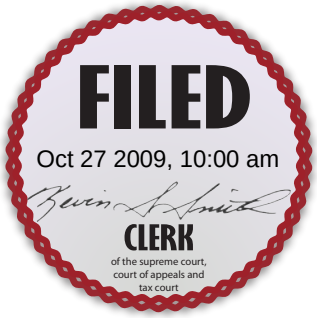


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# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| ANTON WILLIAMS, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 49A02-0904-CR-293 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly J. Brown, Judge
Cause No. 49G16-0901-CM-237

**October 27, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## Case Summary

Anton Williams ("Williams") appeals his conviction for Invasion of Privacy, a Class A misdemeanor,[1] contending that the trial court erroneously admitted evidence obtained in violation of his Fourth Amendment rights.[2] We affirm.

## Facts and Procedural History

On January 1, 2009, Indianapolis Metropolitan Police Officer Brad Gosnell was training Officer Rasheed Muwallif, and decided to show Officer Muwallif "some of the hot spots." (Tr. 6.) At approximately 11:15 p.m., the officers observed a vehicle stopped, with the engine running, at the south corner of 26th and White streets, a "corner [that] in the past year ha[d] been the subject of several narcotics arrest[s], as well as guns." (Tr. 6.)[3]

The officers pulled up behind the parked vehicle and shone the police vehicle's spotlight on it. The officers exited their vehicle and approached the parked vehicle, where they asked the vehicle's two occupants for identification. The occupants handed over their identification, disclosing that one person was Sierra Porter ("Porter") and the other was Williams.[4] A computer search revealed that Williams was subject to a no-contact order with regard to Porter. Williams was arrested for Invasion of Privacy.

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[1] Ind. Code § 35-46-1-15.1.

[2] Williams references the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution. However, he does not develop a separate argument based upon the Indiana Constitution.

[3] Testimony revealed that there were two houses at this corner. It is not clear where the vehicle was parked in relation to the houses.

[4] The record is conflicting as to which person was driving. Officer Gosnell testified that Porter was the driver and Williams was the passenger, while Officer Muwallif testified that Williams was in the driver's seat and Porter was in the passenger's seat.

On February 23, 2009, Williams was tried in a bench trial. He moved to suppress evidence obtained by the officers, claiming that they lacked reasonable suspicion of criminal activity to support a detention. The motion to suppress was denied. Williams was convicted as charged and sentenced to sixty days imprisonment. He now appeals.

**Discussion and Decision**

Williams asserts that the officers lacked reasonable suspicion that criminal activity was afoot when they detained him, and that testimony revealing that he was with Porter, in violation of a no-contact order, should have been excluded because that evidence was obtained in violation of his Fourth Amendment rights. The State responds that Williams was involved in what amounted only to a consensual encounter as opposed to a Terry stop implicating his Fourth Amendment rights.[5] Alternatively, the State argues that, even if the admission of the officers' testimony was erroneous, "the error is harmless" because Williams failed to object to the admission of a copy of the no-contact order. State's Brief at 5.

Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pretrial motion to suppress or by a trial objection. Burkes v. State, 842 N.E.2d 426, 429 (Ind. Ct. App. 2006), trans. denied. We look for substantial evidence of probative value to support the trial court's decision and, in so doing, we consider the evidence most favorable to the court's decision and any uncontradicted evidence to the contrary. Id.

[5] See Terry v. Ohio, 392 U.S. 1 (1968). Terry "established that a law enforcement officer must have reasonable suspicion of criminal conduct in order to justify a traffic stop, which is a 'seizure' for purposes of the Fourth Amendment." Clarke v. State, 868 N.E.2d 1114, 1118 (Ind. 2007).

The Fourth Amendment to the United States Constitution provides that citizens possess "[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" U.S. CONST. amend. IV. There are three levels of police investigation, two of which implicate the Fourth Amendment and one of which does not. Overstreet v. State, 724 N.E.2d 661, 663 (Ind. Ct. App. 2000), trans. denied. The Fourth Amendment requires that an arrest or detention that lasts for more than a short period of time must be justified by probable cause. Id. Second, the police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based upon specific and articulable facts, the officer has a reasonable suspicion that criminal activity has or is about to occur. Id. The third level of investigation occurs when a police officer makes a casual and brief inquiry of a citizen, which involves neither an arrest nor a stop. Id. This third level is a consensual encounter in which the Fourth Amendment is not implicated. Id. The Fourth Amendment is not triggered unless an encounter between a law enforcement officer and a citizen "loses its consensual nature." Florida v. Bostick, 501 U.S. 429, 434 (1991).

A law enforcement officer's approach to a vehicle parked in a public place does not in itself implicate the Fourth Amendment. Powell v. State, 912 N.E.2d 853, 861 (Ind. Ct. App. 2009). While the individual remains free to leave, the encounter is consensual and there has been no violation of the individual's Fourth Amendment rights. State v. Calmes, 894 N.E.2d 199, 202 (Ind. Ct. App. 2008). "Detention turns on an evaluation, under all the circumstances, of whether a reasonable person would feel free to disregard the police and go

about his or her business." Finger v. State, 799 N.E.2d 528, 532 (Ind. 2003). Examples of circumstances under which a reasonable person would have believed he was not free to leave include: (1) the threatening presence of several officers, (2) the display of a weapon by an officer, (3) physical touching of the person, or (4) the use of language or tone of voice indicating that compliance with the officer's request might be compelled. Overstreet, 724 N.E.2d at 664.

Here, the facts are akin to those of an initial encounter discussed in Clarke v. State, 868 N.E.2d 1114 (Ind. 2007). In Clarke, a police officer responded to an anonymous tip regarding a parked vehicle and drug sales. Id. at 1116. On approach, Officer Eastwood activated her flashers and placed her spotlight to see the occupants. Id. She questioned Clarke, the driver, as to what he and the passenger were doing and how long they had been there. Id. She also obtained Clarke's license and registration, as well as the passenger's identification and "returned to her car to run driver's license and warrant checks on both[.]" Id. at 1117. Officer Eastwood returned Clarke's license and registration before Clarke gave his consent to search the vehicle. Id. In agreement with the Court of Appeals, our Supreme Court characterized the initial encounter (including the computer check and return of the license) as a consensual encounter with police. Id. at 1118. The Supreme Court disagreed with the Court of Appeals that "the encounter escalated into a seizure[.]" Id. The Clarke Court observed that, according to Bostick, an officer may generally ask questions without a basis for suspecting a particular individual, and may ask to examine identification, and may request a consensual search, so long as the police have not conveyed the message that

compliance is required. Id. The Court found no evidence that Officer Eastwood conveyed such a message. Id. at 1119.

Here, likewise, the officers pulled up behind a stopped vehicle and illuminated it with a flood light. The officers took identification from both occupants and took it back to the police vehicle to "run over the microphone, or through … laptops." (Tr. 28.) There is no evidence of record that the encounter was accompanied by any police threat, display of weapons, physical touching, or commanding use of language. The encounter did not lose its consensual nature before officers discovered the no-contact order. The process did not violate the Fourth Amendment.

**Conclusion**

The trial court properly admitted evidence obtained during a consensual encounter between Williams and law enforcement officers.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.