

**STATE OF LOUISIANA
IN THE INTEREST OF D.P.**

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NO. 2017-CA-0194

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COURT OF APPEAL

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 2016-203-05-DQ-B, SECTION "B"
Honorable Tammy M. Stewart, Judge

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Judge Daniel L. Dysart

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(Court composed of Judge Daniel L. Dysart, Judge Regina Bartholomew Woods,
Judge Tiffany G. Chase)

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AFFIRMED

NOVEMBER 29, 2017

As a result of a traffic stop of his mother on March 11, 2016, D.P., who was fifteen at the time of his arrest, was charged with violation of La. R.S. 40:966 E(1)(i), possession of marijuana. On November 17, 2016, the trial court held a hearing on the defendant's motion to suppress evidence, and an adjudication of the charges against him. The trial court denied his motion to suppress and found D.P. guilty as charged. On January 19, 2017, the trial court sentenced D.P. to fifteen days in custody, but suspended the sentence and placed him on six months of probation.

D.P. appeals the adjudication arguing that the trial court erred in denying his motion to suppress the evidence.

BACKGROUND:

On March 11, 2016, Detective Lawrence Weathersby, Jr., and Sergeant Joseph Davis conducted a traffic stop at N. Rampart and Flood Streets in New Orleans. While on patrol, the officers observed a vehicle abruptly swerve to avoid pedestrians in the street. The officers stopped the vehicle, and Det. Weathersby

approached the driver side and Sgt. Davis approached the passenger side of the vehicle. Both officers testified that as they approached, they smelled marijuana coming from the vehicle. Det. Weathersby testified that at that point what was initially a traffic stop became a narcotics investigation. He advised the driver of her *Miranda* rights, explaining that as her passenger was her juvenile son, the rights extended to him. He asked D.P.'s mother to produce her license, registration and proof of insurance, at which time he noticed clear plastic baggies in the glove box. Based on his experience, he asked the driver if she had narcotics in the vehicle, to which she responded by handing the detective a bag of marijuana that was in her purse.

Det. Weathersby stated that he initially told D.P.'s mother that she would likely be issued a summons for possession of a small amount of marijuana. However, after seeing the baggies, Det. Weathersby suspected that there were more narcotics in the vehicle. He ordered both the mother and son out of the vehicle. Sgt. Davis handcuffed D.P.

A further search of the vehicle revealed more narcotics. Sgt. Davis testified that he could smell marijuana on D.P. As narcotics and drug paraphernalia had been discovered in the vehicle, Sgt. Davis patted D.P. down for weapons and narcotics. He felt a small bulge in D.P.'s pocket and heard the sound of cellophane or plastic. A search of D.P.'s pocket revealed a bag of marijuana.

D.P.'s mother was placed under arrest for possession with intent to distribute marijuana, and was transported to central lock-up. D.P. was placed under arrest for possession of marijuana and was transported to juvenile lock-up.

DISCUSSION:

In his sole assignment of error, D.P. argues that the trial court erred in denying his motion to suppress. Applied to the facts of the case, the issue is whether the police officers had reasonable suspicion to justify the pat-down of D.P., and whether that pat-down legally resulted in the discovery of marijuana in his pocket.

D.P. argues that his rights under both the U.S. and Louisiana constitutions were violated when Sgt. Davis conducted an investigatory stop without specific knowledge or reasonable suspicion that D.P. had committed a crime. He contends that neither officer had specific knowledge that he was engaged in criminal activity, especially in light of the fact that the officers knew he was the driver's minor son and that he was sitting quietly in the passenger seat. D.P. also argues that neither officer saw him in possession of marijuana or plastic baggies, and that Sgt. Davis was not justified in patting him down. D.P. posits that should this Court find that Sgt. Davis did have reasonable suspicion sufficient to justify a pat-down, the search of D.P.'s pockets elevated the stop to an arrest, which, in the absence of probable cause, is illegal.

A trial court's rulings on motions to suppress are afforded great weight and will not be set aside absent an abuse of discretion. *State v. Gates*, 13-1422, p. 9

(La. 5/7/14), 145 So.3d 288, 294; *State v. Lewis*, 15-0773, p. 11 (La.App. 4 Cir. 2/3/16), 187 So.3d 24, 30. A trial court's legal findings are subject to a *de novo* review. *Lewis*, 15-0773, p. 11, 187 So.3d at 30.

Reviewing courts must look to the totality of the circumstances on a case-by-case basis to determine if police officers had an objectively reasonable basis for their actions. *State v. Cure*, 11-2238, p. 4 (La. 7/2/12), 93 So.3d 1268, 1270. The court must balance the need for the stop against the invasion of privacy it entails. *State v. Williams*, 07-0700, p. 11 (La.App. 4 Cir. 2/13/08), 977 So.2d 1101, 1111. The requisite "minimal objective basis" for an investigatory stop is an officer needing to "maintain the status quo momentarily while obtaining more information." *State v. Lampton*, 12-1547 (La. 4/5/13), 110 So.3d 557, 561, *citing State v. Fauria*, 393 So.2d 688, 690 (La. 1981). It is also well-settled that once officers make a valid traffic stop, they are justified in ordering the driver and passengers out of the vehicle for safety reasons. *See Maryland v. Wilson*, 519 U.S. 408, 117 S.Ct. 882 (1997); *Cure, supra*.

The officers testified that they observed D.P.'s mother swerve to avoid hitting pedestrians. She was cited for careless operation of a motor vehicle, as well as driving with a suspended driver's license, an expired plate, and illegally tinted windows. Clearly, the officers made a valid traffic stop based on the mother's erratic driving, the expired plate and the windows.

Initially, Det. Weathersby testified that as he approached the vehicle, he could smell marijuana coming from the vehicle. His partner, Sgt. Davis, signaled

that he also smelled marijuana. At that point, what was initially a traffic stop escalated to a narcotics investigation. Det. Weathersby first asked the driver for her registration and proof of insurance. When the glove box was opened, the detective saw multiple plastic baggies, which based upon his experience, indicated distribution of drugs. He asked the mother if she had narcotics in the vehicle, at which time she retrieved a bag of marijuana from her purse and handed it to the detective. Det. Weathersby stated that initially he was inclined to issue the mother a municipal citation; however, upon seeing the plastic baggies, he knew he would have to place the mother under arrest.

Based on the jurisprudence and the facts of the case, we find the officers were justified in making the traffic stop, and in asking both the driver and passenger to exit the vehicle.

Furthermore, we find that D.P. was properly detained by handcuffing him after he exited the vehicle. Officers are “authorized to take reasonable steps to protect their personal safety and to maintain the status quo” during the course of an investigatory stop. *United States v. Hensley*, 469 U.S. 221, 235, 105 S.Ct. 675, 683-84 (1985) ; *State v. Duhe*, 12-2677, p. 9 (La. 12/10/13), 130 So.3d 880, 886.

D.P. argues that having him exit the vehicle, handcuffing him, and searching his pockets was tantamount to an arrest, not a detention. His argument centers on the facts that he was with his mother, that they knew he was a minor, that he was quiet and calm during the encounter, and that the officers had no reasonable suspicion to believe he had committed a crime.

This argument must fail. At the point that Sgt. Davis asked D.P. to exit the vehicle and handcuffed him, it was already established that his mother was in possession of marijuana and that there were plastic baggies (which the officers knew from their experience were linked to distribution of narcotics) in a common area of the vehicle. Further, Sgt. Davis testified that he noted a strong smell of marijuana on D.P. once he exited the vehicle. The fact that he was with his mother is irrelevant, as she was at that time under arrest for distribution of narcotics. Likewise, the fact that he was a minor and was quiet and calm has no bearing on whether he was legally detained.

The Louisiana Supreme Court has consistently held that pat-down searches following valid investigatory stops were properly based on reasonable suspicion, and thus justified, based on officers' discovery of narcotics during the stop and the close association between firearms and narcotics. *See, e.g., Duhe*, 12-2677, p. 9, 130 So.3d at 886, *citing United States v. McGehee*, 672 F.3d 860, 870 (10th Cir. 2012); *State v. James*, 99-3304, p. 7 (La. 12/8/00), 795 So.2d 1146, 1150, *citing United States v. Trullo*, 809 F.2d 108, 113-14 (1st Cir. 1987).

Sgt. Davis testified that he initiated a pat-down search of D.P. for the purpose of discovering any possible weapons. D.P. claims that Sgt. Davis did not testify that he knew what was in D.P.'s pocket prior to emptying his pocket. This is a mischaracterization of the actual testimony. On cross-examination, Sgt. Davis testified that he frisked D.P. for weapons, but did not find any. However, Sgt. Davis also stated that he felt a small bulge in D.P.'s pocket and heard "cellophane

‘crinkle a bit.’” On re-direct, he explained that based on the totality of the circumstances, i.e., the discovery of narcotics and plastic baggies in the vehicle, he was also looking for evidence of narcotics on D.P.

In *State v. Guillory*, 09-1350, (La. 11/20/09), 21 So.3d 945, the Supreme Court addressed the necessity of a protective frisk. In *Guillory*, an officer felt a plastic bag hanging out of the defendant’s waistband, and seized it. The Supreme Court, citing to recent cases, held that the plain feel of the bag, combined with the circumstances that led up to the frisk, were sufficient to allow the seizure of the bag. See, *State v. Broussard*, 00-3230 (La. 5/24/02), 816 So.2d 1284; *State v. Adams*, 01-3231 (La. 1/14/03), 836 So.2d 9.

In conclusion, we find that the officers were justified in making the traffic stop, in detaining D.P., and in searching him for weapons. Looking at the totality of the circumstances, we also find that Sgt. Davis was justified in frisking D.P. for possible narcotics. D.P.’s age or the fact that he was with his mother at the time of this encounter does not negate the reality of the dangers encountered by law enforcement when making traffic stops.

Accordingly, we affirm the ruling of the trial court.

AFFIRMED