MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

J.C.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

December 29, 2023

Court of Appeals Case No.
23A-JV-1667

Appeal from the
Marion Superior Court

The Honorable
Danielle P. Gaughan, Judge

The Honorable
Peter Haughan, Magistrate

Trial Court Cause No.
49D15-2305-JD-3529

Memorandum Decision by Senior Judge Baker
Judges Bailey and Mathias concur.

Baker, Senior Judge.

Statement of the Case

[1] J.C. appeals from his adjudication as a juvenile delinquent for committing Class A misdemeanor dangerous possession of a firearm if committed by an adult. He challenges the juvenile court's decision to admit evidence of a handgun found in his possession. He claims the firearm was "recovered as the result of an illegal seizure" and that "the investigatory stop violated [his] rights under the Fourth Amendment." Appellant's Br. p. 9. Concluding that the juvenile court did not abuse its discretion because the seizure of the handgun was constitutionally sound, we affirm.

Facts and Procedural History

[2] IMPD Officer Elizabeth Flatter received a dispatch at 10:52 p.m. on Thursday, April 27, 2023 on a report of suspicious activity; namely, two persons were trying to enter a vehicle. One of the subjects wore a black jacket with white sleeves, while the other subject wore a green sweatshirt or jacket and white shoes. While Officer Flatter was responding, she received a second dispatch that the two subjects had crossed the street and that one "potentially had a gun in his hand." Tr. Vol. II, p. 8. Officer Flatter encountered two subjects at 11:01 p.m. wearing the clothing described in the dispatch. She activated her stationary red-and-blue lights because she did not want her identity to be

misunderstood, exited her fully marked police car, and approached the subjects, who were on the sidewalk.

[3] The two males "paused to see who [the officer] was as [she] exited [her] car. Tr. Vol. II, p. 9. She asked them, "Hey, what are you guys doing out here tonight?" *Id.* Officer Flatter observed that the males "appeared to be younger" and that one was possibly a juvenile, while the other "was definitely a juvenile." Tr. Vol. II, p. 20. As she spoke with them, she noticed that one of them kept both hands in his jacket pockets, while the other male, later identified as J.C., held a cell phone in one hand, but kept one hand in his pocket "[f]irmly as if to keep something in place." *Id.*

[4] Officer Flatter asked the males if they could remove their hands from their pockets while they were talking. J.C. protested and asked, "if he needed to." *Id.* at 9. The officer responded, "it would be a whole lot easier if you did." *Id.* Officer Flatter explained, "I just want to be able to see your fingers." Conventional Ex. Vol. I, p. 4 (State's Ex. 1; bodycam recording). J.C. did not verbally respond, but handed his cell phone to the other male and then both of them kept their hands inside their coat or sweatshirt pockets. A brief time later, the other male took both hands out of his coat pockets, but J.C. kept his hands hidden from the officer.

[5] J.C. asked the officer if he had to remove his hands from his pockets. She replied, "I mean, it could be a real simple request, right?" *Id.* J.C. told her he was wearing a glove. She then said, "the issue that we have is that somebody

thought they saw something in your hand. So that's why I want to be able to see your right hand." *Id.* J.C. and the other male talked with each other about J.C.'s refusal to comply and then the other male said, "it's not like he has a weapon or anything." *Id.* J.C. and the other male looked down the street and talked about whether someone in that direction was "her." *Id.* Officer Flatter "could tell based on [J.C.'s] hand positioning that he was holding onto something or trying to keep something into [sic] his pocket." Tr. Vol. II, p. 10.

[6] IMPD Officer Anna Nichols arrived as backup for Officer Flatter at that time. Flatter informed Nichols that J.C. had taken his left hand from his coat but would not show his right hand. J.C. repeated that he had a glove on. Officer Flatter said, "I'm not concerned about the glove" adding "the faster we can just get through this, the faster I can just let you know why we're here." Ex. Vol. I, p. 4, (State's Ex. 1; bodycam recording). J.C. then argued with the officer about whether she had already explained why they were there.

[7] Officer Flatter asked the two to state their ages. J.C. said he was fifteen years old, and the other male said he was thirteen years old. The officer then asked them what their parents thought they were doing. The other male said that he and J.C. were returning from a gas station. Instead of replying to the officer's question about when their parents expected them to be home, J.C. said that they were going to see if a girl was available to socialize.

[8] Officer Flatter asked, "Do you understand, how questionable it looks . . . ." as J.C. and the other male looked away from her and then at J.C.'s right shoe. *Id.*

She then requested that J.C. step toward a nearby mailbox, and he complied. Officer Nichols shone her flashlight on the area of J.C.'s right jacket pocket. She saw a gun inside J.C.'s right coat pocket and said, "He's got a gun." Conventional Ex. Vol. I, pp. 4, 6 (State's Exhibits 1, 2). Officer Flatter replied, "Yeah, I see it." *Id.* At that point, Officer Flatter took hold of J.C.'s right hand and removed it from his pocket, revealing a 9 mm caliber loaded handgun. Officer Nichols took the handgun and secured it in her vehicle.

[9] The State filed a delinquency petition alleging that J.C committed what would be Class A misdemeanor dangerous possession of a firearm if committed by an adult, and the handgun was admitted into evidence at the factfinding hearing. At the conclusion of the factfinding hearing, the juvenile court entered a true finding that J.C. had committed the alleged delinquent act. J.C. was placed on probation, and this appeal ensued.

Discussion and Decision

[10] J.C. contends that the seizure of the handgun violated his Fourth Amendment[1] rights and, as such, the admission of the gun into evidence at the factfinding hearing constituted an abuse of discretion. We disagree.

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[1] J.C.'s brief mentions the Indiana Constitution but does not make a separate and independent argument against the admission of his handgun into evidence on state constitutional grounds. See Appellant's Br. p. 7. Consequently, review of this issue under the Indiana Constitution is waived. *Myers v. State*, 839 N.E.2d 1154, 1158 (Ind. 2005) ("Where a party, though citing Indiana constitutional authority, presents no separate argument specifically treating and analyzing a claim under the Indiana Constitution distinct from its federal counterpart, we resolve the party's claim on the basis of federal constitutional doctrine and express no

[11] "The Fourth Amendment protects persons from unreasonable search and seizure and this protection has been extended to the states through the Fourteenth Amendment." *Taylor v. State*, 842 N.E.2d 327, 330 (Ind. 2006). "The fundamental purpose of the Fourth Amendment to the United States Constitution is to protect the legitimate expectations of privacy that citizens possess in their persons, their homes, and their belongings." *Id.* "For a search to be reasonable under the Fourth Amendment, a warrant is required unless an exception to the warrant requirement applies." *Id.* At trial, the State bears the burden of proving that a warrantless search falls within an exception to the warrant requirement. *Id.*

[12] J.C. appeals from a completed delinquency proceeding and contends that the trial court abused its discretion by admitting his handgun into evidence. "We afford trial courts broad discretion in ruling on the admission of evidence." *J.B. v. State*, 205 N.E.3d 244, 247 (Ind. Ct. App. 2023). '"Generally, we review the trial court's ruling on the admission of evidence for an abuse of discretion."' *Id.* (quoting *Jones v. State*, 982 N.E.2d 417, 421 (Ind. Ct. App. 2013), *trans. denied*). "We reverse only where the decision is clearly against the logic and effect of the facts and circumstances." *Id.*

[13] Reviewing courts will not second-guess a trial court's estimation of the facts and circumstances because the trial court "is in a better position to weigh evidence,

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opinion as to what, if any, differences there may be under the Indiana Constitution.") (internal quotations omitted).

assess the credibility of witnesses, and draw inferences." *Moshenek v. State*, 868 N.E.2d 419, 424 (Ind. 2007). "[A] trial court's ruling on the admission of evidence is accorded 'a great deal of deference' on appeal." *Hall v. State*, 36 N.E.3d 459, 466 (Ind. 2015) (quoting *Tynes v. State*, 650 N.E.2d 685, 687 (Ind. 1995)). "The trial court's ruling is presumptively correct, and a challenger bears the burden[2] on appeal of persuading us that the court erred in its exercise of discretion." *Swallow v. State*, 19 N.E.3d 396, 400 (Ind. Ct. App. 2014), *trans. denied.*

[14] "[W]hen an appellant's challenge to such a ruling is premised on a claimed constitutional violation, we review the issue de novo because it raises a question of law." *Pinner v. State*, 74 N.E.3d 226, 229 (Ind. 2017). We "may affirm the trial court's ruling if it is sustainable on any legal basis in the record, even though it was not the reason enunciated by the trial court." *Harris v. State*, 19 N.E.3d 298, 301 (Ind. Ct. App. 2014), *trans. denied*.

[15] Another panel of this Court described the three levels of police investigation and their relationship to Fourth Amendment protections as follows:

> We begin by noting that there are three levels of police investigation, two which implicate the Fourth Amendment and one which does not. First, the Fourth Amendment requires that an arrest or detention for more than a short period be justified by

[2] J.C. argues that it is the State's burden on appeal to prove there was reasonable suspicion to make an investigatory stop. *See* Appellant's Br. pp. 12, 18. On appeal, however, it is J.C.'s burden of showing that the trial court abused its discretion by admitting the evidence. *See Swallow*, 19 N.E.3d at 400.

> probable cause. Probable cause to arrest exists where the facts and circumstances within the knowledge of the officers are sufficient to warrant a belief by a person of reasonable caution that an offense has been committed and that the person to be arrested has committed it. Second, it is well-settled Fourth Amendment jurisprudence that police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity may be afoot. Accordingly, limited investigatory stops and seizures on the street involving a brief question or two and a possible frisk for weapons can be justified by mere reasonable suspicion. Finally, the third level of investigation occurs when a law enforcement officer makes a casual and brief inquiry of a citizen which involves neither an arrest nor a stop. In this type of consensual encounter no Fourth Amendment interest is implicated.

Overstreet v. State, 724 N.E.2d 661, 663 (Ind. Ct. App. 2000) (internal quotations and citations omitted), *trans. denied*. Here, the officers' actions are justified under two of those levels of police investigation; namely, consensual encounter, and investigatory detentions under *Terry v. Ohio*, 392 U.S. 1 (1968).

[16] J.C.'s initial encounter with Officer Flatter and later Officer Nichols was a consensual encounter, which does not implicate Fourth Amendment protections. On appeal, J.C. implicitly concedes that the events prior to the moment that Officer Flatter grasped his right arm were part of a consensual encounter, arguing that he was seized at the moment his arm was grabbed. *See* Appellant's Br. p. 11. Officer Flatter used her stationary lights, not her flashing emergency lights, to identify herself to J.C. and the other male as a police officer. This did not constitute a seizure under the Fourth Amendment. *See*

R.H. v. State, 916 N.E.2d 260, 266 (Ind. Ct. App. 2009) (officer using emergency lights to identify himself to other motorists when stopping behind parked car was not a "seizure" under the Fourth Amendment), *trans. denied*.

[17] The record shows that J.C. and the other male voluntarily turned to speak to Officer Flatter and then engaged in a dialogue about their activities with her. Officer Flatter did not display a weapon or issue orders, commands, or instructions to them. She made the reasonable request that the two males remove their hands from their pockets to reveal them in an effort to put her at ease during the encounter. These facts demonstrate that this was a consensual encounter which did not constitute a seizure in violation of the Fourth Amendment. *See Bell v. State*, 144 N.E.3d 791, 797 (Ind. Ct. App. 2020) (encounter was consensual where two uniformed deputies asked defendant to come to them and told him to "stand still, stop" because the deputies did not draw or display weapons and did not touch or yell at defendant, but spoke calmly and politely with him).

[18] J.C. contends, however, that the consensual search became an illegitimate *Terry* stop when Officer Flatter grasped his arm to expose the handgun. J.C. argues the officer's actions were illegal because she was relying on a nameless person's tip about attempts to enter a car, without having seen J.C. exhibit behavior in corroboration of that tip. We cannot agree.

[19] By the time Officer Flatter grasped J.C.'s arm, she had learned from J.C. that he and the other male were minors on a public street after 11:00 p.m. on a

Thursday night. Indiana Code section 31-37-3-2(a)(2) (2004) makes it a delinquent act for a person who is fifteen years old to be in a public place after 11:00 p.m. on a Thursday. And there is nothing in the record to support a statutory defense to the delinquent act. *See* Ind. Code § 31-37-3-3.5(b) (2006) (list of defenses). J.C. failed to respond to Officer Flatter's questions about what his parents had allowed him to do or where they believed him to be. Instead, J.C. and the other male discussed their attempts to socialize with a girl and their trip to a gas station. These facts provided probable cause for her to take J.C. into custody for a curfew violation. As such, Officer Flatter was justified in searching the pockets of J.C.'s coat or sweatshirt. Indiana Code section 31-37-4-2 (1997) provides that an officer may take a child into custody for a delinquent act. "[O]nce a lawful arrest has been made, authorities may conduct a full search of the arrestee for weapons or concealed evidence." *I.G v. State*, 177 N.E.3d 75, 78 (Ind. Ct. App. 2021) (internal quotations omitted). And as '"long as probable cause exists to make an arrest, the fact that a suspect was not formally placed under arrest at the time of the search incident thereto will not invalidate the search."' *Id.* (quoting *State v. Parrott*, 69 N.E.3d 535, 543 (Ind. Ct. App. 2017), *trans. denied*). Officer Flatter had probable cause to arrest J.C., and the search of his jacket leading to the seizure of the handgun was a constitutionally valid search incident to arrest.

[20] Furthermore, the facts here—J.C., a minor, being (1) out after curfew; (2) evasive about his parents' knowledge of his whereabouts; (3) reluctant to remove both hands from his pockets; and (4) protective of the item in his

pocket—are articulable facts justifying a reasonable suspicion that J.C. was breaking the law, thus justifying his seizure. And "[a]s part of a valid *Terry* stop, an officer is also entitled to take reasonable steps to ensure his own safety" including "a limited search of the individual's outer clothing for weapons if the officer reasonably believes that the individual is armed and dangerous." *Miller v. State*, 201 N.E.3d 683, 689 (Ind. Ct. App. 2022) (quoting *Patterson v. State*, 958 N.E.2d 478, 482-83 (Ind. Ct. App. 2011)). Once J.C. stepped near the mailbox, Officer Nichols shone her flashlight in the direction of the right pocket of his jacket or sweatshirt. Both officers observed a handgun in his pocket. This encounter occurred on a deserted residential street at night, and J.C. kept his right hand in his pocket as if to hold something in place, posturing such that his right side was closest to Officer Flatter. We conclude that the seizure was constitutionally valid under this rationale as well.

[21] The trial court did not abuse its discretion by admitting the handgun in evidence.

Conclusion

[22] In light of the foregoing, we affirm the trial court's judgment.

[23] Affirmed.

Bailey, J., and Mathias, J., concur.