. Johnson raises one issue on appeal, whether the trial court abused its discretion by admitting the drug paraphernalia and the crack cocaine into evidence at trial. We affirm.

FACTS AND PROCEDURAL HISTORY

While on duty during the third shift[3] on February 26, 2006, while it was still dark, Officer James Gasvoda[4] of the Allen County Police Department was patrolling an area in Allen County known to have frequent criminal and drug activity. Officer Gasvoda observed a white Cadillac pull out of a Travel Lodge without using its turn signal. He further observed that the Cadillac's license plate light was not working and that the driver failed to signal properly when changing lanes. Officer Gasvoda stopped the Cadillac and upon approaching the vehicle, asked for identification from both the driver, Jason Crozier, and the passenger, Johnson.

Officer Gasvoda returned to his car, and pursuant to routine procedure, ran both Crozier's and Johnson's names through his on-board computer system. This computer

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[1] Ind. Code § 35-48-4-6 (2005).

[2] Ind. Code § 35-48-4-8.3 (2005).

[3] Although the parties do not specify, we note that the third shift, also known as the "graveyard shift," is generally understood to be the shift when employees work through the night.

[4] Officer Gasvoda has since been promoted to the rank of Corporal.

check against law enforcement records alerted Officer Gasvoda that there were two outstanding felony warrants for Crozier's arrest in Georgia. The routine check further informed him that, with regard to Johnson, "Code X. Use extreme caution. Known party. Armed … Use extreme caution" and that Johnson had several prior arrests, allegedly involving robberies, and one escape arrest. Tr. at 13-14.

Officer Gasvoda contacted the Georgia authorities to determine whether or not they wished to extradite Crozier, and, knowing it would be some time before the Georgia authorities would make their determination, Officer Gasvoda re-approached the white Cadillac and secured Crozier. Officer Gasvoda testified that after receiving the warning to proceed with caution when dealing with Johnson, he determined that it was necessary to check Johnson for weapons so as to ensure officer safety.[5] He then instructed Johnson to exit the vehicle and started to pat down Johnson, checking for weapons.

During the weapons check, Officer Gasvoda felt a device in the pocket area near Johnson's left hip, which, based upon his training and experience, he knew to be a pipe commonly used to smoke illegal substances such as cocaine or methamphetamine. Officer Gasvoda first checked Johnson's jacket pocket, which hung directly on top of Johnson's pant pocket, and upon finding nothing, moved the coat aside, re-patted the area, and retrieved a glass crack pipe from Johnson's pant pocket. Officer Gasvoda then arrested Johnson, and, incident to the arrest, continued to search him, finding 3.12 grams

[5] In this case, officer safety included not only Officer Gasvoda's safety, but also the safety of Officer Sutton who had also arrived on the scene.

of crack cocaine on his person. The Georgia authorities subsequently notified Officer Gasvoda that they would not extradite Crozier.

On March 1, 2006, Johnson was charged with both possession of cocaine and possession of paraphernalia. On May 10, 2006, Johnson filed a motion to suppress, seeking to exclude the crack cocaine and the drug paraphernalia from trial. The trial court conducted a hearing on Johnson's motion on June 2, 2006, and subsequently denied it. Johnson then waived his right to a trial by jury, and a bench trial was conducted on December 13, 2006. Johnson timely objected to the introduction of the crack cocaine and the drug paraphernalia. His objections were overruled by the trial court. At the conclusion of the trial, the court found Johnson guilty on both counts and set sentencing for January 16, 2007, when it sentenced Johnson to concurrent sentences of four years for the cocaine possession conviction and one year for the paraphernalia possession conviction to be served in the Indiana Department of Correction. This appeal follows.

DISCUSSION AND DECISION

The sole issue before us on appeal is whether the trial court abused its discretion by admitting the drug paraphernalia and the crack cocaine into evidence at trial. It is well settled that in Indiana, a trial court has broad discretion in ruling on the admissibility of evidence and accordingly, we will reverse a trial court's ruling on the admissibility of evidence only when the trial court has abused its discretion. *Washington v. State*, 784 N.E.2d 584, 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*.

Our standard of review of rulings on the admissibility of evidence is the same whether the challenge is made by a pre-trial motion to suppress or by a trial objection. *Ackerman v. State*, 774 N.E.2d 970, 974 (Ind. Ct. App. 2002), *trans. denied*. We do not reweigh the evidence, and we consider the conflicting evidence in the light most favorable to the trial court's ruling. *Friend v. State*, 858 N.E.2d 646, 650 (Ind. Ct. App. 2006). However, we must also consider the uncontested evidence favorable to the defendant. *Id*.

When police perform a warrantless search, the burden is on the State to demonstrate that it falls into one of the exceptions to the warrant requirement as set forth under the Fourth Amendment. *See Johnson v. State*, 659 N.E.2d 116, 120 (Ind. 1995). One exception, allowing for limited warrantless searches in investigatory stops, was pronounced by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968). In *Terry*, the Court concluded that:

> there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.

392 U.S. at 27. Accordingly, courts must strike a balance between the individual's rights and the public interest when judging the reasonableness of investigatory stops. *Carter v. State*, 692 N.E.2d 464, 466 (Ind. Ct. App. 1997).

Reasonable suspicion is determined on a case-by-case basis by looking at the totality of the circumstances. *Id.* at 467 (stating that the totality of the circumstances may include, but is not limited to, an officer's knowledge, experience and training, whether the conduct is observed in an area known for high crime, other actions of the persons involved, and whether it appears from the officer's perspective that the subject is attempting to avoid the police after visual contact has been made). In determining whether a reasonable person would believe that a pat down was justified, the court must look, not to the officer's inchoate and unparticularized suspicions, but rather to the specific reasonable inferences that the officer is entitled to draw from the facts in light of his experience. *Howard v. State*, 862 N.E.2d 1208, 1210 (Ind. Ct. App. 2007). Upon appeal, we do not reweigh the evidence or judge the credibility of the witnesses. *See id*. However, our review of the trial court's ultimate determination of reasonableness is *de novo*. *See id*.

In the instant matter, the trial court concluded that Officer Gasvoda's decision to conduct a pat-down search of Johnson was reasonable in light of the totality of the circumstances. Officer Gasvoda pulled Crozier and Johnson over after Crozier committed numerous traffic violations during the overnight hours in an area known to have frequent criminal and drug activity. While the Indiana Supreme Court has stated that reasonable suspicion may be more easily attained in the middle of the night in a high crime area, the location and time of day alone do not warrant a "more easily attained" reasonable suspicion in all cases. *See Carter*, 692 N.E.2d at 467 n.2; *Johnson*, 659 N.E.2d at 119. However, in this case, the trial court did not rely only upon the time of

day and location of the traffic stop when it concluded that reasonable suspicion existed. The trial court additionally found that a computer check against law enforcement records of Crozier and Johnson's names, conducted after Officer Gasvoda initiated a traffic stop, pursuant to standard procedure, revealed that there were two outstanding felony warrants for Crozier's arrest in Georgia and that with regard to Johnson, a "Code X" had been issued warning officers to use extreme caution when dealing with him because he was believed to be armed and dangerous. The trial court concluded that this information, in addition to the location of the traffic stop and the time of day, gave Officer Gasvoda a reasonably articulable basis for conducting a limited warrantless search for weapons under the circumstances. We agree. Officer Gasvoda was encountering Johnson late at night in an area known to have frequent criminal and drug activity, and his routine request for the records of both the driver and the passenger alerted him that Johnson was suspected of being armed and possibly dangerous.

In *Cochran v. State*, 843 N.E.2d 980 (Ind. Ct. App. 2006), *reh'g denied, trans. denied*, we observed the necessity that police officers be permitted to verify whether the persons they encounter in the line of duty have known or suspected dangerous propensities, and we determined that officers may do so by checking the person's name against law enforcement records. *Id*. at 985. Once an officer has received information from law enforcement records suggesting that a person with whom they are dealing may be dangerous, that officer may then reasonably rely upon it. Further, in the absence of evidence that the law enforcement computer system was faulty, we are not inclined to suggest that an officer may not use such information as one factor that may support a

determination of reasonable suspicion, justifying a limited *Terry* search. *See United States v. Rice*, 483 F.3d 1079, 1084-86 (10th Cir. 2007) (holding that the information received from a computer check of law enforcement records is one factor which the court may consider in determining whether reasonable suspicion existed to justify a limited *Terry* search). We therefore conclude that the trial court did not abuse its discretion by finding that a reasonable articulable basis existed, justifying the limited search of Johnson for weapons.

Further, to the extent that Johnson is also arguing that Officer Gasvoda improperly continued his "plain feel" search after discovering that Johnson's jacket pocket was empty, we do not find this argument persuasive. As the trial court stated at trial:

> you may have a good argument, Mr. Fumarolo, if … instead of finding it in his left jeans pocket he found it in his back pocket after thinking it was in his front jacket pocket, but his explanation of why he reached into the jacket pocket makes sense. I don't think that there's any violation in once the officer feels an object that … is immediately apparent to him is contraband that doing what he did was a violation of the limited search for weapons authorized in *Terry*.

Trial Tr. at 39. In *Minnesota v. Dickerson*, 508 U.S. 366 (1993), the United States Supreme Court determined that a police officer may lawfully seize contraband which is detected through the officer's sense of touch during the lawful execution of a *Terry* protective pat down search, thus creating the "plain feel" doctrine. *Id*. at 373. We have previously determined that two issues are dispositive when determining the admissibility of contraband seized under the "plain feel" doctrine: first, whether the contraband was detected during an initial search for weapons rather than during a subsequent search, and

second, whether the identity of the item was immediately apparent to the officer. *Wright v. State*, 766 N.E.2d 1223, 1233 (Ind. Ct. App. 2002).

In this case, the facts satisfy the two-prong test as set forth in *Wright*. The facts establish that on the night in question, Johnson was wearing a thin jacket, the left pocket of which hung directly on top of his left front pant pocket. In conducting a pat down search of Johnson, Officer Gasvoda felt what he testified was immediately apparent to him, based on his training and experience, to be contraband in the left front pocket area. Officer Gasvoda checked Johnson's left jacket pocket and, upon discovering that it was empty, moved the jacket aside, re-patted the left pocket area where he had previously felt what he knew to be contraband, and removed the pipe from Johnson's left pant pocket. While it is undisputed by the parties that Officer Gasvoda first checked the left jacket pocket, found nothing and then checked the left pant pocket, the evidence clearly establishes that the contraband was detected in the area where Officer Gasvoda first detected it during his initial search for weapons. We are not convinced that Officer Gasvoda's inaccurate assumption as to which of the two specific pockets the contraband was in somehow constitutes a subsequent search. We conclude that, under these circumstances, Officer Gasvoda's search complied with the "plain feel" requirements under *Wright*.

We therefore conclude that the trial court did not abuse its discretion by admitting the crack cocaine and the drug paraphernalia into evidence at trial because it was found incident to a valid limited search, under *Terry*, that, based on the totality of the circumstances, was reasonably necessary to ensure officer safety.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.