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IN THE
COURT OF APPEALS OF INDIANA

M.M.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 71A03-0708-JV-389
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable _____, Judge[1]
The Honorable Barbara Johnson, Magistrate
Cause No. 71J01-0703-JD-169

December 31, 2007

[1] The Appendix filed by Appellant contains copies of documents from the court's order book that appear to have been printed from the internet. However, the image boxes containing the names of the Magistrate and Judge did not load prior to the pages being printed. Accordingly, the record before us does not contain the name of the Judge who found M.M. to be a delinquent. We obtained the Magistrate's name from the cover of the transcript. We suggest counsel ensure the completeness of the record submitted to us.

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

M.M. appeals his adjudication as a delinquent, claiming the court abused its discretion in admitting the evidence seized from his person and car. Because the officer had probable cause to arrest M.M., the evidence seized during a search incident to his arrest was admissible at trial. Therefore, we affirm.

FACTS AND PROCEDURAL HISTORY

M.M. walked into a gas station to prepay for gasoline carrying a partially consumed bottle of tequila. After prepaying, M.M. stumbled when walking to the bathroom. Because the gas station attendant believed the customer was intoxicated and about fifteen years old, she telephoned police. When Roseland Police Officer Jack Tiller arrived, the attendant pointed to the pump where M.M. was pumping gas.

As M.M. climbed into his car, Officer Tiller parked his marked police cruiser next to M.M.'s car. Officer Tiller stepped out of his car and asked M.M. to roll down his window. When M.M. rolled down the window, Officer Tiller immediately smelled burnt marijuana and saw a cup of "yellowish liquid" that he believed to be "alcohol out in the open." (Tr. at 33.) Officer Tiller asked M.M. how old he was, and M.M. reported he was nineteen years old. Officer Tiller asked M.M. to step out of the car. Prior to stepping out, M.M. attempted to place under the driver's seat "a very large ball, of what appeared to be marijuana, a green leafy substance." (*Id.* at 34.) Upon M.M. exiting the car, Officer Tiller could see the bottle of alcohol on the driver's side floorboard. Officer

Tiller placed M.M. under arrest. During a search incident to arrest, Officer Tiller found cocaine in M.M.'s pants pocket and both marijuana and tequila in the car. A breathalyzer indicated M.M. had consumed alcohol.

The State filed a petition alleging M.M. was a delinquent for committing: possession of cocaine,[2] possession of marijuana,[3] false reporting,[4] consumption of alcohol,[5] and possession of alcohol.[6] The court entered true findings for possession of cocaine, consumption of alcohol, and possession of alcohol.

DISCUSSION AND DECISION

M.M. appeals the admission of evidence at his trial. Trial courts enjoy broad discretion in ruling on the admission of evidence. *Vasquez v. State*, 868 N.E.2d 473, 476 (Ind. 2007). We will reverse the court's decision only for an abuse of discretion. *Id.*

M.M. alleges Officer Tiller's search was an illegal warrantless search. The court found the search was proper because it was incident to M.M.'s arrest. M.M. claims Officer Tiller did not have probable cause to arrest him when the search commenced.

> Probable cause to arrest exists where the officer has knowledge of facts and circumstances that would warrant a man of reasonable caution to believe that a suspect has committed the criminal act in question. Under the search-incident-to-arrest exception to the warrant requirement, a police officer may conduct a search of the defendant's person and the area within his control. The search of a defendant's automobile under this exception is valid even when the automobile is no longer in the defendant's area of control. In addition, "where there is probable cause to believe an automobile contains the fruit or instrumentality of a crime, the inherent mobility of the automobile justifies a warrantless search."

[2] Ind. Code § 35-48-4-6 (Class D felony).
[3] Ind. Code § 35-48-4-11 (Class A misdemeanor).
[4] Ind. Code § 35-44-2-2 (Class B misdemeanor).
[5] Ind. Code § 7.1-5-7-7 (Class C misdemeanor).
[6] Ind. Code § 7.1-5-7-7 (Class C misdemeanor).

Sebastian v. State, 726 N.E.2d 827, 830 (Ind. Ct. App. 2000) (citations omitted), *trans. denied* 735 N.E.2d 235 (Ind. 2000).

The report from the gas station attendant, who was not "anonymous" because she visually signaled M.M.'s location to Officer Tiller upon his arrival, reported M.M. appeared to be intoxicated and an underage drinker carrying a tequila bottle. When M.M. rolled the window down, Officer Tiller immediately smelled burnt marijuana and saw a yellowish liquid he believed to be alcohol. M.M. reported being nineteen years old and attempted to hide a bag of green leafy substance under the seat prior to stepping out of the car. When M.M. stepped out of the car, Officer Tiller saw the cap on the alcohol bottle. These facts provided probable cause to believe M.M. was a minor in possession of alcohol. *See* Ind. Code § 7.1-5-7-7 (defining crime as a Class C misdemeanor).

Moreover, we note that, even if probable cause had not existed to arrest M.M., the smell of burnt marijuana gave Officer Tiller probable cause to search M.M's car: "we have no hesitation in deciding that when a trained and experienced police officer detects the strong and distinctive odor of burnt marijuana coming from a vehicle, the officer has probable cause to search the vehicle." *State v. Hawkins*, 766 N.E.2d 749, 752 (Ind. Ct. App. 2002), *trans. denied* 783 N.E.2d 690 (Ind. 2002). Upon searching the car, Officer Tiller would have found the marijuana and had additional cause for arresting M.M.

Accordingly, we find no abuse of discretion in the admission of the evidence seized from M.M. and his car, and we affirm the court's judgment finding M.M. a delinquent.

Affirmed.

KIRSCH, J., and RILEY, J., concur.