

Case Summary

Khaleeq Williams appeals his conviction for Class A misdemeanor carrying a handgun without a license. Williams contends that the trial court erred by admitting the handgun into evidence at trial because it was recovered during a search incident to an unlawful arrest in contravention of Article 1, Section 11 of the Indiana Constitution. Concluding that the police conduct was reasonable under the totality of the circumstances, we affirm.

Facts and Procedural History

In March 2010, Officer Jonathan Clark of the Lawrence Police Department was parked at the front of a skate park when a woman told him about a fight inside the park. Right after the woman reported the fight, he received a dispatch regarding a fight at the same skate park. As he approached the scene, Officer Clark saw several people pointing at a young man running across a field. He then saw that young man getting into the rear driver's side of a white Jeep Cherokee. Officer Clark stopped the vehicle, which had six or seven people in it, and went to the rear driver's side. When he asked the young man to step out, he noticed the passenger in the front seat, later identified as Williams, "sweatin' and breathin' real hard." Tr. p. 14. Officer Clark asked Williams to step out of the vehicle as well. Another officer brought a witness to the scene. The witness identified Williams to Officer Clark. Other officers spoke with the victim. Officer Clark arrested Williams based on information gathered at the scene. He then patted down Williams and found a handgun in his right front pocket.

The State charged Williams with Class A misdemeanor battery, Ind. Code § 35-42-2-1(a)(1), and Class A misdemeanor carrying a handgun without a license, *id.* § 35-47-2-1. At the beginning of Williams' bench trial, the court granted the State's motion to dismiss the battery count because the alleged victim was not present. Officer Clark then testified for the State. When the State offered the handgun into evidence, Williams moved to suppress it on grounds that the search was not incident to a lawful arrest. The trial court denied the motion. At the close of trial, the court found Williams guilty of Class A misdemeanor carrying a handgun without a license and sentenced him to eighteen days.

Williams now appeals.

Discussion and Decision

Williams contends that the trial court erred by admitting the handgun into evidence at trial because it was recovered during a search incident to an unlawful arrest in contravention of Article 1, Section 11 of the Indiana Constitution.

Article 1, Section 11 of the Indiana Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

The legality of a governmental search or seizure under the Indiana Constitution turns on an evaluation of the reasonableness of the police conduct under the totality of the circumstances. *Litchfield v. State*, 824 N.E.2d 356, 359 (Ind. 2005). Among the totality of the circumstances to be considered when determining whether a search or seizure is

reasonable under the Indiana Constitution include: (1) the degree of concern, suspicion, or knowledge that a violation of law has occurred; (2) the degree of intrusion that the method of search or seizure imposes on the citizen's ordinary activities; and (3) the extent of law enforcement needs. *Id.* at 361. Article 1, Section 11 is construed liberally to guarantee the people against unreasonable search and seizure. *Cheatham v. State*, 819 N.E.2d 71, 76 (Ind. Ct. App. 2004) (citing *Brown v. State*, 653 N.E.2d 77, 79 (Ind. 1995)).

Officer Clark had a high degree of concern that a violation of law had occurred because he received a dispatch about a fight at the skate park right after a woman had informed him of a fight at the same skate park. *See Bogetti v. State*, 723 N.E.2d 876, 880 (Ind. Ct. App. 2000) (“[W]hen an officer receives a dispatcher’s message, he has no reason to question the source or credibility.”). As he approached the scene, he saw several people pointing at a young man running across a field and jumping into the backseat of a white Jeep Cherokee. When Officer Clark stopped the Cherokee and asked the young man to step out, he noticed Williams in the front passenger seat sweating and breathing heavily. Officer Clark had reasonable suspicion that Williams may have also been involved in the fight since his sweating and heavy breathing was consistent with someone who had been involved in a fight and he was a passenger in the same vehicle that the man running across the field had fled into. The degree of intrusion in asking Williams to step out of the Cherokee was minimal in light of the fact that Officer Clark had already performed a valid investigatory stop of the vehicle and had a high law

enforcement need to investigate the fight. It was therefore reasonable for Officer Clark to ask Williams to step out of the Cherokee.

During the investigation, a witness identified Williams to Officer Clark as being involved in the fight. Other officers spoke with the victim of the fight. Based on information gathered at the scene, Officer Clark arrested Williams. Given the witness's identification of Williams to Officer Clark, the arrest was reasonable; that is, it was supported by probable cause.¹ Further, the subsequent search was reasonable as it was only a pat-down search and Officer Clark had a high law enforcement need to remove any weapons in Williams' possession.

Under the totality of the circumstances, Williams' arrest and subsequent search were reasonable under Article 1, Section 11 of the Indiana Constitution. The trial court therefore did not err by admitting the handgun into evidence at trial.

Affirmed.

BAKER, J., and BARNES, J., concur.

¹ To the extent Williams argues that the witness who identified him to Officer Clark did not testify at his bench trial, he presents no cogent confrontation argument and has thus waived the issue. *See* Ind. Appellate Rule 46(A)(8)(a) ("The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning."); *Lyles v. State*, 834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005) (holding that failure to develop a cogent argument waives the issue for appellate review), *reh'g denied, trans. denied*. Even if the issue was not waived, there is no confrontation issue here. Officer Clark's testimony that the witness identified Williams was not offered for the truth of the matter asserted – that Williams was involved in the fight – but to show that Officer Clark's conduct in arresting Williams was reasonable.