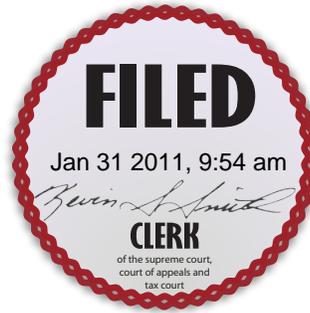


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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R.K., )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A02-1002-JV-343  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marilyn Moores, Judge  
The Honorable Scott Stowers, Magistrate  
Cause No. 49D09-0909-JD-3012

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**January 31, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

R.K. appeals his adjudication as a delinquent child for an act that, if committed by an adult, would constitute Class A misdemeanor possession of marijuana. We affirm.

### **Issue**

R.K. raises one issue, which we restate as whether the juvenile court abused its discretion by admitting marijuana found in R.K.'s shoe into evidence.

### **Facts**

On September 26, 2009, officers from the Indianapolis Metropolitan Police Department were dispatched to the intersection of East 34th Street and North Keystone Avenue regarding a report that someone was going to be assaulted at that location. The officers did not find anyone at that location, but they located some men one block away. Officer Charles Rhodes also saw R.K. in the vicinity and approached him to identify him and see if he was linked to the assault report. When Officer Rhodes approached R.K., he smelled marijuana on R.K.'s clothing. Officer Rhodes patted R.K. down, found a knife in his possession, and handcuffed him. He then obtained R.K.'s identification information and found that R.K. had a warrant for being a runaway. Officer Rhodes arrested R.K. and asked him if he had any narcotics. R.K. said that he had a bag of marijuana in his shoe. Officer Rhodes recovered a bag of marijuana weighing 1.07 grams from R.K.'s shoe.

The State alleged that R.K. committed an act that, if committed by an adult, would be possession of marijuana as a Class A misdemeanor. During the hearing, R.K. moved to suppress his statement to the officer and the marijuana, arguing that there was no basis

for detaining him and that he was questioned without the opportunity to consult with his parent or guardian. The juvenile court granted R.K.'s motion to suppress his statements to the officer but denied R.K.'s motion regarding the marijuana. The juvenile court entered a true finding regarding the possession of marijuana. The juvenile court awarded wardship of R.K. to the Department of Correction, suspended the commitment, and placed R.K. on probation with special conditions.

### **Analysis**

The issue is whether the juvenile court abused its discretion by admitting the marijuana found in R.K.'s shoe. The admission of evidence is a matter left to the sound discretion of the juvenile court, and a reviewing court will reverse only upon an abuse of that discretion. R.H. v. State, 916 N.E.2d 260, 263 (Ind. Ct. App. 2009), trans. denied. An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances before the juvenile court. Id.

R.K. argues that the juvenile court should not have admitted the marijuana because his initial detention violated the Fourth Amendment to the United States Constitution. The Fourth Amendment to the United States Constitution guarantees the right to be secure against unreasonable search and seizure. State v. Augustine, 851 N.E.2d 1022 (Ind. Ct. App. 2006). There are three levels of police investigation, two of which implicate the Fourth Amendment and one of which does not. Id. First, 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 is a consensual encounter in which the Fourth Amendment is not implicated. Id.

We have noted that “a seizure does not occur simply because a police officer approaches an individual and asks a few questions.” Cochran v. State, 843 N.E.2d 980, 984 (Ind. Ct. App. 2006) (quoting Florida v. Bostick, 501 U.S. 429, 434, 111 S. Ct. 2382, 2386 (1991)), trans. denied, cert. denied. “Asking questions is an essential part of police investigations. In the ordinary course a police officer is free to ask a person for identification without implicating the Fourth Amendment.” Id. (quoting Hiiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County, 542 U.S. 177, 185, 124 S. Ct. 2451, 2458 (2004)). When Officer Rhodes approached R.K. to ask for his identification, the Fourth Amendment was not implicated.

The situation quickly changed when, after approaching R.K., Officer Rhodes noticed the smell of marijuana on R.K. The United States Supreme Court has declared that the Fourth Amendment’s “protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest.” Armfield v. State, 918 N.E.2d 316, 319 (Ind. 2009) (quoting United States v. Arvizu, 534 U.S. 266, 273, 122 S. Ct. 744, 750 (2002)). Under Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868 (1968), an officer is permitted to “stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” Id. (quoting United States v. Sokolow, 490

U.S. 1, 7, 109 S. Ct. 1581, 1585 (1989)). Upon smelling the marijuana, Officer Rhodes had reasonable suspicion that criminal activity had occurred, and he could detain R.K. for investigative purposes. See Miller v. State, 846 N.E.2d 1077, 1082 (Ind. Ct. App. 2006) (“In essence the smell of marijuana can satisfy the reasonable suspicion requirement justifying an investigatory stop.”), trans. denied.

Upon learning during the detention that R.K. was a runaway and a warrant had been issued for him, Officer Rhodes placed R.K. under arrest. Officer Rhodes then questioned R.K. without R.K. having consultation with his parent or guardian, and R.K. admitted to having marijuana in his shoe.<sup>1</sup> Although the juvenile court suppressed R.K.’s statements, it did not suppress the marijuana found in his shoe.

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<sup>1</sup> Indiana Code Section 31-32-5-1 provides:

Any rights guaranteed to a child under the Constitution of the United States, the Constitution of the State of Indiana, or any other law may be waived only:

- (1) by counsel retained or appointed to represent the child if the child knowingly and voluntarily joins with the waiver;
- (2) by the child’s custodial parent, guardian, custodian, or guardian ad litem if:
  - (A) that person knowingly and voluntarily waives the right; that person has no interest adverse to the child;
  - (B) meaningful consultation has occurred between that person and the child; and
  - (C) the child knowingly and voluntarily joins with the waiver; or
- (3) by the child, without the presence of a custodial parent, guardian, or guardian ad litem, if:
  - (A) the child knowingly and voluntarily consents to the waiver; and

We note that the inevitable discovery exception to the exclusionary rule “permits the introduction of evidence that eventually would have been located had there been no error, for [in] that instance ‘there is no nexus sufficient to provide a taint.’” J.B. v. State, 868 N.E.2d 1197, 1201 (Ind. Ct. App. 2007) (quoting Nix v. Williams, 467 U.S. 431, 448, 104 S. Ct. 2501, 2511 (1984)), trans. denied. A full search of a person after arrest “is not only an exception to the warrant requirement of the Fourth Amendment, but is also a ‘reasonable’ search under that Amendment.” Ward v. State, 903 N.E.2d 946, 957 (Ind. 2009) (quoting United States v. Robinson, 414 U.S. 218, 235, 94 S. Ct. 467, 477 (1973)), adhered to on reh’g, 908 N.E.2d 595 (Ind. 2009), cert. denied. Upon his arrest, R.K. would have been subject to a search of his person incident to that arrest, and the marijuana in his shoe would have been discovered anyway. Officer Rhodes also testified that R.K. would have been subject to the removal of his clothing and shoes, and the marijuana would have been discovered during that search too. Consequently, the marijuana was admissible under the inevitable discovery doctrine, and the trial court did not abuse its discretion by admitting it into evidence.

### **Conclusion**

The trial court did not abuse its discretion by admitting the marijuana found in R.K.’s shoe. We affirm.

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- (B) the child has been emancipated under IC 31-34-20-6 or IC 31-37-19-27, by virtue of having married, or in accordance with the laws of another state or jurisdiction.

Affirmed.

BAKER, J., and VAIDIK, J., concur.