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ATTORNEY FOR APPELLANT:

JOHN ANDREW GOODRIDGE
Evansville, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

JULIUS CABELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A01-1010-CR-548
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

INTERLOCUTORY APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Robert J. Tornatta, Judge
Cause No. 82D02-0912-FD-1254

June 1, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

A police officer, investigating a 911 call from a child, knocked on the front door of a residence and identified himself as police. Julius Cabell peered out the window, fled further into the residence, returned to the door to look out the window again, and then ran into a room out of the officer's view. When the officer gained entry, he found Cabell hiding in a bedroom closet. After the residence was cleared and no child was found, another officer questioned Cabell about why he ran back and forth in the residence and whether he was hiding something. Cabell led the police to a stash of marijuana.

The State charged Cabell with Class D felony possession of marijuana. Cabell filed a motion to suppress the marijuana and statements he made to the police. The trial court denied his motion, and Cabell now brings this interlocutory appeal. We conclude that Cabell's actions in darting back and forth through the residence and then hiding in a bedroom closet supplied the officers with reasonable suspicion justifying an investigatory detention. Because Cabell's Fourth Amendment rights were not violated, we conclude that the trial court did not err by denying the motion to suppress. We affirm.

Facts and Procedural History

In December 2009, a child called 911, asked them to send police, and hung up. Officer John McQuay of the Evansville Police Department was dispatched to 411 Bellemeade Avenue in response to the call. When Officer McQuay arrived, he looked through the front door window and saw a man, later identified as Cabell, seated inside the residence. Officer McQuay knocked on the door. Cabell came to the door, peered through the window, and asked who was there. Officer McQuay identified himself as the

police in a loud voice. When Cabell again asked who was there, Officer McQuay repeated that he was the police and shined a flashlight on his uniform. At that point, Officer McQuay saw Cabell run from the door and further into the residence. Officer McQuay continued to bang on the door and requested that Cabell open the door. Cabell returned to the door, peered through the window again, and then ran into the east side of the residence and out of view. Officer McQuay called for backup.

Officer Todd Mattingly and Officer Shirley arrived two minutes later. At some point, State Trooper Beane also arrived. Based on the possible risk to the child and Cabell's behavior, Officer McQuay decided to force entry into the residence. As the officers were trying to kick in the door, Jeanette MaGruder arrived and said she was a resident of the house. After Officer McQuay explained the situation, MaGruder gave them a key. The officers unlocked the door and entered the house. Officers McQuay and Shirley immediately headed in the direction that Cabell had run. They found him hiding in a child's bedroom closet. Cabell was detained in handcuffs and led to the living room where he sat on the couch while the officers continued to clear the residence. When Officer McQuay asked Cabell why he did not open the door, Cabell responded that he was scared. Officer McQuay then stepped outside to speak with MaGruder.

After the other officers finished clearing the residence, Officer Mattingly advised Cabell of his *Miranda* rights. Cabell indicated that he understood his rights and was willing to speak with Officer Mattingly. Officer Mattingly explained why they were there and asked if a child had been in the house. Cabell said no. Officer Mattingly then asked what Cabell was doing when he was running back and forth inside the house.

Cabell said he was not doing anything and had a defensive demeanor. When Officer Mattingly asked if Cabell was hiding anything in the house, Cabell said no. Officer Mattingly told Cabell, "You know, if it's a small amount of narcotics, there's a citation involved and you can be released tonight." Tr. p. 26. Cabell's demeanor changed, and he appeared to be relieved that a citation could be written for a small amount of narcotics. He responded, "Okay, I'll show you," *id.*, and led them to a bedroom where he indicated that there was marijuana inside a clothes hamper. Officer Mattingly found two baggies of marijuana under some clothes in the hamper. Only one to two minutes had elapsed from when Officer Mattingly advised Cabell of his rights to when Cabell said he would show him the marijuana.

The State charged Cabell with Class D felony possession of marijuana. Cabell filed a motion to suppress the marijuana and statements he made to Officer Mattingly. The trial court denied the motion to suppress following a hearing.

Upon Cabell's request, the trial court certified its order for interlocutory appeal, and this Court accepted jurisdiction.

Discussion and Decision

Cabell contends that the trial court erred by denying his motion to suppress.

Our standard for reviewing the denial of a motion to suppress is well settled. We review such rulings in a manner similar to other sufficiency matters. *State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006). We do not reweigh the evidence, and we consider conflicting evidence most favorable to the ruling. *Id.* Unlike typical sufficiency reviews, however, we will consider not only the evidence favorable to the ruling but also the

uncontested evidence favorable to the defendant. *Powell v. State*, 898 N.E.2d 328, 334 (Ind. Ct. App. 2008), *trans. denied*.

Cabell does not argue that the officers' entry into the residence was improper.[1] Instead, he claims that his Fourth Amendment rights were violated when he was detained beyond the point at which the residence was cleared. Therefore, his argument continues, any statements and evidence obtained as a result of the allegedly unlawful detention should be suppressed.

The Fourth Amendment to the United States Constitution provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The protections of the Fourth Amendment have been extended to the states through the Fourteenth Amendment. *Taylor v. State*, 929 N.E.2d 912, 919 (Ind. Ct. App. 2010), *trans. denied*. Evidence obtained in violation of a defendant's Fourth Amendment rights may not be introduced against him at trial. *Mapp v. Ohio*, 367 U.S. 643, 648-60 (1961).

The Fourth Amendment prohibits "unreasonable searches and seizures" by the Government, and its safeguards extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest. *United States v. Arvizu*, 534 U.S. 266, 273 (2002). A police officer may briefly detain a person for investigatory purposes without a warrant or probable cause if, based upon specific and articulable facts together with rational

[1] Although dispatch provided the address of 411 Bellemeade Avenue for the child's 911 call, it was later determined that the call did not originate from that address. Nonetheless, Cabell concedes that the officers relied on the information in good faith.

inferences from those facts, the official intrusion is reasonably warranted and the officer has a reasonable suspicion that criminal activity "may be afoot." *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968).

Reasonable suspicion exists where the facts known to the detaining 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. *Campos v. State*, 885 N.E.2d 590, 597 (Ind. 2008). When making a reasonable suspicion determination, reviewing courts examine the "totality of the circumstances" of the case to see whether the officer had a "particularized and objective basis" for suspecting legal wrongdoing. *Arvizu*, 534 U.S. at 273. Officers are not required to rule out all possibility of innocent behavior before initiating a stop. *United States v. Holland*, 510 F.2d 453, 455 (9th Cir. 1975). "The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct." 4 Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 9.5(b) (4th ed. 2004) (quoting *In re Tony C.*, 582 P.2d 957, 960 (Cal. 1978)).

Cabell argues that aside from his refusal to let the officers into the residence, there were no facts supporting "probable cause or reasonable suspicion of any criminal activity once the house was cleared." Appellant's Br. p. 5. We acknowledge that a person has a right to refuse to answer the door when someone knocks. *Montgomery v. State*, 904 N.E.2d 374, 380 (Ind. Ct. App. 2009), *trans. denied*. However, flight in response to a knock on the front door is not the functional equivalent of merely denying officers admittance. *Hardister v. State*, 849 N.E.2d 563, 570 (Ind. 2006). Such flight also adds to

the information available to the officers. *Id.* "It is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such and warrants further investigation by police." *Id.* (quotation omitted).

Cabell did not merely refuse to answer the door. When Officer McQuay knocked on the door and identified himself as a police officer, Cabell looked out the window and then ran to the back of the residence. When Officer McQuay continued to bang on the door, Cabell returned to the door, looked out the window again, and then fled into a room out of Officer McQuay's view. Upon gaining entry to the residence, officers found Cabell hiding in a bedroom closet.

By the time Officer Mattingly began talking with Cabell, the residence was cleared and no child was found. *See* Tr. p. 32 ("I could draw a conclusion that there was no child inside the house because nobody else was searching at that time."). Nonetheless, the officers were not required to ignore the fact that Cabell darted back and forth through the house and ultimately hid in a bedroom closet. Under the totality of the circumstances, the facts and reasonable inferences therefrom were sufficient to establish reasonable suspicion that criminal activity occurred or was about to occur. It was thus permissible for the officers to briefly detain Cabell and ask him why he hid. Further, the couple of minutes it took for Officer Mattingly to confirm his suspicions was not too long in duration to render the investigative detention unreasonable. *See United States v. Sharpe*, 470 U.S. 675, 686 (1985) ("In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the

police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.”).

The officers had reasonable suspicion to justify the investigative detention. We therefore conclude that the trial court did not err by denying Cabell’s motion to suppress.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.