

Case Summary

Tonya Vinson appeals her conviction for Class A misdemeanor possession of paraphernalia. We affirm.

Issue

The sole issue is whether the trial court properly denied Vinson's motion to suppress and admitted paraphernalia into evidence.

Facts

On August 30, 2008, Officer Chad Pryce of the Indianapolis Metropolitan Police Department received a dispatch requesting that he investigate a suspicious pickup truck parked next to a business that was closed for the night. The business had been broken into on prior occasions. Officer Pryce parked near the pickup and went to speak to the person sitting in the passenger seat, Vinson, while another officer went to talk to the driver. Officer Pryce asked Vinson what they were doing there, and she said that she and her boyfriend were just talking. Vinson was "very nervous, very fidgety," and she kept reaching down and making furtive movements towards the middle of her legs. Tr. p. 8. Officer Pryce then asked Vinson to step out of the vehicle. When she did so, Officer Pryce saw a small glass pipe on the seat, which he recognized as drug paraphernalia, and he took it.

The State charged Vinson with Class A misdemeanor possession of paraphernalia. At a bench trial, Vinson moved to suppress the glass pipe. The trial court denied the

motion, admitted the pipe into evidence, and found Vinson guilty as charged. She now appeals.

Analysis

Vinson objected to the admission of the glass pipe via a motion to suppress made during trial. Accordingly, the issue before us is properly framed as whether the trial court abused its discretion by admitting the evidence at trial. See Cole v. State, 878 N.E.2d 882, 885 (Ind. Ct. App. 2007). “Our standard of review for rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by an objection at trial.” Id. We do not reweigh the evidence, and we consider conflicting evidence in the light most favorable to the trial court’s ruling. Id. We also consider uncontroverted evidence favoring Vinson. See id.

Vinson contends Officer Pryce’s ordering her out of the vehicle, thus exposing the glass pipe to view, was an unconstitutional seizure in violation of the Fourth Amendment to the United States Constitution.¹ We begin our analysis by noting that there is a lack of evidence that Officer Pryce seized Vinson within the meaning of the Fourth Amendment when he approached the pickup and began talking to her through the window. When a law enforcement officer makes a casual and brief inquiry of a citizen that involves neither an arrest nor a stop, it is a “consensual encounter” and no Fourth Amendment interest is implicated. Overstreet v. State, 724 N.E.2d 661, 663 (Ind. Ct. App. 2000), trans. denied. A Fourth Amendment seizure does not occur if an officer approaches and talks to an

¹ Vinson makes no argument that Officer Pryce’s actions violated the Indiana Constitution.

occupant of a vehicle that the officer did not pull over, and the officer does not display a weapon or otherwise threaten or physically restrain the occupant. See State v. Lefevers, 844 N.E.2d 508, 513 (Ind. Ct. App. 2006), trans. denied.

The State concedes that when Officer Pryce ordered Vinson to exit the pickup, a seizure occurred. Before that occurred, Officer Pryce had observed that Vinson was “very nervous, very fidgety,” and she kept making reaching down and furtive movements towards the middle of her legs. Tr. p. 8. This caused Officer Pryce to fear for his safety, e.g. that there may have been a weapon in the vehicle. We have previously held that it is reasonable under the Fourth Amendment to order an occupant out of a vehicle in order to perform a pat-down search for weapons where the occupant is nervous and fidgeting, as if attempting to hide or retrieve something. Trigg v. State, 725 N.E.2d 446, 449 (Ind. Ct. App. 2000). That is precisely what occurred here, and Officer Pryce’s ordering Vinson out of the vehicle after observing her nervous and fidgety behavior, while sitting in a vehicle next to a closed business that had a history of break-ins, was reasonable. See id. Moreover, upon seeing the glass pipe that Officer Pryce believed to be drug paraphernalia, he was entitled to seize it. See id. (holding officer could seize crack pipe that he saw in vehicle seat after ordering occupant out of vehicle).

Conclusion

The trial court did not abuse its discretion in denying Vinson’s motion to suppress and admitting the pipe into evidence. We affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.