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**IN THE
COURT OF APPEALS OF INDIANA**

LAQUALIN PAIGE,)

Appellant-Defendant,)

vs.)

No. 02A05-0811-CR-659

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
ROOM 4
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0711-FD-978

April 21, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Laqualin Paige (Paige), appeals his conviction for possession of cocaine, a Class D felony, Ind. Code § 35-48-4-6.

We affirm.

ISSUES

Paige raises two issues for our review, which we restate as follows:

- (1) Whether the scope of the traffic stop exceeded the permissible limits of a *Terry* stop; and
- (2) Whether the State presented sufficient evidence to prove beyond a reasonable doubt that Paige possessed cocaine.

FACTS AND PROCEDURAL HISTORY

On the evening of May 16, 2007, Officer Ben Miller (Officer Miller) of the City of Fort Wayne Police Department initiated a traffic stop after observing Paige change lanes without signaling. When Officer Miller approached the vehicle, Paige rolled down his window slightly. Paige slid his driver's license out the window to Officer Miller, who explained to Paige that he had pulled him over because of his failure to use proper signaling when changing lanes. Officer Miller returned to his patrol car to run Paige's information through the computer to verify his driver status and to check for any outstanding warrants. After running Paige's information through the computer, Officer Miller discovered that Paige had no outstanding warrants and that the vehicle was registered to Paige's mother.

While sitting in his patrol car, Officer Miller observed Paige “spraying something inside [his] vehicle.” (Transcript p. 11). Based on Officer Miller’s experience, this was a technique often used by individuals “to disguise [the] smell [of narcotics] inside [their] car.” (Tr. p. 11). When Officer Miller returned to Paige’s vehicle, he leaned closer to the window, and “caught a faint smell of marijuana.” (Tr. p. 12). Officer Miller ordered Paige to step out of his vehicle. Paige refused to exit the vehicle, and rolled up the car window. Officer Miller pulled out his baton, and tapped it on the window. Officer Miller told Paige that if he did not roll down the window, he would break the window with the baton. Paige rolled the window approximately halfway down. Officer Miller reached inside the window, unlocked the door, and opened it. When Officer Miller reached inside the window, Paige attempted to roll the window up on his arm. After opening the door, Officer Miller “help[ed]” Paige exit the vehicle. (Tr. p. 14).

At that point, Officer Miller believed he had probable cause to arrest Paige for resisting law enforcement. Incident to that arrest, Officer Miller patted Paige down, uncovering a “grinder”¹ in the process. (Tr. p. 15). Officer Miller opened the grinder and found burnt marijuana inside.

Since there was no one else inside the vehicle with Paige at the time, and since Paige was put under arrest, Officer Miller decided to have the vehicle towed. Before the vehicle was towed, Officer Miller searched the interior of the vehicle. This initial search uncovered

¹ According to Officer Miller’s testimony, a “grinder” is a tool used to grind marijuana or tobacco into a fine grain, so that it can then be rolled into a cigarette. (Tr. pp. 15-16).

no additional contraband or marijuana. However, consistent with Officer Miller's prior observations, the search did uncover a can of aerosol air freshener. In conducting the search, Officer Miller also observed certain irregularities with the interior of the vehicle. For example, Officer Miller observed that one of the vents on the passenger side of the vehicle appeared to be blocked on the inside.

At some point, Detective Mark Gerardot (Detective Gerardot) of the narcotics division for the City of Fort Wayne Police Department arrived at the scene. Officer Miller explained to Detective Gerardot that he had smelled marijuana during the traffic stop. Detective Gerardo approached the vehicle and "detected the strong odor of raw marijuana." (Tr. p. 45). Detective Gerardot, who had received special training in drug interdiction, examined the irregularities in the interior of the vehicle. During his testimony, Detective Gerardot explained that these types of irregularities were indicative of hidden compartments within the vehicle's interior. Detective Gerardot further explained that these compartments were commonly used "[i]n the transport and sales of narcotics." (Tr. p. 46). These irregularities, together with the strong odor of marijuana, led Detective Gerardot to believe that there was more marijuana inside the vehicle.

The vehicle was towed to a secure location. After obtaining a search warrant for the vehicle, Detective Gerardot, together with another detective and Officer Miller, went to the secure location and searched the vehicle. During the course of the search, the detectives uncovered several bags of cocaine and marijuana stuffed inside a "homemade compartment"

within a vent. (Tr. p. 53). Based on Detective Gerardot's observations, the marijuana within the bags was of the same consistency as that found by Officer Miller during his initial search.

On November 7, 2007, the State filed an Information charging Paige with possession of cocaine, a Class D felony, I.C. § 35-48-4-6. On June 18, 2008, the trial court conducted a bench trial. At the trial, the State presented Officer Miller and Detective Gerardot as witnesses. At the conclusion of the evidence, the trial court convicted Paige of possession of cocaine, a Class D felony. On July 11, 2008, the trial court sentenced Paige to eighteen months in the Department of Correction, which was suspended to probation, with credit for two days served in confinement.

Paige now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Scope of Terry Stop

Paige argues that the scope of the traffic stop initiated by Officer Miller exceeded the permissible limits of a *Terry* stop, and was therefore unconstitutional under both the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. Specifically, Paige argues that Officer Miller did not have the requisite reasonable suspicion of criminal activity that is necessary to support a *Terry* stop.

A. Fourth Amendment to the United States Constitution

The Fourth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, guarantees: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall

not be violated[.]” U.S. CONST. amend. IV. Although the Fourth Amendment generally requires a warrant in order to search a person or property, there are some well-established exceptions to this requirement. A search and seizure is *per se* unreasonable if it is conducted outside of the judicial system unless the state can show that the search falls within one of these exceptions. *Stone v. State*, 671 N.E.2d 499, 501 (Ind. Ct. App. 1996).

The exception applicable in the present case is a *Terry* stop. “The *Terry* stop exception permits a police officer to stop and 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.” *Parker v. State*, 697 N.E.2d 1265, 1267 (Ind. Ct. App. 1998) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). Courts will consider the totality of the circumstances in determining whether a police officer had reasonable suspicion to believe that there was criminal activity afoot. *D.K. v. State*, 736 N.E.2d 758, 761 (Ind. Ct. App. 2000). On appeal, we consider *de novo* whether such reasonable suspicion existed. *Ransom v. State*, 741 N.E.2d 419, 421 (Ind. Ct. App. 2000), *trans. denied*.

This court has recognized that “[a]n ordinary traffic stop is akin to an investigative detention, and the principles announced in *Terry* apply.” *D.K.*, 736 N.E.2d at 761. Furthermore, “[t]he *Terry* investigative detention should ‘last no longer than is necessary to effectuate the purpose of the stop.’” *Id.* (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)). “Therefore, once the purpose of the initial traffic stop has been completed, an officer cannot ‘further detain the vehicle or its occupants unless something that occurred

during the traffic stop generated the necessary reasonable suspicion to justify a further detention.” *Id.* (quoting *United States v. Mesa*, 62 F.3d 159, 162 (6th Cir. 1995)).

Considering the totality of the circumstances in the present case, we conclude that Officer Miller did have reasonable suspicion to stop and detain Paige. Officer Miller made a valid traffic stop after observing Paige change lanes without using the proper signals. After Officer Miller ran Paige’s information through his computer, he discovered that Paige had no outstanding warrants and that the vehicle was properly registered to Paige’s mother. At that point, Officer Miller had the option of issuing Paige a traffic citation for his failure to signal when changing lanes, or allowing Paige to leave with a warning. The purpose of the initial traffic stop would then be completed, and Officer Miller could no longer lawfully detain Paige.

However, this court has recognized that “an officer cannot ‘further detain the vehicle or its occupants *unless* something that occurred during the traffic stop generated the necessary reasonable suspicion to justify a further detention.” *Id.* (emphasis added). We conclude that Officer Miller’s observations during the traffic stop generated the necessary reasonable suspicion to prolong the initial *Terry* stop and justified the further detention of Paige. While Officer Miller was running Paige’s information through the computer in his patrol car, he observed Paige “spraying something inside [his] vehicle.” (Tr. p. 11). Based on Officer Miller’s experience, this was a technique often used by individuals “to disguise [the] smell [of narcotics] inside [their] car.” (Tr. p. 11). When Officer Miller returned to Paige’s vehicle, he leaned closer to the window, and “caught a faint smell of marijuana.”

(Tr. p. 12). Given these facts, the detention of Paige did not offend Fourth Amendment principles, as Officer Miller had the necessary reasonable suspicion to believe that there was criminal activity afoot. Furthermore, based on these facts, it was lawful for Officer Miller to prolong the initial traffic stop and further detain Paige for investigative purposes.

B. Article 1, Section 11 of the Indiana Constitution

We reach a similar result when analyzing Paige’s claim under the Indiana Constitution. Parallel to the language of the Fourth Amendment, 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.” IND. CONST. art. I, § 11. This provision “guarantees the rights of liberty, privacy, and free movement.” *Taylor v. State*, 639 N.E.2d 1052, 1054 (Ind. Ct. App. 1994). This court has recognized that “[i]nvestigatory stops are intrusions into the privacy of the detained individual and an interference with freedom of movement.” *Id.* As such, these stops are considered a seizure, and thereby invoke the protections of Article 1, Section 11 of the Indiana Constitution. The rights guaranteed by Article 1, Section 11, however, are not absolute, and must be balanced against society’s right to protect itself. *State v. Atkins*, 834 N.E.2d 1028, 1034 (Ind. Ct. App. 2005). To strike this balance, we must consider the reasonableness of the intrusion and, where appropriate, allow brief investigatory stops based upon reasonable suspicion of criminal activity. *Id.*

Our supreme court has articulated a distinct method of analysis for claims of search and seizure violations of Article 1, Section 11 of the Indiana Constitution: “Rather than employ federal concepts like the warrant requirement and probable cause requirement, we require instead that the State bear the burden of showing that, in the totality of the circumstances, the intrusion was reasonable.” *Baldwin v. Reagan*, 715 N.E.2d 332, 337 (Ind. 1999). Indiana courts have recognized that a brief police detention of an individual during an investigation is reasonable if the police officer reasonably suspects that the individual is engaged in, or is about to engage in, illegal activity. *Id.* (citing *Taylor v. State*, 639 N.E.2d 1052, 1054 (Ind. Ct. app. 1994)). “Reasonable suspicion exists where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe that criminal activity has or is about to occur.” *Id.*

As explained above with respect to Paige’s Fourth Amendment claim, Officer Miller observed Paige spraying something inside his vehicle. Likewise, Officer Miller smelled the scent of marijuana emanating from Paige’s vehicle. These observations would cause an ordinarily prudent person to believe that criminal activity had or was about to occur, thus giving rise to the requisite reasonable suspicion under Article 1, Section 11 of the Indiana Constitution. Paige’s detention did not contravene Article 1, Section 11 of the Indiana Constitution, and the scope of the traffic stop did not exceed the permissible limits of *Terry*.

Furthermore, we are not persuaded by Paige’s argument that the duration of his detention exceeded the limits established in *Terry*. While we acknowledge Paige’s statement that “[a]uthorities are constitutionally required not to detain motorists any longer than is

necessary to complete the purpose of the stop and their limited investigation into the documentation of the driver and vehicle in question[,]” (Appellant’s Brief, p. 5), we emphasize that this was no ordinary traffic stop. After Officer Miller detected the scent of marijuana, a legally justified chain of events not disputed by Paige ensued that ultimately led to the discovery of cocaine within the vehicle.

We conclude that the scope of the traffic stop initiated by Officer Miller did not exceed the permissible limits of a *Terry* stop. Furthermore, we find that Officer Miller did have the requisite reasonable suspicion of criminal activity that is necessary to support a *Terry* stop.

II. *Sufficiency of the Evidence*

Paige also argues that the State did not present sufficient evidence to sustain his conviction for possession of cocaine, a Class D felony, beyond a reasonable doubt. Specifically, Paige argues that the evidence presented at trial failed to establish that he constructively possessed the cocaine that was uncovered during the search of his vehicle.

Our standard of review with regard to sufficiency claims is well settled:

In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. A conviction may be based upon circumstantial evidence alone. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense.

Perez v. State, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied* (citations omitted).

Indiana Code section 35-48-4-6 provides in pertinent part: “(a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner’s professional practice, knowingly or intentionally possesses cocaine (pure or adulterated) or a narcotic drug (pure or adulterated) classified in schedule I or II, commits possession of cocaine or a narcotic drug, a Class D felony[.]” Thus, to convict Paige of possession of cocaine, the State needed to prove beyond a reasonable doubt that Paige knowingly or intentionally possessed cocaine.

A conviction for possession of cocaine may be supported by proof of actual or constructive possession. *Goodner v. State*, 685 N.E.2d 1058, 1061 (Ind. 1997). “Constructive possession is established when the defendant had 1) the intent to maintain dominion and control over the contraband, and 2) the ability to maintain dominion and control over the contraband.” *Whitney v. State*, 726 N.E.2d 823, 825-26 (Ind. Ct. App. 2000) (citing *Lampkins v. State*, 685 N.E.2d 698, 699 (Ind. 1997)).

To prove that Paige had the necessary intent to constructively possess the cocaine, the State must provide evidence that Paige had knowledge of the cocaine’s presence. *Id.* at 826. “This knowledge may be inferred from either the exclusive dominion and control over the premise containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant’s knowledge of the presence of the contraband.” *Id.* (citing *Taylor v. State*, 482 N.E.2d 259, 261 (Ind. 1985)). Paige contends that his entire

family used the car in which the drugs were found, and therefore, he was not in exclusive possession of the car. However, Paige was the driver and sole occupant of the car when Officer Miller stopped him. Likewise, Detective Gerardot testified that Paige's mother told him that Paige was the primary driver of the vehicle. Based on these facts, the trial court could reasonably conclude that Paige was in exclusive possession of the vehicle. *See id.* (finding that the trial court could reasonably conclude that defendant was in exclusive possession of the vehicle where he was the driver and sole occupant of the vehicle when stopped by police).

The fact that Paige had exclusive possession of the car provides some evidence from which it could be inferred that he was aware of the cocaine in the car. However, this court has been "hesitant to rely solely on control of the vehicle as evidence of intent" in cases where the drugs were hidden within a secret compartment. *Id.* As such, "additional evidence of guilty knowledge is necessary to establish intent[.]" *Id.*

We conclude that there is additional circumstantial evidence from which the trial court could reasonably infer that Paige knew that the cocaine was concealed in the car. During the traffic stop, Officer Miller smelled the odor of marijuana. When Officer Miller searched Paige, he discovered a grinder with marijuana inside. After obtaining a warrant, officers found marijuana of the same consistency as that found within the grinder. Officers found this marijuana in a hidden compartment of the car. In the same hidden compartment, officers found a bag of cocaine. In addition to the fact that Paige had exclusive control of the vehicle,

these additional facts provide further circumstantial evidence of Paige's guilty knowledge. Thus, we conclude there is sufficient evidence to establish the element of intent.

In addition to proving intent, the State must also provide evidence that Paige had the ability to maintain dominion and control over the cocaine. This capability requirement is established "when the State shows that the defendant is able to reduce the controlled substance to the defendant's personal possession." *Id.* Furthermore, "[p]roof of a possessory interest in the premises in which the illegal drugs are found is adequate to show the capability to maintain dominion and control over the items in question." *Id.* at 826-27 (quoting *Davenport v. State*, 464 N.E.2d 1302, 1307 (Ind. 1984)). Here, Paige was the driver and sole occupant of the vehicle in which the cocaine was found. Such possession is sufficient to establish his capability to maintain control over the cocaine. Since the State provided evidence of both Paige's intent and his ability to maintain control over the cocaine, we conclude that the evidence is sufficient to support the trial court's conclusion that Paige had constructive possession of the cocaine. As such, the evidence is sufficient to support Paige's conviction.

CONCLUSION

Based on the foregoing, we conclude that the scope of the traffic stop initiated by Officer Miller did not exceed the permissible limits of a *Terry* stop. Furthermore, we

conclude that the evidence is sufficient to support Paige's conviction for possession of cocaine, a Class D felony, beyond a reasonable doubt.

Affirmed.

DARDEN, J., and VAIDIK, J., concur.