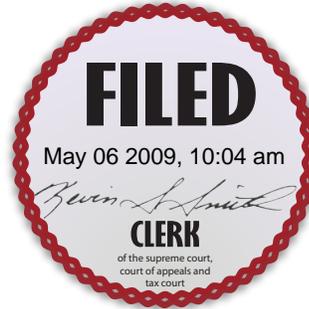


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

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TERRA GARRETT, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A02-0807-CR-664

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable William E. Young, Judge  
The Honorable Michael S. Jensen, Magistrate  
Cause No. 49G20-0505-FB-83083

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**MAY 6, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARTEAU, Senior Judge**

STATEMENT OF THE CASE

Defendant-Appellant Terra Garrett appeals the trial court's denial of her motion to suppress evidence seized after a search. We reverse and remand with instructions.

ISSUE

The following restated issue is dispositive: Whether the trial court erred in denying Garrett's objection to evidence garnered as a result of a stop and seizure.

FACTS AND PROCEDURAL HISTORY

On May 17, 2005, Indianapolis Police Officer Greg Crabtree was dispatched to an Indianapolis address after an anonymous tipster reported that a black male would be selling narcotics outside that residence. The anonymous tipster also stated that a white, four-door Ford Taurus with a particular license plate number was parked outside the house.

When Officer Crabtree arrived at the address, he parked his marked police car directly behind the white Taurus, which was occupied and legally parked. A second IPD police car, driven by Officer Steven Hayth, arrived simultaneously with Crabtree. Officer Hayth parked his car behind Officer Crabtree's car.

Officer Crabtree observed that there were no black males in the area. However, after confirming that the license plate on the white Taurus matched that given by the dispatcher, Officer Crabtree walked toward the driver's side of the car, while Office

Hayth approached from the opposite side. Wanting to ensure that the car was occupied by a licensed driver, Officer Crabtree rapped on the window two times to get the passenger's attention. After the second rap, the Taurus's occupant, Garrett, opened the car's window.

Officer Crabtree smelled the odor of burnt marijuana emanating from the car. However, instead of arresting Garrett, Officer Crabtree asked her for identification so he could determine whether she had a valid driver's license. Garrett told him that her identification was in the house; however, Officer Crabtree noticed a purse lying on the front seat, asked Garrett if it belonged to her, and upon receiving an affirmative response, asked her whether there was identification in the purse. Officer Crabtree then had Garrett get out of the car "[to] identify her. I needed to check her license." (Tr. at 10, 27).

Officer Crabtree, desiring to "[s]ee if maybe her identification was underneath her purse," reached inside the car and removed it. (Tr. at 27). Noticing that the purse was unusually heavy, Officer Crabtree asked Garrett whether there was anything in the purse that he needed to know about for his safety. Garrett said that she had "protection" in the purse, meaning a handgun.

Officer Crabtree immediately placed Garrett in handcuffs for carrying a firearm without a license. A search of Garrett turned up cocaine and Xanax, a controlled substance.

Despite having smelled the odor of burning marijuana wafting from the car's open window, Officer Crabtree insisted that Garrett was not yet detained and was free to leave

without speaking further to him. Indeed, Officer Crabtree testified that Garrett was free to drive away from the scene without rolling down her window and that she did not have to exit her car. Furthermore, Officer Crabtree testified that Garrett was free to abandon her purse and walk away from him.

Garrett, who had a previous armed robbery conviction, was charged by information with Count I: unlawful possession of a firearm by a serious violent felon, a Class B felony; Count II: possession of cocaine, a Class C felony; Count III: possession of cocaine and a firearm, a Class C felony; Count IV: possession of a controlled substance, a Class D felony; Count V: carrying a handgun without a license, a Class A misdemeanor, or carrying a handgun without a license, a Class C felony.<sup>1</sup> Garrett responded by filing a motion to suppress any statements made or physical evidence obtained as part of the investigatory stop. After a hearing, the trial court denied the motion, and this court denied Garrett's subsequent motion for interlocutory appeal.

The case was tried to the bench after the State and Garrett submitted the "Parties' Stipulated Facts and Evidence." As the trial court stated on the record, the purpose of "trying" the case on the stipulated facts was to preserve Garrett's right to appeal the trial court's denial of Garrett's motion to suppress. (Tr. at 44-45). The trial court convicted Garrett on all counts but did not enter a judgment of conviction of carrying a handgun without a license, a Class C felony. Garrett now appeals.

## DISCUSSION AND DECISION

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<sup>1</sup> As the trial court explained on the record, Marion County's case management software records offense enhancements as new counts. (Tr. at 49). Accordingly, the enhancement was filed as Count VI.

Garrett contends that the trial court erred in admitting statements and physical evidence that was obtained after the investigatory stop began. The standard used to review rulings on the admissibility of evidence is effectively the same whether the challenge is made by a pre-trial motion to suppress or by a trial objection. *Burkes v. State*, 842 N.E.2d 426, 429 (Ind. Ct. App. 2006), *trans. denied*. This court considers the evidence most favorable to the court's decision and any uncontradicted evidence to the contrary. *Cox v. State*, 854 N.E.2d 1187, 1193 (Ind. Ct. App. 2006). The ruling will be reversed if the court abuses its discretion, which occurs when a decision is clearly against the logic and effect of the facts and circumstances before the court. *Morris v. State*, 871 N.E.2d 1011, 1015 (Ind. Ct. App. 2007), *trans. denied*.

Before considering Garrett's contention, we will address the State's argument that Garrett has not preserved her claim on appeal. As the State correctly notes, a motion to suppress is not enough to preserve a claim of error on appeal. *See Green v. State*, 753 N.E.2d 52, 59 (Ind. Ct. App. 2001). Instead, the party claiming error in the admission of evidence must object to the introduction of that evidence at trial. *Id.* The State argues that Garrett's stipulation to the evidence is an invitation of error, and in support of that argument it points to *Ellis v. State*, 707 N.E.2d 797, 803 (Ind. 1999), *trans. denied*, in which our supreme court held that "[b]y stipulating, without qualification, to the evidence that he now challenges, Defendant invited the very error he now claims is reversible." The flaw in the State's argument is that Garrett's stipulation was qualified, and that qualification was recognized by the trial court. In essence, Garrett determined that

without the suppression of the evidence there was no need for a trial; accordingly, she saved the trial court the time of holding a trial while preserving her objection. There is no waiver here.

The State tries to characterize Officer Crabtree's actions as an inoffensive contact between a police officer and a member of the public. We would agree with this characterization if Officer Crabtree had initiated contact to ask questions about the black male who was reportedly dealing drugs at that location; however, as he testified, Officer Crabtree determined to detain Garrett for investigatory purposes to ascertain whether the person sitting behind the wheel of the parked Taurus was a licensed driver. A police officer may briefly detain a person for investigatory purposes without probable cause if the officer has a reasonable suspicion of criminal activity based on specific and articulable facts. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 1879-80, 20 L.Ed.2d 889 (1968). Here, Garrett's sitting in a parked car was not an action that should have raised any reasonable suspicion. It is not an offense for an unlicensed person to sit in a parked car; therefore, there was no reasonable suspicion of criminal activity based on specific and articulable facts.

The State argues that no seizure took place because there was no police activity that would have prompted Garrett to conclude that she was not free to leave. The test of whether a seizure has taken place is necessarily imprecise "because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation." *Bentley v. State*, 779 N.E.2d 70, 74 (Ind.

Ct. App. 2002) (quoting *Michigan v. Chestnut*, 486 U.S. 567, 573, 108 S.Ct. 1975, 100 L.Ed.2d 565 (1988)). The test looks at the reasonable person's interpretation of the conduct in question. *Id.* There are a number of factors which may be considered in determining whether a seizure has taken place under the Fourth Amendment. *Id.* These factors include the threatening presence of several officers, the display of a weapon by the officer, some physical touching of the person, or the use of language or tone of voice indicating that compliance with the officer's requested might be compelled. *Overstreet v. State*, 724 N.E.2d 661, 664 (Ind. Ct. App. 2000), *trans. denied*. Here, there were two officers involved and they approached on opposite sides of her vehicle. It strains credulity to conclude that a person in Garrett's position would think that she was free to drive off, leaving the two officers standing in her wake. Stated differently, Garrett opened the window to her vehicle in response to a show of police authority.

We reverse and remand with instructions that the trial court exclude the statements and physical evidence garnered from the invalid stop and the subsequent warrantless seizure.<sup>2</sup>

DARDEN, J., and NAJAM, J., concur.

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<sup>2</sup> Because we resolve this issue pursuant to the Fourth Amendment, we do not address Garrett's claim under Indiana's Constitution.